

Commonwealth Human Rights Initiative

Newsletter

Volume 12 Number 1
New Delhi, Spring 2005

I n s i d e

- Ombudsman and the Right to Information: Case Study from the Pacific
- Control Orders to Combat Terror: Replacing One Kind of Detention For Another in the United Kingdom
- Human Rights: Legislation or Moral Pressure?
- An Important Commonwealth Partnership
- Freedom of Information in the UK
- The United Nations Human Rights Mechanism: What It Means for Human Rights
- A Leap to Equality
- Around the Commonwealth
- Human Rights in the Mature Commonwealth
- Democracy in the Maldives: Fact or Fiction?
- Mozambicans Go To The Polls In Small Numbers
- Police and Police Reform in South Africa After 1990: Some Reflections
- Police Reforms in Pakistan: A Step Forward
- Lawyers vs. Law



A New Right to Information Bill Will we finally get what we deserve?

- Charmaine Rodrigues & Mandakini Devasher
RTI Team, CHRI

On 23 December 2004, the United People's Alliance (UPA) Government in India finally tabled a new Right to Information Bill 2004 ("RTI Bill") in Parliament. When passed, the RTI Bill will replace the Freedom of Information Act 2002 ("FOI Act") which was passed more than 2 years ago but was never implemented.

The right to information has been recognised for decades by the Supreme Court of India as a fundamental right of every Indian under Article 19 (Right to Freedom of Speech and expression) and Article 21 (Right to Life) of the Constitution. In practice, this right recognises that every person in India has a guaranteed right to access information held by government departments information which explains what they do, how they do it and how much it costs. Information is not a gift graciously given by Government. It is collected on our behalf with our money and we should be able to access it *as of right*.

Currently, much of the Government's information is kept secret, particularly if it might lead to exposing of corruption. A properly drafted and effectively implemented Right to Information Act can be used by the public to ensure that the Government will no longer be able to dodge our questions. If civil society is active in using the right to information to scrutinise the Government it could serve to change the very nature of governance in India as we know it by finally forcing public officials to be answerable to us, the public.

The FOI Act passed in 2002 was poorly drafted. As such, it was hoped
Contd.....to pg. 2

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

that the new RTI Bill would offer the country a new opportunity to effectively implement our fundamental right to information. While considerably improved, the new Bill still contains a number of drawbacks, which need to be fixed before the Bill is passed.

It is in all of our interests to make sure that the very best Bill possible is passed by Parliament – and passed quickly. A good law will give us a powerful tool, which we can use to hold government officials to account. This is long overdue.

Background to the Development of the RTI Bill

The campaign for a comprehensive right to information regime celebrated its ten-year anniversary at the second National Right to Information Convention held in Delhi in October 2004. The campaign, which started as a grassroots movement in Rajasthan, has grown to encompass activists from all over the country. Over the years, it has notched up many successes. Most notably, nine states in India have already passed Right to Information laws – namely, Tamil Nadu, Goa, Rajasthan, Karnataka, Delhi, Maharashtra, Madhya Pradesh, Assam and Jammu Kashmir.

Unfortunately, at the national level, progress has been much slower.

Although the FOI Act was passed in 2002, it was very weak, failing to conform to well-accepted international standards. In any case, although the FOI Act was published in the Official Gazette in 2003, the Government never notified a date for it to come into operation. It has thus remained a paper tiger.

In 2004, hopes were bolstered when the UPA Government specifically promised in the

Common Minimum Programme (CMP) to make the FOI Act more “progressive, participatory and meaningful”.

The National Advisory Council (NAC), set up to oversee the implementation of the CMP, took an immediate interest in the issue, discussing right to information at their very first meeting in July 2004. Based on submissions by CHRI, the NCPRI and other civil society groups, the NAC as quickly as August 2004 submitted a set of recommendations for amending the FOI Act to the Prime Minister’s Office.

Unfortunately, between August and December 2004, when the UPA Government tabled the *Right to Information Bill 2004* in Parliament, it appeared that the bureaucracy had got its hands on the NAC amendments and used this opportunity to remove and/or dilute some key recommendations in the final version of the Bill.



Information under lock and key

Credit : Google images

This is not entirely surprising. The bureaucracy is probably well aware of the potential for the right to information to finally make them accountable to the public – and it’s doubtful that they are keen to see that happen.

Despite these setbacks, campaigners remain hopeful that a stronger Act can still be passed by Parliament. It appears that a special group of Ministers may be made responsible for reviewing the RTI Bill. Already, the RTI Bill has been referred to the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice for consideration. The public is encouraged to write to the Committee, calling on members to recommend that the Bill be improved to bring it into line with best practice standards – and then passed as a matter of priority.

Key provisions in the RTI Bill

The RTI Bill 2004 sets out to provide a 'practical regime of right to information for people to secure access to information...in order to promote transparency and accountability. If passed, the RTI Act 2004 will extend to the whole of India except Jammu and Kashmir and will come into force on the 120th day of its enactment.

Coverage:

- Only "citizens" can request information from a "public authority", defined as anybody constituted under the Constitution or a law made by Parliament, or anybody owned or controlled by the Central Government. This definition does not include private bodies which perform public services or which receive funds or concession from the Government.
- All public authorities are required to proactively publish information about their organisation, function, duties and services, including proposed development activities and recipients of subsidies.
- Certain types of information are exempt from disclosure, such as information which if released could harm national security or international relations, legally confidential or commercially sensitive information, or where release would impinge on the right to privacy. Unfortunately, the Act also provides a blanket exemption for all documents of Cabinet or the Council of Ministers, and does not cover a range of intelligence and security agencies such as Intelligence Bureau, Research Analysis Wing, Directorate of Revenue Intelligence and Central Economic Intelligence Bureau.

Applications

- Citizens must request information in writing

(including by email). Applications are submitted to a Public Information Officer (PIO) or an Assistant PIO who is appointed at the sub-divisional or sub-district level. An application fee will need to be paid (to be prescribed).

- Applications must be responded to within 30 days, except in cases concerning the life and liberty of the person where information must be provided within 48 hours. Where no response is received, this will be deemed as a refusal. Applications must be rejected in writing.
- Where applications are approved, a fee will be imposed for accessing the information. However, if the application is not dealt with in time, the fees will not be returned. Information can be requested in hard copy in any form (e.g. paper, video, tape, sample) and people can also inspect documents or public works.

Appeals & Penalties

- If a person feels they have been wrongly denied information, they can appeal to the officer immediately senior to the PIO.
- A second appeal can be lodged with an independent "Central Information Commissioner" (CIC), a newly established position under the law. The CIC and his/her Deputies constitute an independent, impartial appeals mechanism. They can override public authorities and require disclosure. Their decisions are binding.
- Penalties can be imposed on PIOs of up to Rs. 25,000 or a prison term extending up to five years for "persistently failing to provide information within the specified period". This penalty clause is very weak, because it only sanctions persistent non-compliance.

Implementation

- The CIC must submit an annual report to Parliament on the implementation of the Act.
- The Central Government is advised to develop educational and training materials on RTI for the public and for its officers. At a minimum it must provide a User's Guide for the public.

Key Shortcomings in the RTI Bill

The RTI Bill 2004 is an improvement on the FOI Act 2002. However,

- It is not applicable to public authorities of the State Governments. Notably, there remains debate as to whether the Centre can legislate in respect of the States on this subject. However, an argument has been made that the Centre has the right to legislate for the whole country on the basis that the Right to Information is a fundamental right under the Constitution.
- It provides access to information only to citizens. Citizenship may be difficult for many Indians to *prove* because they lack proper documentation. This requirement also restricts permanent residents, such as refugees, from using the law.
- The exemptions in the law are too broad. Complete blanket exemptions for Cabinet documents and for prescribed intelligence and security agencies should be removed. Information should only be withheld where it is clear that disclosure would cause serious harm to India's national interest.
- The penalty provisions are inadequate. They do not require officials to be sanctioned for willful destruction of records, deliberate provision of false or misleading obstruction of the disclosure process or unreasonable delay. These are serious acts of non-compliance – the new Bill should ensure that officials wouldn't get away with such bad behaviour.
- An attempt is made to bar the jurisdiction of the courts. This is arguably unconstitutional;

especially considering the right to information has been recognised as a fundamental right.

- A provision should be included to permit the waiver of application fees and fees for access where the payment would cause financial hardship and/or where it is in the public interest.

Making a Submission on the RTI Bill

The RTI Bill 2004 has been tabled in Parliament, but has not yet been passed. Despite shortcomings in the Bill, it is still imperative that the Government pass the Bill as a matter of priority.

During the next couple of months, before the Budget session of Parliament, the public are being encouraged to write to MPs as well as the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, calling on them to (a) table amendments to the Bill which will address the flaws identified and (b) to pass the improved RTI Bill urgently. ■

To make your submissions to Parliament on the RTI Bill 2004, write to:

The Committee on Petitions
Room No. 81,
Second Floor,
Parliament House
New Delhi-110001

Email: competition@sansad.nic.in

Chairman
The Standing Committee on Personnel, Public Grievances, Law and Justice,
Parliament of India
Room #125, Parliament House Annexe,
New Delhi-110001

Email: emsn@sansad.nic.in

(For more information and links to the RTI Bill, please visit CHRI's website at www.humanrightsinitiative.org/programs/ai/rti/india/national.htm)

Ombudsman and the Right to Information: A Case Study From the Pacific

Walter Rigamoto
Ombudsman of Fiji

Governments, the world over are waking up to the key role the right of information has to play in promoting good governance, participatory democracy and ultimately development. The Asia Pacific region though has been slow to enable what is a vital element in securing good governance, curbing corruption, ensuring more participatory governance and targeted development. Australia and New Zealand made laws early on, Pakistan has recently passed an information law and India is still struggling to bring an effective law into operation...but Commonwealth Pacific Island member states have yet to take Freedom of Information laws on to their lists of priority legislation. This despite the fact that Papua New Guinea (PNG) ranks the right to access of information as a constitutional right and Fiji's Constitution requires the government to pass a right to information law as a priority. To date neither has enacted legislation.



The Asia Pacific

been unfairly withheld. In many of the Commonwealth countries such as Australia, Belize, New Zealand and Trinidad and Tobago, Ombudsmen have been granted such powers under Freedom of Information legislation.

The significant potential of Ombudsmen as right to information advocates was recently the subject of discussion at the 22nd Australasian and Pacific Region Ombudsmen Conference held in New Zealand in February 2005. The Conference brought together Ombudsmen from 24 countries, including the Commonwealth countries of Australia, Fiji, Malaysia, Malta, Pakistan, Papua New Guinea, Samoa, St. Lucia, Seychelles, Solomon Islands, South Africa, Tonga, Vanuatu, and New Zealand in a two day conference to discuss the role of the Ombudsman in the Asia Pacific region.

It is against this backdrop that the recent presentation of the Ombudsman of Fiji, Mr. Walter Rigamoto, on the value of the right to information should be considered and commended.

The Office of the Ombudsman has traditionally confined itself to examining instances of misadministration within governments. However, in recent years, as human rights have increasingly been recognised as being central to effective democracy and good governance, the mandate of many Ombudsmen has been broadened to encompass a consideration of the government's performance in protecting human rights.

More specifically, throughout the world, Ombudsmen are increasingly being appointed as protectors of the right to information. They are given monitoring and oversight powers, and in some instances are also designated as the independent appeal body to whom the public can direct complaints when information has

CHRI met with Mr. Rigamoto following a workshop in Fiji to launch a civil society *Freedom of Information Bill 2004* drafted by the Citizens Constitutional Forum to discuss the value of the right to information. Following these discussions, Mr. Rigamoto and CHRI worked to obtain a slot at the Asia Pacific Ombudsman Conference where Mr. Rigamoto could promote the right to information to his fellow Asia-Pacific Ombudsmen.

In a paper drafted by CHRI and presented by Mr. Rigamoto at the Conference, the Fiji Ombudsman highlighted the key ways in which Ombudsmen in the Asia-Pacific region can maximise the effectiveness of their mandates to scrutinise government administration by promoting the

right to information. The paper was well received and tied in with several other delegates' presentations. It is hoped that this work will build momentum in the Asia-Pacific region around the right to information.

Excerpts from CHRI's paper on, "Right to Information: Strengthening Democracy and Development", presented by Fiji Ombudsman, Mr. Walter Rigamoto, at the Asia-Pacific Ombudsman Conference 2005.

Experience has shown that legislation is only the first step in operationalising the right. Effective implementation requires a genuine commitment to opening up to scrutiny from all levels of government, adequate resourcing, improved records systems and infrastructure and education for the public and bureaucracy on their rights and obligations under the new law. In many right to information regimes throughout the world, Ombudsmen have often played a key role in ensuring effective implementation of access laws.

....the right to information has proven to be an effective antidote to corruption, equipping parliamentarians, anti-corruption bodies (such as Ombudsmen) and the public with a tool to breakdown the walls of secrecy that shield corrupt officials. A legally entrenched right to access documents held by the government (and in some cases, by private bodies) can be used to collect hard evidence of malfeasance and hold officials accountable. The right to information also serves as an important deterrent - the knowledge that a decision may be open to review by the public at a later stage can discourage the decision-maker from acting dishonestly.

....right to information laws constitute an extremely useful tool for ensuring greater government transparency in practice, reducing corruption and facilitating increased accountability. Right to information is all about opening up the government to scrutiny and requiring it to be answerable for its actions. This objective dovetails neatly with the mandate of Ombudsmen - to review the administration of the government with a view to ensuring that officials are made accountable for their activities.

Ombudsmen are encouraged to take a proactive role in promoting and implementing the right to information, both individually in their home countries and collectively at the regional level. As respected leaders of the community,

Ombudsmen could make a real difference in terms of ensuring that the right to information is enjoyed by all.

Ombudsman could strategically take a lead in transforming the general good governance rhetoric into a practical reality for the people of the Asia-Pacific by encouraging governments to make the enactment and implementation of strong right to information laws a priority.

As a first step, Asia-Pacific Ombudsmen, as a collective, are encouraged to recognise the promotion of the right to information as a priority area for attention. This issue could also be placed on the agenda of other meetings of Ombudsmen, such as the upcoming Pacific Ombudsmen meeting in August 2005. Ombudsmen could also consider more actively promoting the right to information domestically – by raising it with government and individual MPs, publishing articles on the topic as a means of raising public awareness and including recommendations regarding implementing the right to information in annual reports, papers and speeches. In addition to pushing for the development of a law, Ombudsman could also usefully support the review of Standing Orders and other parliamentary procedures and rules to ensure that they do not promote secrecy.

Notably, Ombudsmen are not only important as strategic supporters of the general right of the public to access information.... Ombudsmen are also commonly given specific responsibilities under right to information laws. In addition to a general monitoring function, some Ombudsmen have been given the job of acting as the independent appeal body under the law, with a mandate to review decisions of public authorities not to disclose information and recommend/demand release if appropriate. In New Zealand, the Ombudsman operates as the independent appeal body under the country's right to information law.

An ombudsman has the expertise and commitment to transparency and accountability to tackle the difficult job of breaking down entrenched cultures of secrecy amongst the bureaucrats responsible for the day-to-day implementation of the law.

To read more, log on to the article at:
http://www.humanrightsinitiative.org/programs/ai/rti/international/laws_&_papers.htm ■

Control Orders to Combat Terror: Replacing One Kind of Detention For Another in the United Kingdom

Stephanie Aiyagari

London Liaison Officer

The notorious Guantánamo Bay Naval Base is in the news yet again. After admitting lack of evidence to prosecute, U.S. authorities released four people to the British authorities on 25 January 2005 who had been held at the base in Cuba for up to three years. After arresting the men under Section 41 of the Terrorism Act 2000 for suspicion of involvement in the commission, preparation or instigation of acts of terrorism, the authorities released them to their families the following night.

According to his lawyer, Gitanjali Gutierrez, detainee Feroz Abbasi claimed to have experienced harsh interrogation techniques while in Cuba. He said he was held in long-term isolation, denied access outdoors, and injected with a substance inducing psychosis. Abbasi suffered mental breakdowns and hallucinations while in custody. The questioning in Britain added to further stress and panic. Abbasi's statements to his lawyer is similar to the accounts of the other three released British detainees.

The British Government's proposed *Control Orders* announced on 27 January 2005, if passed will lead to terror suspects being forced into a kind of detention, which will in effect curtail individual liberty and repress human rights. Suspects such as Abassi and the more than a dozen other being held in the United Kingdom (UK), mainly in Belmarsh

prison and Broadmoor high security hospital may be subjected to heightened surveillance including electronic tagging, curfews, and barred from usage of mobile phones or the internet. The house arrest clause has raised political opposition, particularly in upper parliamentary chamber, the House of Lords, and at the European Court of Human Rights in Strasbourg.

The *Control Orders* in the face of it might appear to be a preferable alternative to the indefinite detention without trial used against terror suspects under the Terrorism Act of 2000 (TACT) and the

Anti-Terrorism, Crime and Security Act of 2001 (ATCSA). One reason why human rights supporters have argued against indefinite detention is that the grounds for detention under TACT or ATCSA need only be reasonable for

suspecting involvement in terrorist activity. This low threshold has historically been the basis for initial arrest, not for incarceration that potentially lasts a lifetime.

Indefinite detention is also seen as problematic because it is almost always fundamentally unfair,¹ and it tends to condone if not promote torture. For these reasons, several United Nations (UN) human rights rapporteurs expressed their continuing concern about the treatment of detainees in Guantánamo Bay on 4 February 2005.²



Guantanamo Bay

Credit: Google images

¹ This was even recognised by the U.S. Supreme Court in *Zadvydas v. Davis*, which stated that a statute permitting indefinite detention of an alien would raise a serious constitutional problem. 533 U.S. 678, 690 (2001).

² Available at <http://www.unhchr.ch/huricane/hurricane.nsf/view01/F3AF690DC18BFFD6C1256F9E0034AC95?opendocument>

In a landmark case³ referring to foreign terrorism suspects held in Britain without charge, the law lords declared on 16 December, 2004 that indefinite detention was a breach of human rights under Article 5 of the European Convention on Human Rights and the implementing Human Rights Act (1998). As a response to this ruling, the *Control Orders* proposal falls short.

The *Control Orders* as currently proposed would have no mandatory limit on how long they could be used against an individual and would apply to British citizens and foreign nationals alike. Although detention would be imposed by judges, the Home Secretary could in an emergency unilaterally detain suspects to prevent them from fleeing, subject to judicial confirmation within a week. Although redress to the courts would be available, an accused person would not necessarily have access to the evidence against him in making an appeal.

If there is inadequate evidence to prosecute the four recently released as well as the others currently held in the country, some of whom have been allegedly tortured and kept in solitary confinement for months at end, continued isolation through control orders could lead to serious breaches in human rights of these individuals. The public needs assurance that important security related goals are being met by measures to justify such curtailment of personal liberty.

There is still hope that the *Control Orders* will not become law. The European Court case brought by the British detainees challenging indefinite detention under TACT and ACTSA would most likely affect the government's ability to use the *Control Orders*. Further derogation from the European Convention would be required, which is unlikely to be acceptable to the European Court.

The UK already derogated⁴ from the European Convention on 11 November 2001, declaring a public emergency in order to be able to detain people under the Immigration Act of 1971, even when no action is being taken to deport them. The UK also derogated from article 9 of the International Covenant on Civil and Political Rights (1966), which is similar in effect to article 5 of the European Convention.

To hold suspects under indefinite house arrest measures without charge, and thereby partially opt out of the European Convention, UK would have the difficult task of convincing the European Court that control orders are required and further derogation justified citing public emergency and in the interest of the nation as a valid reason.

Human rights activists are increasingly questioning the legitimacy of the *Control Orders*. Chairman of the country's Bar Council, Guy Mansfield, has commented that the proposals may make UK less rather than more safe, because measures that are disproportionate to the risk they are meant to guard against may in fact radicalise the community from which a detainee comes.⁵

Many have reacted to publicised abuses at Abu Grahیب prison and in Guantánamo Bay with dismay and resentment. Control Orders would likely be seen as yet another excess against human liberty that governments will impose under the guise of promoting public safety. If governments cannot prosecute suspects under law, they should set them free. In their more extreme form *Control Orders* could instead make detention without charge last a lifetime. ■

³ A and others v Secretary of State for the Home Department, available at: <http://www.publications.parliament.uk/pa/ld200405/ldjudgmt/jd041216/a&others.pdf>

⁴ To “derogate” means to suspend. In the context of the human rights treaties, a “derogation” is a suspension of the application of a right, allowable only in certain defined circumstances of public emergency.

⁵ Clare Dyer, *Lawyers criticise house arrest plan*, The Guardian, <http://www.guardian.co.uk/terrorism/story/0,12780,1399401,00.html> (January 27, 2005).

Human Rights: Legislation or Moral Pressure?

Nihal Jayawickrama
Chair, Trustee Committee, CHRI

Below is the adapted speech that Nihal Jayawickrama delivered at the Commonwealth Parliamentary Association Seminar held on "Corruption, Human Rights and Party Politics" on 26 January 2005 in London, UK.

Religious and cultural tradition of Human Rights

Contrary to popular belief and assertions made by political leaders in Asian and African countries that human rights concepts are Euro-centric in origin and conception, respect for human dignity is rooted deep in the religious and cultural traditions of the world. Many of the moral values that underpin the contemporary international law of human rights are an integral part of these religious and philosophical orders.

Many strands of philosophical thought that unfolded the concept of a natural law complemented this religious and cultural tradition. Aristotle, Cicero, and over 1500 years later, Hugo Grotius, and still later, John Locke and a galaxy of European political thinkers like Montesquieu, Voltaire and Paine all consolidated a doctrine of liberty and equality that had a profound influence the world over.

But at the end of the day, barely sixty years ago, these tremendous religious, cultural and philosophical forces could not prevent the unprecedented atrocities that were perpetrated during the Second World War by one government on millions of its own citizens. It was this, more than any other factor that helped create an international human rights law.

We now have such a body of international human rights law which is at least forty years old and seeks to protect the individual against the acts and omissions of his/her own government. Religious

traditions and philosophical concepts have now been replaced by legal rules incorporated in a series of human rights treaties.

Experience of Sri Lanka

The existence of international or regional treaties, or domestic legislation based on them, is by no means the



Nihal Jayawickrama

Credit: Google images

complete answer. The experience of Sri Lanka is a case in point. It was a country that became independent with the solid foundations of freedom. It had the highest per capita income in the Asian region. Its sterling reserves were high, and its registered unemployed were minimal. It had one of the smallest military budgets, and one of the most extensive social welfare programmes for any developing country. But the Independence Constitution of

Sri Lanka did not contain a Bill of Rights.

Without any overriding law to protect human rights, it became possible for successive governments to utilise the extensive armoury of legislative power at its disposal to, for example, disenfranchise a significant minority of its population, impose the language of the majority on the principal minority community, extend its own life without recourse to a general election and to remove judges of superior courts without cause, compensation or resort to constitutional procedures. It was possible to transfer ownership of newspaper companies to the state, prevent passport holders from leaving the country, and to expel the Leader of the Opposition from Parliament.

Competent, independent and impartial judiciary

A mere statement of fundamental rights guaranteed in the Constitution does not automatically translate into it being implemented. There must also be a competent, independent and impartial judiciary capable of interpreting and applying the protected rights. Sadly, evidence suggests that corruption is steadily and increasingly surfacing in judicial systems in many countries across the Commonwealth.

For example, a national household survey that was conducted on corruption in Bangladesh revealed that eighty-eight percent of those surveyed thought it was impossible to obtain a quick and fair judgment from the judicial system without money or influence.

Sixty-three percent of those involved in litigation in the lower courts claimed they had paid bribes to either court officials or the opponent's lawyer. In a similar survey in Tanzania, thirty-two percent of those surveyed reported payments to persons engaged in the administration of justice. In Uganda, only nine percent were willing to say that corruption in judicial administration was a "greatly exaggerated" problem.

The above figures pose a serious challenge to the administration of justice. Human rights law recognises as fundamental that everyone be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

A bribed judge will neither be independent nor impartial. But it is not only with money that a judge can be bribed. The executive, the powerful corporate sector, the legal profession, friends and family have all been known to exert undue influence on a vulnerable judge. A corrupt judiciary means that legislation on human rights, however well intentioned and cleverly drafted, remains crippled.

Conclusion

To sum up, moral pressure needs to go hand in hand with legislation. The protection of human rights, whether of the individual or of the group, requires also a firm and abiding commitment by all three branches of government - the executive, the legislature and the judiciary - to create a climate that is increasingly sensitive

and less tolerant to the violation of human rights and more responsive to efforts in preventing them.

Countries are increasingly recognising the rights of their citizens to complain against their respective governments to the international and regional human rights monitoring bodies established by treaty. These are significant steps, and whether they are taken out of a genuine desire to improve conditions or for purely cosmetic reasons, they obviously mirror the aspirations of the people, and will in due course capture their imagination. ■

Nihal Jayawickrama replaced Ms. Annie Watson of the Commonwealth Trade Union Council as the new Chair of the Trustee Committee of CHRI. The CTUC disbanded in January 2005. Ms Watson spent little over one year on CHRI's Trustee Committee. We thank Ms. Watson for her invaluable contribution to CHRI over many years.

A graduate in law of the University of Ceylon, Nihal practiced law before serving first as Attorney General, and then as Permanent Secretary to the Ministry of Justice in Sri Lanka. After obtaining his doctorate in international human rights law from the University of London (SOAS), he taught Law at the University of Hong Kong and at the University of Saskatchewan, Canada. Thereafter, he served as the Executive Director of Transparency International in Berlin. A consultant to the UN and several other international organisations on anti-corruption strategies and judicial reform, he is currently coordinating a programme on strengthening judicial integrity which is led by a group of Chief Justices including eight from the Commonwealth.

Dr. Jayawickrama has published widely on constitutional law, human rights and governance issues, and is the author of The Judicial Application of Human Rights Law – International, Regional and National Jurisprudence, which was published by Cambridge University Press in 2003. We look forward to working with him over the coming years.

An Important Commonwealth Partnership

Clare Doube

Coordinator, Strategic Planning and Programmes

From Malawi to Fiji to India and beyond, Commonwealth countries need assistance in ensuring that the human rights of all are actively promoted and protected from violation. While primary responsibility lies with governments, other actors also have a crucial role to play – particularly National Human Rights Institutions (NHRIs) and civil society, including non-governmental organisations (NGOs). On countless occasions they have protected rights and brought the government to account. Collaboration between them can, if conducted effectively, increase the impact of their individual actions. However, there has been little research done on the forms this collaboration can take, its pitfalls and lessons learned.

A workshop organised in Colombo, Sri Lanka, in November 2004 by the British Council and National Human Rights Commission of Sri Lanka to discuss this was therefore a welcome initiative. The workshop included NGO and NHRI representatives from Asia, Africa and the Pacific, and culminated in a final declaration.

The workshop recognised that NHRIs and NGOs are different types of bodies, with different mandates, structures, ways of working, strengths and limitations. These distinct but complimentary identities need to be recognised when collaborating, and the roles articulated, especially as the capacity of NHRIs and NGOs vary considerably between countries. However, having considered these issues, it is obvious that collaborative efforts can minimize resources and maximize impact, and should therefore be encouraged.

Following presentations from NHRI and NGO perspectives, the workshop was divided into working groups on: education, public information and training; investigations; monitoring; and international advocacy. Recommendations from the international advocacy working group, for instance, included:

- publicising UN processes such as treaty bodies and their monitoring, particularly following up on recommendations made to countries;

- dialoguing with government delegations before meetings such as the UN Commission on Human Rights;
- advocating for UN Special Rapporteurs visits;
- participating in joint human rights platforms at Commonwealth meetings, such as the Commonwealth Human Rights Forum; and
- advocating for NHRI and NGO access to important Commonwealth meetings to make human rights statements and dialogue with government.

The workings of the two types of institutions was also discussed. It was reiterated that the Paris Principles, by which all NHRIs should abide, are only minimum standards. The Paris Principles include that the NHRI: is independent as guaranteed by statute or constitution; is autonomous from government; is plural and diverse, including in membership; has a broad mandate based on universal human rights standards; has adequate powers of investigation; and has sufficient resources. These are the minimum standards expected to enable NHRIs to do their job effectively and free from interference.

As well as collaboration between individual NHRIs and NGOs, two pan-Commonwealth networks provide an opportunity for broader collaboration: the Commonwealth National Human Rights Commissions Project of the British Council draws together the NHRIs; and the Commonwealth Human Rights Network (set up by CHRI, the Commonwealth Policy Studies Unit and the Association of Commonwealth Amnesty International Sections) brings together civil society groups working on human rights in the Commonwealth. It is hoped that these two networks can work together in enabling NHRI and NGO involvement in the next Commonwealth Human Rights Forum in Malta in 2005. Considerable support was expressed for the Forum and its ability to act as a platform for discussion and collaboration, as well as a springboard for advocacy. With more such initiatives it is hoped that collaborative efforts between NHRIs and NGOs will become reality and a force for human rights promotion and protection across the Commonwealth. ■

Freedom of Information in the UK

Justin Foxworthy
CHRI, London Office

Since the United Kingdom's *Freedom of Information Act 2000*¹ came into effect on 1 January 2005, there have been nearly three thousand requests for information submitted, primarily aimed at the Ministry of Defense and the Education Department. Given that the legislation has been in effect for such a short period, it is difficult to measure the true impact of the legislation. While some requests have been granted, others have been refused on the grounds that they wouldn't be processed within the twenty-day period stipulated by the Act.

Among the twenty three exemptions from the general right of access are included: information relating to national security, information that would prejudice international relations, commercially sensitive and confidential information, as well as data the public authority deems is in public interest to withhold.

So far, the most contentious debate has revolved around the refusal of requests from citizens, Members of Parliament and news organisations for full disclosure of the legal advice given to Prime Minister Blair by the Attorney General Lord Goldsmith on the legality of the invasion of Iraq.

In a written statement following the refusal to make Lord Goldsmith's advice public, Christopher Simson, the Freedom of Information officer for the Attorney General's chambers, cited the reason for refusal as need for maintaining the confidentiality of attorney-client discussions.

He also added that the legal basis for invading Iraq had been explained on a number of occasions including a memo by the Foreign Secretary to the Foreign Affairs Committee, the Attorney General's written submission to Parliament and several other parliamentary debates.

In addition to the legal arguments, there is also a long-running political dimension to the dispute over the refusal to disclose Lord Goldsmith's advice. Following the release of Lord Butler's report, which found much of the pre-war intelligence unreliable, questions remain over whether the Prime Minister's claims that Saddam Hussein posed a threat were in fact made in good faith.

Opposition politicians and civil groups are hoping that a public disclosure of Lord Goldsmith's counsel will

help piece together the timeline during the run up to war, as there have been suggestions that US plans to invade were known to the UK army well before the actual invasion took place.

Obviously, requests for potentially politically damaging information under provisions of the Act generate reluctance to disclose but free access to information also threatens the entrenched attitudes and practices of government employees regarding privileged access to sensitive material.

According to the Director of the Campaign for Freedom of Information, Maurice Frankel, "The real test of the Act is not what authorities reveal twenty days after a request, but what they are required to do after the Information Commissioner rules on complaints."

While the full weight of the legislation may not be immediately felt, the real power of the Act will be determined by the decisions taken by the Information Commissioner in the appeals process and the manner in which UK governments exhibit a proactive approach to open governance in the future. ■



Credit: Google images

Maurice Frankel, Campaign for Freedom of Information

¹ <http://www.hms.gov.uk/acts/acts2000/20000036.htm>

The United Nations Human Rights Mechanism: What It Means For Human Rights

John Mark Mangana

Intern, Human Rights Advocacy Programme

Progressive expansion of democratic space within the wider Commonwealth has in the recent past given much impetus to the entrenchment of the human rights debate within several specific Commonwealth countries. Resulting partly from this process is arguably a citizenry that is increasingly aware of its rights and that thirsts for greater exposure to human rights related activities.

The level of Government as well as private sector involvement in political and civic, as well as economic, social and cultural spheres of people lives shows evidence of this. However, on the negative side, what about the multiple cases of human rights violations involving governments and various players within the private sector?

Countries involved in cases of human rights violation are members of the United Nations (UN), and as such, are bound by the UN Charter. The UN in its Charter reaffirms respect for human rights based on the dignity and worth of the human person and commitment to social progress of all people and Articles 1 and 55 and express commitment to the protection and promotion of human rights. Specifically, Article 55(c) indicates that, “the UN will promote universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”.

Consequently, the UN has developed machinery to protect and promote human rights. Through this machinery, human rights are said to have become more than just moral guidelines and have been included in international law.

In addition, this machinery offers ways to respond to human rights violations all over the world. Such human rights activities are pursued either by bodies created

under the authority of the UN Charter, which are referred to as Charter-based bodies or by bodies established under various human rights treaties, also referred to as Treaty-based bodies¹. In addition, several specialised agencies of the UN have important human rights functions, for example, the International Labour Organisation (ILO) and the UN High Commissioner for Refugees (UNHCR).

The Treaty based system is commonly used channel by individuals who believe their rights under the treaty have been violated. The process of contacting the various treaty bodies is relatively simple and as many examples exist from across the Commonwealth.

Currently five of the seven treaty bodies consider individual petitions. These are

- The Human Rights Committee associated with the International Covenant on Civil and Political Rights;
- The Committee on Elimination of Racial Discrimination associated with the International Convention on the Elimination of all Forms of Racial Discrimination;
- The Committee on the Elimination of Discrimination Against Women associated with the Convention on the Elimination of Discrimination Against Women;
- The Committee Against Torture associated with the Convention against Torture and
- The Committee on the Protection of Migrant Workers associated with the Convention on the Protection of Migrant Workers and their Families.

¹ For more on the UN human rights system see www.ohchr.org or www.ishr.org

In simple terms, independent individuals can bring cases of human rights violation to the relevant treaty bodies. However, the state in question must have both ratified the treaty, and accepted its associated individual complaint mechanism.

The individual complaints procedure involves receipt of communication by the relevant treaty body. The treaty body registers the complaint and subsequently examines its compliance with the admissibility criteria. If admissible, the treaty body will proceed to consider its merits.

The rules and procedure for each treaty body governed the admissibility of the complaints and are available in the Office of the United Nations High Commissioner for Human Rights website: www.ohchr.org. Most importantly, the author of the communication must be personally affected by the alleged violation. It is important to note that third-party submissions are not accepted except under special circumstances outlined in the treaty body sites.

Determining the merits of each case involves proving the facts beyond any doubt. This may require copies of arrest warrants, court judgements, affidavits, medical reports, outlining specific dates, etc. In cases where all or most of the information is in the hands of the accused state party, non-cooperation with the committee by the state in question will lead to a reversal of the burden of proof.

While individual complaints procedures have been used across the Commonwealth, available jurisprudence indicates a rather scattered and limited usage of the same. Australia, New Zealand and Canada are among the developed Commonwealth countries that have had cases against them taken to the various treaty bodies. But, this is by no means an indictment on their human rights record. On the contrary, it may be a reflection of their progressive human rights stand - as well as other factors such as community understanding of the treaties and associated committees.

There are far fewer cases from the category of developing Commonwealth countries. The government

of Sri Lanka had a case registered against it in the year 2004, as did governments of Zambia, Namibia, Sierra Leone and Cameroon, with Jamaica notoriously appearing several times in the Human Rights Committee jurisprudence.

Each of the advocacy avenues associated with the UN; present varying advantages as well as disadvantages. When on one hand it sets an important precedent in getting human rights issues noticed, on the other hand the lack of legal mandate which would force a government to follow the recommendations prescribed restricts its effectiveness. ■

United Nations Human Rights Mechanism: Targeting NGO Advocacy

A National Workshop on 'United Nations Human Rights Mechanisms: Targeting NGO Advocacy' was organised by the Commonwealth Human Rights Initiative (CHRI) in collaboration with Law and Society Trust (LST) at Jamia Hamdard University in New Delhi from 23-25 November 2004.

The objectives of the workshop were to place before the participants information about how to more effectively engage in human rights advocacy towards the United Nations, focusing on training participants on how the United Nations' human rights mechanisms operate and gauge the options available to civil society for engaging with these mechanisms.

The workshop was structured around two kinds of sessions: educating and training participants in the basics of how to use human rights treaty mechanisms and introducing them to the key conventions; and procedures; and presentations by resource persons with experience in using these mechanisms, with a view to sketching out basic guidelines and practical tips when using the mechanisms.

The workshop brought together close to 30 participants from the Indian states of National Capital Territory of Delhi, Haryana, Uttar Pradesh, Bihar, Madhya Pradesh, Chhattisgarh, Gujarat, Orissa and Maharashtra.

A Leap To Equality

Dr. Doel Mukerjee

Project Coordinator, Police Reforms, CHRI

The Fourth Meeting of the High Level Group (HLG) on Education for All (EFA), which was organised by UNESCO in Brasilia, Brazil in November 2004 saw most of the developing Commonwealth countries along with civil society organisations advocating on the themes of child labour and gender parity. The forum is used to lever political commitment, find funds and mobilise technical support for the member countries of the United Nations. The Commonwealth Human Rights Initiative was invited to the forum as an observer.

Of particular interest to human rights were discussions around the commitment of states towards a strong global movement advocating greater gender parity in education. It was particularly noted that countries in the South Asian Commonwealth countries such as India and Pakistan have been reluctant to commit to elimination of child labour.

Interestingly, India is a signatory to the Convention on the Rights of the Child (CRC) but has not committed itself to the Optional Protocols to the CRC on the sale of children, child prostitution and child pornography and the involvement of children in armed conflict. On the contrary, smaller Commonwealth nations like Tonga and Bangladesh have been able to meet the criteria of the EFA due to visionary and strategic programmes, opting for decentralised planning for EFA, further government accountability, transparency and continued commitment to eradicate illiteracy with civil society groups.

Discussions led to member countries agreeing on the need to work harder to ensure legislative reforms to protect the girl child and women in all spheres of education rights. In most countries, a strong general policy on gender equality is also needed so that both women's and men's interests are explicitly considered in all legislation, policies and programmes.

The final communiqué of the HLG meeting reflects some of the resolutions passed.

- *The participants at the meeting reiterated that the global community had not met the goals of bringing girls and boys to equal levels of education and this would be difficult by the year 2005 in primary and secondary education. To ensure this, "bold steps" are necessary and these same issues need to be addressed at other world forums such as at the UN Assembly on the Millennium Declaration, the meeting of G-8 countries, African Union, and the World Economic Forum.*
- *There is need for governments to make a strong political commitment by formulating national education policies conforming to international education initiatives.*
- *Some of the gray areas include exclusion of marginalised groups and children living with HIV/AIDS in the EFA mission.*
- *The three important areas to propel reform initiatives will be to concentrate further on education for girls, to recognise the critical role, which is played by teachers and the need to utilise domestic and external resources judiciously.*

It is certain that a lack of coordination between governments, civil society groups and donor support has jeopardised the commitments made for the year 2005. Lack of participation from civil society groups at the forum demonstrated that if countries are to achieve gender equality by 2015, consultations need to be more participative between civil society, governments and other such stakeholders.

The next HLG meeting is scheduled to be held in People's Republic of China from the 28–30 November 2005 on the theme 'Literacy' with a special focus on Education for Rural People. ■

Bangladesh

The government of **Bangladesh** has finally jettisoned the plan to introduce the draft law aimed at regulating foreign-aided non-government organisations apparently bowing to the pressure of the powerful donor groups and leaders of the development industry and civil society. The decision of the government to shelve the proposed “The Foreign Donations (Voluntary Activities) Regulation (Amendment) Act, 2004” is interpreted by many as a “limbo dance”,

while leaving the development sector to the unilateral domination of the donor community. In a memorandum to the government, the LCG Sub-group on NGOs, a club of bilateral and multilateral donors, said, if enacted, the law will do an “incalculable amount of harm to Bangladesh’s image” and its ability to meet its development and poverty alleviation goals, as outlined in the Poverty Strategy Paper (PRSP).

Malaysia

The **Malaysian** government’s plan to begin arresting and deporting thousands of undocumented migrant workers from the month of November 2004 resulted in widespread rights abuses. According to the Immigration Department, Malaysian authorities will conduct a 14-day investigation

into each case and then press charges against undocumented migrants in federal courts. Those found guilty under the Immigration Act of 2002 may be caned, imprisoned for five years, fined heavily, and detained indefinitely pending deportation. Last year, some 18,000 migrants were caned in Malaysia.

South Africa

South Africa’s ruling party, the African National Congress, has, following outcry, moved to qualify statements it made about judges needing to change their ‘mind-set’. It said the policy statement it issued neither threatened nor attacked white judges, says a report on a local website. ‘It is instead an honest assessment of the state of transformation within the judiciary, consistent with the long-standing policy objectives of the ANC and the requirements of the Constitution.’

Gambia

A proposed Criminal Code Amendment Bill, which the government-dominated, and controlled National Assembly of **The Gambia**, is set to rubber stamp into law, is perhaps, the most ominous evidence yet that the government of President Yaya Jammeh is determined to kill off the independent media and limit the space for freedom of expression in The Gambia. Media freedom, freedom of expression, and the diversity and pluralism of views and the media are guaranteed and reinforced in several

provisions of the 1997 Constitution, notably Sections 25, 207, 208. However, the relentless application of arcane decrees and provisions (such as the Telegraph Stations Act of 1913), the continued promulgation of restrictive laws (such as the National Media Commission Act of 2002), and the sheer perpetration of impunity (such as continued forceful closure of the Citizen FM radio station contrary to a High Court ruling) put media freedom and freedom of expression under siege.

Commonwealth

by Vaishali Mishra

Communication Officer, CHRI

Pakistan

The **Pakistani** Government's violent repression of an opposition party rally has caused grave concern among human rights activists across the Commonwealth. In the run-up to a Pakistan People's Party rally which was scheduled for 2 December 2004, General Pervez Musharraf's government arrested hundreds of

the opposition party's PPP supporters, including several legislators. "Musharraf spoke a lot about political progress on his recent visits with Bush and Blair to Washington, but back in Pakistan it's business as usual with baton charges and harassment of political opponents," said Brad Adams, Asia Director at Human Rights Watch.

Uganda

Uganda's Constitutional Court is all set to decide on the controversial issue of the death penalty. The matter has come to the fore after a group of high profile lawyers asked the court to rule on the constitutionality of capital punishment. The 14 lawyers challenging the death penalty imposed on 417 condemned inmates have closed their case after urging the court to scrap the penalty and replace it with punishments such as life imprisonment. The lawyers were quoted as saying that, "the death penalty is the most severe punishment in our law and if this court finds it fit to declare it unconstitutional, then it should substitute it with life imprisonment or refer each and every convict to the trial court to find another alternative sentence."

Pakistan

The **Pakistan** government has bulldozed the Criminal Law (Amendment) Bill 2004 against "honour killings" in the National Assembly and adopted it on 26 October, 2004 without any debate amidst Opposition walkout. While the Bill has for the first time officially acknowledged the existence of this barbaric practice of honour killings, it is far from addressing the real issue of impunity, which encourages the practice. Ironically, just when the Bill was being presented in the National Assembly, enraged villagers in the hinterland of rural Punjab tied two persons to the railway track for marrying against the will of family elders who were then crushed under the wheels of a speeding train.

Maldives

A team of democracy experts, sent by Commonwealth Secretary-General Don McKinnon to observe the **Maldives** Parliamentary Elections has come out with its report available on the Commonwealth Secretariat website <http://www.commonwealth.org>. Cassam Uteem, a former president of Mauritius, led the five-member team sent to Male. Andy Becker, Electoral Commissioner of Australia, Bangladesh MP Mahi Choudhury, British MP Jim Fitzpatrick and D. Jayaprakash Narayan, the campaign coordinator of the Lok Satta were the other members of the team.

Zimbabwe

The publication of **The Zimbabwean**, an initiative by veteran journalist, Wilf Mbanga (founder of the now silenced Daily News – Zimbabwe's only independent daily) has been hailed internationally as a major step in bridging the information gap between millions of Zimbabweans in the *diaspora* and their troubled homeland. The 24-page weekly will be published simultaneously in London and Johannesburg every Thursday. Copies will also be available in Zimbabwe through street sales and subscriptions. Mbanga and his team of helpers will distribute the paper free of charge to areas with concentrations of Zimbabwean residents and to interested people in the streets of central London.

Human Rights In the Mature Commonwealth

Murray Burt

Ex-President, Commonwealth Journalists Association and member of CHRI's International Advisory Commission

Even in the mature Commonwealth, there are human rights breaches attracting attention and criticism. Ironically, these prove to be beneficial as they can also lead to solutions.

For a prosperous country whose people enjoy one of the world's highest standards of living, stories on Canada's work to advance human rights tends to be eclipsed by more dramatic experiences in the less fortunate and developed members of the Commonwealth. After all, bad news carries further than good news.

However, this does not mean that worthy and sensitive work is not being done to identify and correct human rights breaches in Canada. The difference perhaps is that blessed democracies like Canada have the luxury of time and resources to effect speedier change than most. This effectiveness tends to overshadow rights issues (be they big failures or small successes) that deserve an airing in the Commonwealth.

Four headlines in recent months in Canada make exactly that point:

- *Racial profiling curbed by installing minicams in police cars*
- *The protection of rights of addicts and alcoholics*
- *Mediation trumps court trials in advancing rights disputes*
- *Quebec Court forgets the principle that there can be no hierarchy of human rights.*

Cameras in police cruisers

Two years ago in Canada, the term 'racial profiling' was barely known to the common person. Today, all public agencies, employers and, especially, all levels of police have been sensitised to this insidious breach of an

individual's rights, particularly freedom from discrimination on account of ethnic differences.

Examples of this right's travesty occur on a daily basis at border crossings, in renting of accommodation, in bank credit decision-making, but most of all on the police front lines. Altercations during arrest are not new, the only difference is that accounts of violence against ethnic minorities are getting more of a hearing now by the courts and the evidence produced is more likely to be scrutinised.



Murray Burt

Credit : Google images

Units of the Royal Canadian Mounted Police and the Ontario Provincial Police have installed mini-cams (automated digital cameras) to document evidence of behaviour in the police cruiser, showing both the prisoner and arresting officer. It adds to the credibility if the issue is raised in court and secures the rights of both parties when conflict occurs.

Securing the rights of people susceptible to alcohol and drug use

A Canadian provincial human rights authority has voiced concerns on the practice of unwarranted testing of persons suspected of using alcohol and drugs in workplace.

The Manitoba Human Rights Commission is of the view that many a time people with such dependency are singled out and often unfairly dismissed as a result of such unwarranted practices.

"Often the tests are totally reasonable, as in the case of bus drivers or teachers or for those who are responsible for public safety. However, what should be kept in mind is that the tests should not be considered as the sole reason for unreasonably punishing a user of alcohol and drugs," said Janet Baldwin, the Chairperson of the Commission.

Mediation faster than courts

Human rights records in the Canadian province of Manitoba show that out of court mediation processes are replacing court decisions in the speedy settlement of rights disputes. More than half of the province's 279 complaints closed in the year 2002 were settled by mediation and conciliation. As a result the authorities are promoting it for its efficacy, speed and economy. The most common ground for complaints across Canada - 33% of them - are issues involving discrimination against the disabled.

No hierarchy of rights

A stinging article commenting on public safety and religious freedom in French Canada made the government sit up and take notice about unfair verdicts when it comes to matters of practicing faith. The article, which featured in The Globe and Mail, Canada's established national newspaper, addressed a Quebec court's decision on the right of a 14-year-old Sikh student to wear his *kirpan* (the ceremonial dagger of his faith) to his public school. The newspaper termed the court's decision of barring the wearing of the dagger as "a grievous error."

"When rights collide in Canada, as they often do, the courts are not free to simply choose the right they prefer. They need to examine the evidence to determine if the two rights can live together..." the editorial said. Since a free speech versus free trial dispute in British Columbia in 1994 "there has been no hierarchy of rights."

In the case of the *kirpan*, the student and his school board had already reached a compromise that the 10 centimeter ceremonial knife, with a blunt end, would be triply secured, concealed under clothing, carried in a wooden sheath and encased in a cloth sewn shut, and stitched to the carrying strap. The court, however seemed to endorse a narrow view of religious freedom, reflecting a too frequent intolerance related to immigrant integration.

The above cases illustrate that human rights need to be honoured at every basic level of existence irrespective of religion, race, and creed. There has to

be that optimal integration of rights and laws which allows people to be what they are. ■

2005 Commonwealth People's Forum

The 2005 Commonwealth People's Forum (CPF) will be held at the Mediterranean Conference Centre, Valletta, Malta, from 21-25 November. As the major Commonwealth civil society event, the Commonwealth People's Forum brings together a cross section of civil society organisations (CSOs) to dialogue with government representatives at the time of Commonwealth Heads of Government Meeting (CHOGM) and to feed the ideas, issues and concerns of the people of the Commonwealth into the CHOGM process. The CPF also provides opportunities for civil society to interact with business and the private sector.

The theme for the 2005 Commonwealth People's Forum is Networking Commonwealth People.

Important dates to remember:

<i>May 24</i>	<i>Civil society consultation in Marlborough House, London, UK</i>
<i>June 30</i>	<i>Deadline for exhibitors and meeting organisers to confirm participation and their requirements.</i>
<i>July 30</i>	<ul style="list-style-type: none">• <i>CF confirms acceptance of meeting proposal to meeting organisers.</i>• <i>Recommended deadline for confirmation of accommodation bookings.</i>
<i>NB: CPF participants should liaise with hotels directly</i>	
<i>August 31</i>	<i>Deadline for organisation profiles for inclusion in Guidebook.</i>
<i>October 14</i>	<ul style="list-style-type: none">• <i>Exhibitor manual sent to exhibitors</i>• <i>Meeting organisers given room assignments</i>• <i>CPF Guidebook sent to participants</i>
<i>November 18,19</i>	<i>Set up day for exhibitors</i>
<i>November 21-25</i>	<ul style="list-style-type: none">• <i>Commonwealth People's Forum</i>• <i>CPF Exhibition</i>
<i>November 21-24</i>	<i>CSO Meetings</i>
<i>November 22</i>	<i>Children's Day</i>
<i>November 25</i>	<i>Gozo Day</i>
<i>November 27</i>	<i>Dismantle exhibitions</i>

Democracy in the Maldives: Fact or Fiction?

Fathimath Shimla

Columnist, Minivan News, Maldives

The Maldives held parliamentary elections on 22 January 2005. The elections were an important test for the Maldives' septuagenarian President, Maumoon Gayoom, who - although had promised democratic reform - continues to be in power even after 27 years.

The British Foreign Minister had commented that the elections would be "the test" of the sincerity of a President who was severely criticised by the international community in September 2004 following the brutal crack-down on a peaceful pro-democratic rally in the capital, Male.

The elections went ahead but they were not elections that many would consider to be free and fair: political parties were banned; media was put under state control; public election speeches by candidates were forbidden; all election material was censored by the government; and the President simply appointed eight out of the fifty seats in the parliament and also the speaker, who is responsible for setting the parliamentary agenda.

The Commonwealth Secretariat had sent in an Expert Team (CET) to monitor the elections. Their report stopped short of using the words 'free and fair', and their findings were clear: "In conclusion, the CET believes that in the absence of a multi-party democracy, fundamental freedoms and separation of powers guaranteed by the Constitution and undermined by secondary legislation, Maldives would continue to have a democratic deficit."

In such a system it was surprising to see that the democratic movement, headed by the Maldivian Democratic Party (MDP) – which operates from exile – did so well. The MDP in its mandate called for liberal democracy, a separation of powers, the rule of law and respect for human rights.

Although candidates were unable to stand on the MDP ticket, the party 'endorsed' candidates for the 42 elected seats a month prior to the voting. Eighteen of those

candidates won – gaining some 43% of the elected seats in parliament. Party-endorsed candidates also won over fifty percent of the popular vote in a system which heavily disenfranchises urban areas – the MDP's core support bases.

The European Union after the election observed "These elections are a clear sign that the population of the Maldives is in favour of democratic reforms. They showed indeed the existence of a large public support in the Maldives for the reformers and confirmed that the Maldivian Democratic Party is to be considered as a genuine political movement." The MDP said that it could have doubled its number of seats had more democratic conditions prevailed.

With the economy of the Maldives dependent on European tourists and on international aid following the Tsunami crisis, Gayoom can't afford to ignore the views of the international community. The pressure from both within the country and from outside for democratic change is becoming immense.

Gayoom has played his moves right. As the election results were being made public, the President's Office repeated its commitment to reform. "Multi-party democracy within a year" ran the headlines, but many remain sceptical. This isn't the first time Gayoom has said he'll liberalise the political system but has gone ahead and done just the opposite.

Last July, in the wake of an unprecedented anti-government riot in the capital in late 2003, Gayoom announced a series of reform measures that were meant to transform his essentially dictatorial system into a flourishing democracy. The President said he was going to allow opposition political parties to voice their opinions, create a Supreme Court and the office of a Prime Minister. He encouraged the public to go forth and debate the sorts of changes they wanted to see.

Five weeks later, hundreds of those who went forth and

held debates – the main topic of which seemed to be the desirability of Gayoom’s resignation – were arrested and according to reports of Amnesty International, tortured by Gayoom’s security services.

As the National Democratic Institute (NDI) – who went to the Maldives shortly after the arrests last year at the invitation of the government and the United Nations – said in their report: “The majority of the interviewees feel that the government lacks credibility with respect to reform. They ask how can the government be serious about reform, if in a history of 25 years it has failed miserably to bring about any semblance of democracy, if it invites people to discuss reform, and then detains those who are critical of it. Bold action will be required by the government to build confidence in any reform process.”

Aminath Najeeb is one of the growing number of well-educated and increasingly frustrated Maldivians trying to hold the President to his word. For the last six months she has made innumerable attempts to establish the first ever human rights non-governmental organisations in the Maldives. The ride has been far from smooth.

“First they told me I couldn’t register the NGO because I had a criminal record but I have none. Then they said they couldn’t register the NGO because a co-founder had a criminal record but after investigating I found out that they were referring to a traffic offence from three years ago. Now I am being told that the NGO can’t be registered because the name, ‘Human Rights Maldives’, is incomplete. ”

Public assemblies in the Maldives, like political parties, remain banned, the media is still state-controlled and the country remains under an uneasy state of fear – and growing anger.

The President points out in his defense that his reform proposals are currently sitting with the People’s Special Majlis (constituent parliament) for debate and ratification but even this process, opposition figures fear are plain cosmetic.

“Democratic reform is being carried out in a very undemocratic manner” says Mohamed Nasheed, the newly elected Chairperson of the Maldivian Democratic Party

and former Amnesty International Prisoner of Conscience. “An undemocratic President is simply drafting a new constitution in his office and asking the parliament to rubber-stamp it. How can the parliament seriously debate the changes and counter the views of the President when political parties are banned? How can the public engage with the process when nobody is explaining the changes to them or asking them for their opinions? How can this process be regarded as transparent, inclusive or democratic?” he continues.

Critics also say that on a closer look many of the proposed changes are far from democratic although they sound nice. One proposed change is to create the position of a Prime Minister and Head of the Judiciary.

However, when one reads the small print, what the President is proposing is that he would be able to appoint and dismiss the Head of the Government and the Judiciary on the ‘advice’ of the Parliament. However, the term ‘advice’ in a Maldivian context simply means a debate in parliament in which no vote is recorded and, presumably, the President interprets the outcome. People point out that the so-called democratic reform proposals are nothing more than a well-packaged consolidation of the President’s powers.

There is also a fear that reforms lack an overarching agenda, a roadmap to democracy. Although expert advice is being provided by organisations such as the Commonwealth and the UN, it is being done only on highly restricted technical issues. There has been no independent assessment of the overarching process of reform, possibly allowing Gayoom to blame a failure to reform in future on a technical incompetence.

The election results, the independent assessments such as the NDI and CET report and the 15,000-strong pro-democracy rally last year all point to a country that is crying out for democracy. As the Commonwealth continues to search for its relevance in the 21st Century, helping the Maldives draft a genuine roadmap to democracy would be a relevant contribution. ■

Minivan news is an independent news channel for the Maldives which operates outside of the country. Visit it at www.minivannews.com.

Mozambicans Go To The Polls In Small Numbers

Neil Falzon

Lawyer and Human Rights Activist

“A ccepting the results (of the elections) would be killing democracy” – Afonso Dhlakama, Renamo leader and presidential candidate.

Showered by heavy rainfalls and beaten by a scorching sun, 8 million Mozambicans had the opportunity in December 2004 to exercise their right to vote in the country's third multi-party elections, choosing Armando Guebuza as their new President and confirming the Mozambique Liberation Front (Frelimo) as the ruling party in Parliament. Frelimo Secretary-General Mr. Guebuza succeeds President Joaquim Alberto Chissano who, after 18 years of rule, decided not to contest the elections.

With a meagre 36% turnout of voters, these elections nonetheless signify a sweeping victory of Frelimo over its historic rival, the rebel group turned political movement Mozambique National Resistance (Renamo), with which it fought a bloody civil war for 16 years. With 64% of votes in his favour, Mr. Guebuza takes Frelimo, in power since 1975, into another 5 years of rule and widens the gap between Frelimo and Renamo. Renamo's leader Afonso Dhlakama managed to obtain 32% of votes, whilst obtaining 34% and 48% in the elections of 1994 and 1999 respectively.

Coupling this victory is the huge parliamentary majority obtained by Frelimo, winning 160 seats from 250.

The two major political contenders, Frelimo and Renamo, have been enemies since the country's independence in 1974, with both parties sharing high levels of unpopularity amongst the electorate. Following independence, Frelimo established a one-

party state based on socialist principles and created intensive, Russian-style re-education camps. In opposition and with the support of the Rhodesian government, the rebel group Renamo was created in 1977, starting the civil war which would ravage the entire country until 1992 when, under a UN-sponsored settlement, peace was finally established in Mozambique.

“We have succeeded in consolidating the peace process,” said President Chissano, of the December elections. The elections reflect the country's present political situation, with the two parties peacefully vying for power, albeit not without tension and controversy. In fact, not many would agree with President

Chissano's comment, since the elections were tarnished with allegations of abuse and fraud, with Guebuza accused of *“plotting against democracy”*. Just a week after the elections, even before the announcement of the official results, Dhlakama called for fresh voting, claiming *“massive fraud”*, including manipulation of electoral

computers and prevention of opposition supporters from voting.

He also called on outgoing President Chissano to remain in office until new elections were held. This call has recently been modified as Renamo awaits a ruling on the alleged irregularities from Mozambique's Constitutional Council. Eduardo Namburete, manager of Renamo's electoral campaign, is reported to have said that the party will only call for re-elections in those areas where there have been reports of irregularities.

An insight of such allegations and of the entire



Mozambicans go to polls

BBC News

electoral process may be provided by the reports and statements of the over 200 foreign electoral observers present in Mozambique. Amongst these observers were the Commonwealth, the Carter Center and the European Union, all of which have published their observations on the electoral process.

The Commonwealth Secretariat sent 2 delegations to the Mozambique elections. An Observer Group, present for the end of the campaign period, the voting and the counting of votes at the polling stations, had the mandate of ascertaining whether the December elections provided the electorate with the conditions necessary for free expression of their will and whether the final results do in fact reflect this will.

The Group was also requested to evaluate elements affecting the credibility of the general electoral process. Together with this group, the Secretariat sent an Expert Team, present to observe the remainder of the result process. The Team's mandate was more specific since it was requested to establish whether counting was conducted in a manner conforming to the Mozambique's electoral legislation.

One of the main issues of concern to the Commonwealth observers was certainly the levels of provincial and national access granted to them by the National Electoral Commission (CNE), particularly at the crucial stages of the results process where invalid ballot papers and challenged votes were being reclassified.

The observers were also prohibited from the sessions where the CNE reconsidered the rejected Results Summary Sheets. Although the CNE confirmed that it would publish the list of all rejected Sheets together with the reasons for rejection, this is yet to be done. Criticism is also directed at various Renamo

representatives who stalled the electoral process at various stages by, for example, boycotting CNE meetings, rendering consensus decisions impossible and refusing to grant access to Electoral Materials Warehouses in a number of provinces. Problems with the accuracy, integrity and security of the software utilised for the tabulation proofs were also reported.

The observers did, however, note with satisfaction the presence of several conditions which indicated an increased level of democratic spirit. Civic and voter education was seen as being effective and pluralistic, polling staff seemed to be adequately educated about their roles and duties at the stations and observers were largely granted access to all the electoral preparatory stages.



*Afonso Dhlakama, Leader of opposition,
Renamo*

BBC News

The Commonwealth observers concluded that conditions for free democratic elections did in fact exist and praised the good spirit with which they were received and allowed to conduct their work. In their conclusions and recommendations, they highlight, *inter alia*, the needs:

1. *to grant wider observer access;*
2. *to depoliticise the decision-making process by reducing CNE discretion;*
3. *to improve the use of IT by appointing suitable technical staff; and*
4. *to review electoral logistical arrangements such as voting over two days and locations of polling stations.*

Generally, they recommend that the Mozambican Government liaises with the Commonwealth Secretary General to find methods of improving its electoral management arrangements and to ascertain and process the reasons for the record low turn-out.

In its post election statement, whilst praising the peaceful environment surrounding the general process, the Carter Center expresses its concern at a number of issues which, whilst not necessarily affecting the outcome of the elections, weaken their integrity and credibility. With regards to the provincial tabulation, the Center notes that no province met the legal deadline of 9 December for the presentation of results, owing to delayed delivery of district materials and, echoing Dhlakama's claims, faults in the tabulation software.

Furthermore, a number of districts reported voter turnouts described as *"unrealistically high"*, reaching 90% to 100%. In the light of the overall poor turnout, with a meagre 36% of the electorate actually voting, such figures stand out as dubious.

In the same districts as the Center reports high Frelimo support as well a campaign period that was intimidating and restrictive for representatives of the opposing party. From a more structural perspective, the Center comments on the secretive attitude adopted by the CNE in respect of the list of polling stations and the lack of transparency in the central reclassification of dubious votes by the CNE, particularly with regards to the cancellation of ballot sheets that could have supported the opposition.

Similarly, the European Union's Election Observation Mission (EOM) to Mozambique, comments on the CNE's working methods and structure. No observers were admitted to the reassessment by the CNE of invalid and contested votes, with access to the re-qualification of invalid votes granted at pre-established time slots.

The EOM repeated the Carter Center's concerns regarding the unusually high turnout in specific districts, emphasising the fact that the votes cast in these areas were predominantly in favour of Frelimo. Commenting on the revalidation sessions, the European Union observers noted *"apparently deliberately invalidated ballots"* in the districts commented upon by the Carter Center. Other

problems mentioned include: the lack of information given regarding the electronic tabulation process, the fact that no updated voter list was presented for public scrutiny, the incoherence between the number of polling stations and the number of result sheets, an extremely low turnout with 5-12 voters at some stations, the lack of accuracy regarding the precise number of eligible voters and the fact that some polling stations either opened late on the second day or did not open at all thereby preventing over 20,000 voters from exercising their rights.

Under Mozambique electoral law, all citizens above 18 years of age may vote. The winning presidential candidate needs to obtain a majority of votes cast with, each candidate being proposed by at least 5,000 voters with at least 200 from each of the country's provinces. Mozambique's National Assembly consists of 250 seats representing the country's 11 electoral constituencies, which include Mozambique's 10 provinces together with Maputo City. Voting is by proportional representation whereby voters select the preferred political block or list of candidates as presented by each contesting party or coalition.

To obtain representation in the National Assembly, a party or coalition needs to obtain a minimum of 5% of the vote, following which the parliamentary seats are distributed to successful parties or coalitions in proportion to the number of votes obtained. The CNE is entrusted with ensuring fairness and freedom throughout the registration and electoral process. The CNE is also responsible for announcing the final results.

"Only united can we overcome poverty and all the other difficulties our country is facing today," said Armando Guebuza, the presidential elections winner.

Set on fighting corruption and poverty, Mr. Guebuza has an arduous 5 years coming his way, a challenge clearly reflected in the electoral process giving him victory. ■

Police and Police Reform in South Africa After 1990: Some reflections

Elrena Van der Spuy

Institute of Criminology, Faculty of Law, University of Cape Town, South Africa

This is an extract from Presentation delivered at the India International Centre, New Delhi, 19 January 2005, sponsored by Commonwealth Human Rights Initiative in collaboration with India International Centre.

Introduction

India and South Africa are two countries that not only share a comparative history, but there is also much to be said when it comes to confronting public police institutions in both the societies.

Both share some broad structural similarities relating to factors such as: the historical imprint of British colonial rule, the divisiveness of communal politics and the politics of resistance, as well as the entrenched nature of socio-economic inequality. Finally, there are also the experiences of political transition relating to the consolidation of constitutionalism and its implications for the structure and function of the police organisation.

Broad structural similarities, however, should not blind one to important differences. For example, the police in India comprise 1.4 million personnel to serve its 1.02 billion people. In contrast, South Africa has a police force of 140,000 for a population of only 45.5 million.

But one should not make too much of the differences in the size of the police and the scale of its operation. Public debate and scholarly research in both societies suggest that the search for police legitimacy, professionalism and efficiency is continual. Like elsewhere in the world, the specter of corruption, political manipulation and abuse of police power

requires ongoing vigilance. In both societies, democratic policing as a social practice, as opposed to an abstract concept, is an ongoing process.

Given the lack of comparative analyses of policing in India and South Africa, and the potential fruits of such an analysis, however brief, I turn to a review of recent achievements in the terrain of South African police reform. Some of the formative influences that have shaped both the debate and practices of post-1990 police reform are:



South African Police in action

Credit : Google images

The legacy of colonial and Apartheid rule:

Under Apartheid, various political, legal and social-cultural factors conspired to render police accountability even less of a reality than it had been in the earlier years of 20th century South Africa.

Much has been written about the excesses of the police under Apartheid. It was a system of minority racial rule in which an increasingly permissive legal regime (until the 1980s) facilitated the systemic abuse of police power and the subcontracting of terror to shadow formations in the name of anti-Communism.

The result was an incestuous relationship between political masters and the police high command. From 1976 onwards, the country was almost continuously the scene of hostile interactions between the police and the disenfranchised. As the struggle intensified, the police and their political masters became increasingly hostile to, and dismissive of, any criticisms of police conduct.

Under conditions of this low intensity civil war, the relationship between the disenfranchised people and the state's security apparatus was marked by conflict and animosity. The institutional legacy of militarism, and the preoccupation with the maintenance of 'public order' and the defense of 'state security', helped to set the agenda for police reform in the early phase of political liberalisation. In this context the demand for the demilitarisation of the structure and function of the police institution, for example, needs to be appreciated.

The nature of political transition:

A second formative influence on the trajectory of police reform was the nature of political transition. In political science literature the South African case is often described as a classic 'pacted' agreement between competing political elites. The negotiations were characterised by compromise and confidence-building strategies, which for example, included job protection for the old guard bureaucrats under the Government of National Unity.

As a consequence the large-scale dismissal of security personnel so characteristic of other transitional experiments did not feature in local reform efforts. Through the signing of a Peace Agreement in 1991 a code of conduct was introduced. The latter placed particular emphasis on non-partisanship, the utilisation of minimum force and service delivery of the police institution to the wider public.

The Peace Accord made provision for various transitional mechanisms aimed at advancing independent police oversight and a consultative collaboration between police and civil society. Imperfect as these transitional mechanisms were, they helped to clarify the rules underlying a constitutional model of policing as hammered out around the negotiation tables.

An analysis of the content of the Interim Constitution and the South African Police Services Act of 1993 point to the centrality of transparency, accountability and police-community partnerships for post-Apartheid police arrangements.

Two contentious issues regarding the police arrangement for the future related to the national versus the regional divide as well as the degree of political control to be exerted over the institution of policing in a constitutional democracy. Political expediency and compromises dictated the decisions on this front.¹

The influence of the international community:

The South African 'problem' has long been internationalised. Since the 1960s the excesses associated with white minority rule has been the subject of considerable international exposure. Collaboration between local and international human rights bodies has facilitated this process. By 1990, internal isolation under Apartheid gave way to forceful and constructive re-engagement with the international community.

Discussions on police reform reflected this insertion into a global community eager to promote the process of institutional engineering. A robust exchange regarding the future of policing emerged between a wide range of constituencies involving academics and researchers, politicians, policy elites, NGOs and police professionals themselves. The virtues of, inter alia, democratic policing, community policing, sector policing and zero tolerance strategies were considered and their applicability to local realities entertained.

Part and parcel of the process of internationalisation has been increased access to developmental assistance. Donor aid in support of criminal justice reform grew more widely after 1992. Donor agencies also targeted the police organisation as an important recipient of assistance. The exchange of ideas and

¹ Rauch, J. (2001) 'Police reform and South Africa's transition' in M. Shaw (ed.), *Crime and Policing in Transitional Societies*. Johannesburg: Konrad-Adenauer-Stiftung

the provision of resources and technical expertise were meant to facilitate institutional changes.

Such assistance has been characterised by diversity – both in terms of the types of projects funded and the diversity of donors involved. Recent South African experiments in this regard serve as a useful reminder of the opportunities for foreign assistance in support of police reform. The South-African case study also illustrates the constraints on foreign aid in the absence of conducive political conditions and local ownership of the reform agenda.

Regionalisation of security:

A fourth influence on the project of police reform that has become more apparent in recent years concerns the regionalisation of ‘security’ in the Southern African region. Under current conditions where crime itself takes on wider regional dimensions, policing priorities are increasingly being set beyond the boundaries of any one state.

Security concerns are becoming regionalised and/or globalised. In confronting the challenges posed by organised crime networks for example, law enforcement agencies need to think beyond the national level. Under conditions of globalisation, the imperatives of law enforcement are characterised by cross border co-operation, the harmonisation of legal regimes, the standardisation of police training and the emergence of policy convergence.

In the Southern African Development Community too, there is ample proof of the extent to which the destinies of law enforcement institutions have become intertwined. One small example of this process can be found in the formation of a regional police network, the South African Regional Police Chiefs Co-operation Organisation (SARPCCO). In the past few years SARPCCO has become responsible for setting regional policing priorities and facilitating cross-border collaboration around ‘priority crimes’.

One consequence of this is that agenda for police modernisation and reform is in part at least being shaped by regional concerns. Likewise, international concern with the threat posed by terrorism is bound to have a formative influence on international cooperation between security institutions in years to come.

Privatisation of security:

The fifth influence that has come to shape the debate and practice of public police reform in South Africa concerns the privatisation of security. Recent calculations show that there were twice as many registered private security guards (248 000) in the year 2003 as compared to the figure for 2002 (132 310)². The ratio of public police officials to registered private security guards for 2003 was almost 2:1.

Whilst the trend towards the commodification of policing services is of a global nature, the consequences associated with such privatisation in the context of new democracies may well be more insidious. Rampant commodification of security means that security becomes a private as opposed to a public good provided by the state to its citizenry.

In high-crime contexts characterised by limited state capacity and resources and entrenched patterns of inequality, access to security is likely to become bifurcated along distinctly class lines.

Such developments have prompted various discussions on normative concerns relating to equal access to justice as well as political discussions on the role of the state vis-à-vis the delivery of basic security. The trend towards privatisation has contributed to a broadening of the debate on policing reform.

Again, South African experiences suggest that the terms of reference for a discussion on the future governance of security can no longer afford a parochial focus on the South African Police Service. The institutional realignments in the delivery of security necessitate

² SAPS Annual Report, 1 April 2003 to 31 March 2004.

demand new conceptual tools and approaches. In the early days of discussion on South Africa's policing future a state-centered approach to police reform was very much in evidence.

In recent years a more pluralist approach to policing reform has emerged with new sets of research questions being posed to take account of the evolving inter-relationships between the market, the state and the community as providers of security. Discussions on police accountability, for example, now admit that the co-existence of such multiple providers, necessitate a re-framing of the debate on oversight way beyond the contours of the state.

Rising crime and public concern with crime:

The sixth formative influence on the project of policing reform (and a particularly important one at that) has been the rise in crime, which has accompanied South Africa's political transition and public perceptions of criminal disorder pervading the streets. This has led to continuous shifts in crime policy and institutional priorities regarding police reform. (Shaw, 2002).

By 1998 a forceful engagement with crime trends shifted the emphasis in police reform into more technical directions. The comparative record suggests that the South African trajectory – from broad human rights concern with political oversight to a much more managerialist emphasis on service delivery - is not unique. On the contrary, in the early phase of political transition in post-authoritarian contexts police reform tends to emphasise the political values of accountability, rule of law, and human rights.

Resources are targeted for building mechanisms of oversight and inducing sweeping changes in cultural habits amongst police personnel with insufficient attention given to building police capacity to deal with increases in violent crime.

But under political pressure to do something about crime, the police may well resort to repressive tactics, which has much more in common with the

paramilitary policing model than with a new constitutional order.

At this juncture, the theory of democratic policing has less and less influence on the actual practice of policing. An enquiry into policy shifts over the past fifteen years - particularly from the National Crime Prevention Policy of 1996 to the National Crime Combating Policy of 2000 - would suggest that South African developments illustrate the extent to which the agenda for police reform remains vulnerable to situational exigencies.

Police reform is a project subject to *realpolitik* often underestimated in more abstract discussions.

In conclusion, the debate on *the police* in South Africa has changed radically in the past decade and a half. The exposés of police abuses and the deep corruption of police power in apartheid society produced in the 1980s gave way to constructive engagements with the policy frameworks and institutional mechanisms for democratic policing in the 1990s.

In the current decade, there is a widespread desire for effective and humane policing. But there is an equally common awareness of the obstacles in the way of achieving it. Most South Africans would agree that the police should act with professionalism and according to the ideals of due constitutional process. But few view this goal as attainable under current social conditions. In this sense, the debate is no longer about *what*, but about *how*.

Critical engagement with the *how* is a necessary precondition for a policing future that will consolidate the advances that have been made thus far. In pursuit of such engagements exchanges within the larger Commonwealth community, and societies such as the Indian one, seem eminently desirable. In this regard the efforts of the Commonwealth Human Rights Initiative deserve particular mention. ■

Police Reforms in Pakistan: A Step Forward

G.P. Joshi

Programme Coordinator, Police Reforms, CHRI

While being ironic, it was also an encouraging step forward in the history of policing when the “democratic” government of Pakistan drafted the Police Ordinance in 2001 to repeal the archaic Police Act of 1861, thus stealing a march over other democratic regimes in the region in attempting to change a deeply entrenched police system.

Even after independence, countries in the South Asian region have been unable to rid themselves of past colonial legacies, which is much reflected in their outdated Police Acts. Sporadic attempts to catalyse a change in the system have met stiff resistance. In India, recommendations made by the National Police Commission (NPC) set up in 1977 to insulate the police from outside illegitimate control fell on deaf ears. These included establishment of State Security Commission; abolition of the system of dual control at the district level; selection of the head of the state police force on the recommendations of a committee; giving him/her a fixed minimum secure tenure and transfers to be done according to rules by prescribed authorities.

As per its Preamble, the draft Pakistan Police Ordinance 2001 is aimed at organising a police system, which is “independently controlled, politically neutral, non-authoritarian, people friendly and professionally efficient.” Even though the text of the 2001 Ordinance has been significantly altered since then, first by the Police Order of 2002 and then by the Police Order (Amendment) Ordinance of 2004, the initiative still retains a fairly good

blueprint for police reforms. It is as of now referred to as the Police Order 2002.

Poor quality of policing in the region can be attributed to the existence of Section 3 of the Police Act of 1861, which gives the government the authority to exercise superintendence over the police, but does not define the word ‘superintendence.’ It also fails to prescribe guidelines that will restrict the government from misusing the police for partisan and illegitimate purposes.



Pakistan Police

Credit : Google images

The Pakistan Police Order 2002 vests the superintendence of the police force in the government, but clearly prescribes that the power of superintendence “*shall be so exercised as to ensure that police performs its duties efficiently and strictly in accordance with law.*” The Order fills a very important gap in law by defining the word ‘superintendence’ to mean “*supervision of Police.... through policy, oversight and guidance*” and specifying that while exercising it, the government shall ensure “*total autonomy*” of the police officer in “*operational, administrative and financial matters.*”

This is to be ensured by the Public Safety Commissions proposed to be established at the federal, provincial and district levels. A detailed charter of functions is prescribed separately for Commissions at each of the three levels.

One of the important functions of the commissions at the provincial and district levels is to “*take steps to*

prevent the Police from engaging in any unlawful activity arising out of compliance with unlawful or malafide orders.” The commissions are also authorised to receive public complaints, inquire or get the inquiry done and recommend appropriate action.

The Provincial Public Safety and Police Complaints Commission will have twelve members, besides the Provincial Home Minister, who is the ex-officio Chairperson of the Commission. Half of the members have to be nominated by the Speaker of the Provincial Assembly - four from the treasury and two from the opposition - and the other half are independent members, selected by the Selection Panel.

The District Public Safety and Police Complaints Commission will consist of nine members. One third of the members are to be elected by the Zila Council and one third to be appointed by the government from amongst the members of the Provincial Assembly and National Assembly of the district as ex officio members. The remaining one third are independent members recommended by the District Selection Panel.

One heartening feature is the mandatory provision that one third of members of commissions at all three levels shall be women.

The Police Order 2002 envisaged the establishment of Police Complaints Authorities to inquire into citizens' complaints against misconduct or negligence of duty. Unfortunately, the Amendment Ordinance of 2004 merged them with the Public Safety Commissions at provincial and district levels. The reason behind the amalgamation is unclear, unless it has been guided solely by economic considerations. The reason becomes denser when one finds that the Police Complaints Authority has been retained in its original form as a separate independent body at the federal level, while it is mainly at the provincial and district levels that people interact with their police closely and it is at that level that most complaints against police personnel arise.

The head of the provincial police force is to be appointed by the provincial government out of a panel of three officers recommended by the federal

government. Once appointed, the person shall serve tenure of three years. According to 2001 Ordinance, the posting of the police chief would be done by the government with the approval of the Provincial Public Safety Commission out of a panel recommended by the National Public Safety Commission. The 2002 Order removed the Provincial Public Safety Commission from the scene and the 2004 Ordinance did the same with the National Public Safety Commission. The provisions in the 2001 and 2002 legislation regarding the premature termination of the provincial police chief have also met the same fate in 2004. Thus the decision to select the Chief of the Provincial Police Force or to remove him/her from that post rests solely with the governments and the Public Safety Commissions have no say in the matter.

The Pakistan Police Order, 2002 abolishes the system of dual control at the district level. The administration of the district police is vested solely in the district Superintendent of Police, who is no longer subject to the “general control and direction” of the district magistrate. However, Section 33 of the 2002 Order makes him/her responsible to the Zila Nazim (an elected person defined as such under the Local Government Ordinance, 2001) for “police functions,” except in respect of “administration of the district police, investigation of criminal cases and police functions relating to prosecution.”

The Police Order 2002 prescribes fixed tenure of three years for the head of the district police and also for all officers posted in the district like the heads of the police division, sub division and the police station.

Amongst some other important institutions that the Police Order 2002 establishes are the Criminal Justice Commission at the district level to review the functioning of the system and the National Police Management Board at the federal level to develop standards and advise the governments in that country on police matters.

To what extent the new legislation succeeds in turning the police in Pakistan into an independent, neutral and people friendly force, only time will tell. ■

Lawyers vs. Law

Naomi Gunasekara

Journalist, BBC World Service

When Tirantha Walaliyadde, an Attorney-at-Law of the Supreme Court of Sri Lanka appeared on behalf of a man accused of murdering a High Court judge, lawyers hooted and protested against his appearance, paying little attention to international human rights standards that allows an accused a right to legal representation.

Lawyers considered the killing of Justice Sarath Ambepitiya (58), a judge known for issuing harsh judgments in a number of controversial cases, as an attack on the independence of the judiciary. In their attempts to preserve its independence they paid no attention to the fact that they acted in contravention of international and local legislation governing human rights.

Any person who is accused of committing a crime, no matter how grave the offence is, has a right to legal representation under the 'Universal Declaration on Human Rights' (UDHR) which the international community adopted over fifty years ago. In Sri Lanka, the Constitution and the code of conduct and ethics governing Attorneys-at-Law gives an accused a right to legal representation. However, following the killing of Justice Ambepitiya on November 19, 2004, the Bar Association of Sri Lanka urged lawyers to refrain from providing legal representation to Mohamed Niyas Nawfer alias Potta Nawfer, the first accused of the case.

Ikram Mohamed, President of the Bar Association of Sri Lanka, defended the lawyers' action by saying that although every suspect has a right to retain a lawyer according to the Supreme Court regulations, there exists a need on the part of lawyers to take a personal stand on this case, since the murder of Judge Ambepitiya is an attack on the judiciary.

In the initial stages of the Magistrate's inquiry initiated in December, the suspects did not have any legal representation. But when Mr Walaliyadde appeared on behalf of Mohamed Niyas Nawfer in mid January, lawyers' protestations in open court resulted in the court being adjourned.

This is not the first instance where the Sri Lankan legal sector has opposed legal representation for an accused. In 1988, when Wijedasa Liyanaratchi, an Attorney-at-Law of the Supreme Court of Sri Lanka, died while in police custody, police officers who were suspected of his murder were denied access to legal representation. The Bar Association of Sri Lanka decided that its members should refrain from appearing for the officers unless certain conditions were fulfilled.

Ten years later in 1998, when a much publicised rape and murder case was brought to court, lawyers protested against legal representation for the accused and held a public demonstration condemning the lawyer who appeared for the accused.

Article 7 of the UDHR recognises equality before the law and states "all are equal before the law and are entitled without any discrimination to equal protection of the law." According to Article 12 (1) of the Sri Lankan Constitution, "all persons are equal before the law and are entitled to the equal protection of the law." Article 13 (3), stipulates that "any person charged with an offence shall be entitled to be heard, in person or by an Attorney-at-Law, at a fair trial by a competent court."

These provisions recognise the right of a citizen, irrespective of the crime he/she committed or his/her or the victim's standing in society, to be protected under the law. Rule 5 of the Supreme Court Rules of Conduct also states that "an Attorney-at-Law may not refuse to act on behalf of a party or person in any matter or proceeding before any court, tribunal or other institution established for the administration of justice or in any professional matter at his or her professional fee."

With such strong legal procedures and human rights considerations in place, it is indeed a matter of grave concern that Sri Lankan lawyers are choosing to ignore the basic tenants of law and human rights. ■

CHRI Calendar

CHRI Headquarters

December 2004

Panelist for a discussion on "terrorism and human rights" in a National Symposium on emerging areas of forensic science, organised by SGTB Khalsa College, University of Delhi.

Addressed a seminar on Community Policing, organised by the Indian Merchants' Chamber in Mumbai.

Launch of the Hindi version of 2001 CHOGM Report on Human Rights and Poverty Eradication in Lucknow, by the acting Chair of the UP State Human Rights Commission at a function organised by the Lucknow Chapter of the Association of British Scholars.

Launch of *Human Rights Commissions – A Citizen's Handbook* on 10 December - Human Rights Day. Justice Santosh Hegde, Judge Supreme Court of India released the book at a Human Rights Day function organised by International Institute of Human Rights Society, New Delhi.

Celebrated International Human Rights Day and released flyers and TV spots in Chhattisgarh and Delhi.

Conducted a regional capacity building workshop on Right to Information for NGOs of Chhattisgarh and Madhya Pradesh in Satna, Madhya Pradesh.

January 2005

Organised a workshop for Judges & Lawyers on Karnataka Right to

Information Act, Tumkur, Karnataka.

Presented at a conference on Human Rights and Governance: Local and Global Perspectives held in Dhaka, Bangladesh.

Organised a lecture on "Policing in South Africa - from Apartheid to Democratic Policing" in New Delhi, in collaboration with India International Centre.

Represented the Global Transparency Initiative as part of an NGO Coalition in Phillipines lobbying the Asian Development Bank to improve their proposed revised information disclosure policy.

February 2005

Attended the 2005 International Conference of Information Commissioners.

Presentation on international obligations to the Commonwealth Parliamentary Association study group of MPs on HIV/AIDS and Human Rights in New Delhi.

CHRI made a detailed submission and presentation to the Standing Committee of Parliamentarians for improving the provisions of Right to Information Bill 2004 in India.

CHRI London Office

December 2004

Dr. Nihal Jayawickrama became Chair of the Trustee Committee for CHRI.

January 2005

Presented to the Commonwealth Parliamentary Association seminar on Human Rights, Corruption and Party Politics.

CHRI Africa Office

December 2004

Presented a paper on Gender Human Rights and Political Power at the annual Founders Week Lectures of the Ghana Academy of Arts and Sciences in Accra, Ghana.

Presented a paper on Human Rights and the Media at a workshop organized by Ark Foundation for Female Journalists in Accra, Ghana.

Presented a paper on 'Civil Society Experience with the Africa Peer Review Mechanism' at a regional workshop organised by SAHRIT & OSISA in Mauritius.

Participated in a workshop on New Approaches for addressing Gender-based violence in Manchester, UK.

January 2005

Presented a paper on Human Rights Reporting and the Media, Case Studies and Litigation at a workshop on Gender Awareness Programme in Accra, Ghana.

Participated in a workshop organized by UNFPA Partners Formulation of UNFPA/Government of Ghana County Programme in Swedru.

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.

Editors : Vaishali Mishra & Clare Doube **Design :** Anshu Tejpal, CHRI

Acknowledgement : Many thanks to all contributors.

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

Members : Anu Aga, T. Ananthachari, K.S. Dhillon, N.R. Madhava Menon, P.P. Rao, R.V. Pillai



Published by CHRI, B 117, First Floor, Sarvodaya Enclave, New Delhi - 110 017, INDIA

Tel.: 91-11-2685 0523, 2686 4678 Fax: 91-11-2686 4688 Email: chriall@nda.vsnl.net.in

Visit our website at www.humanrightsinitiative.org

for information on activities, publications, CHRI News, links and more.

CHRI launched an Electronic Magazine 'Commonwealth Police Watch'.

Please visit it at <http://www.humanrightsinitiative.org/policeemag/>

Printed by Print World 98101 85402