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Inside

- A Reflection on Real Security for Uganda
- 'Cosmetic' Commissions and the Rule of Law in Sri Lanka
- Human Rights in Fiji-A 'Clean Up Campaign' For Whom?
- Importance of Records Management
- Around the Commonwealth
- The Rule of Law and Safeguards to Democracy - The Right of Dissent
- Hate-on-the-Net Targeted by Rights Commission in Canada
- Making Access to Information Law Work for People in the Caribbeans
- Pakistan: Danger and Anticipation in its 60th Year
- Laying the Foundations for a Peoples' Campaign for Better Policing



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A Reflection on Real Security for Uganda

- Gudrun Dewey

Intern, Access to Justice Programme, CHRI

On 1 March 2007, President Museveni's Black Mamba squad raided the Ugandan High Court in Kampala. The Black Mamba is the sinister heavily armed anti-terrorism division of Ugandan government security. They are cloaked in secrecy and take orders from the President. During the raid 25 Black Mamba members and 20 prison officers forcibly rearrested five People's Redemption Army (PRA) suspects who had just been released on bail after being charged with treason and terrorism. The Human Rights Network in Uganda states that the Black Mamba 'unleashed brutal violence against the suspects' and their lawyers, leaving one lawyer 'bleeding after he attempted to intervene in the unlawful arrest'¹. The following day the five suspects were charged with new allegations of murder and presented before a military court. In a display of outrage at the arrests, judges, magistrates and others working at the High Court accused the Government of undermining the independence of the judiciary and went on strike.

This is not the first time the Black Mamba have intimidated the judiciary. The suspects were first arrested in 2003 and held in illegal detention until they were released on bail in 2005. The Black Mamba were at Court to rearrest the suspects as they were bailed and returned them to a maximum security prison. The Ugandan Government uses a military approach to security to intimidate the population and assert its might and power over any possible opposition. It is an example of a government putting its own interests above the true security of its people. True security demands the unswerving respect for human rights standards, the rule of law and the ability of the community to express opinions openly and without fear.

¹HURINET Uganda, Press Release: 'Break Down of the Rule of Law, Public Order, Safety and Justice', (5 March 2007).

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Civilian policing in Uganda is a sad tale of brutal police and army joint operations, direct political interference in policing and militaristic policing units. Policing units include the Black Mamba Special Military Unit, the Joint Anti-Terrorist Task Force, the Members of Kalangala Action Plan, the Violent Crime Crack Unit and the Presidential Protection Unit. These groups – and the force and techniques they use – are undermining any potential to achieve true security for Uganda. As civilian policing is confused with military operations and civilian police are given extended military and counter-terrorism style powers and mandates, the legitimacy of the police is undermined as are the checks upon it. The trust that the community has in its police service, which is essential for good policing, is also damaged. The police are meant to protect and serve the community. In Uganda, the police protect and serve the ruling regime. This has manifested itself recently in the police use of the Media Council to stifle free press, the brutal police response to legitimate protest, and the Government's use of the military to carry out traditional police functions relating to criminal justice.

March saw the police force exercising powers beyond its jurisdiction when it filed petitions to the Media Council – the regulator of all media in Uganda – complaining of critical articles published about the Government, with the claim that these articles were threats to national security and therefore a police concern. *The Monitor*, a privately owned Kampala newspaper, reported that out of the 53 complaints filed by police officers, all related to independent press and none to the government run *New Vision* newspaper. When asked by the Media Council to issue a written defence, lawyers from *The Monitor* declined on the grounds that the complaints were invalid because 'the police [are] not a legally designated representative of the state' and had 'usurp[ed] the powers of other designated institutions to represent the state.'² In characterising the press and journalists as threats to security, the police and the Government are stifling healthy, legitimate debate within the community. In doing so they are damaging the key elements of a free, functioning and *secure* democracy. While newspapers do continue to publish, many journalists claim that they now have to self-censor for fear of becoming police targets.

² Angelo Izama, 'Police File 53 Petitions Against the Press' *The Monitor* (Kampala), 11 March 2007.

The Government continues to use the police to crack down on political dissent and opposition. On 12 April there was a large protest over the Government's decision to allocate a significant area of national park to a privately owned Asian sugarcane company. The protests turned violent and some of the demonstrators began attacking those in the community of Asian origin. While the demonstrators began to engage in unacceptable conduct, and the police were required to step in and diffuse the situation, the actual Government response – through the police – was vastly excessive and described as a 'brutal' and 'menacing show of force'³ in which at least two people were killed by officers. Two opposition members of Parliament, along with 24 others, were arrested and charged. Just a few days later in a related protest, the police again showed their strength by using live bullets, water cannons and tear gas to stop the demonstration.

Meanwhile, conflict continues to ravage the North Eastern Karamoja region of Uganda where the presence of the Ugandan Peoples' Defence Forces (UPDF) and a general failure of civilian policing has led to increased insecurity. In this arid region bordering Kenya and Sudan, which is often labelled the 'forgotten area', the Karimojong people are pastoralists who depend on cattle for their livelihoods. They are also heavily and illegally armed and the harsh conditions have created a culture of violent inter-tribe cattle raids and fighting whose casualties are devastating. In an attempt to end the complex tribal conflict, the Government installed a disarmament plan in 2001, starting with a program of voluntary disarmament and then assigning the UPDF to the region to forcibly recover illegal arms. In addition, the UPDF have combined with civilian police, working with the Ugandan Police Force to arrest armed Karimojong. Although the Government run *New Vision* newspaper declared this April that the security situation has improved this year and that local leaders 'praised the armed forces' and 'hailed the new UPDF leadership in the region for improved performance and better relations with civilians',⁴ independent observers paint an entirely different picture. This April, the UN High Commissioner for Human Rights released a statement of concern over security forces from carrying out using indiscriminate force and methods of torture in Karamoja in the disarmament process. She found that between November 2006 and March 2007, 'the force of the [UPDF] resulted in

³ HURINET – Uganda, 'Press Statement: Human Rights Network, Uganda Calls Upon the Government to Respect and listen to the Views of Citizens' (13 April 2007).

⁴ Vision Reporter, 'Security Situation in Karamoja Improves' *New Vision* (Kampala), 9 April 2007.

the killing of at least 69 civilians [and] 10 cases of torture'.⁵ The Commissioner has also received reports of other UPDF human rights violations including extra-judicial killings, arbitrary executions and the destruction of property.⁶

In *all* of these examples the central problem is that police act outside their designated powers – often with Government sanction – or officers are explicitly authorised to use excessive force and engage in conduct that violates human rights standards, the rule of law and the basic foundation stones of democracy, including judicial independence. This is exacerbated by a lack of accountability. When the actions of the police are poorly controlled, lack transparency and are immune from prosecution, a culture of impunity flourishes and real security for the people is even less attainable.

The lack of accountability is worsened by the emergence of more and more forms of policing in Uganda, whereby security is now the responsibility of many different Government actors. Where civilian police units take on military style powers or military forces are given the traditional civilian police power to arrest, as in the case of the Black Mamba in Kampala and the UPDF in Karamoja, they employ more brutal militaristic techniques and their conduct is outside normal civilian policing oversight structures such as reporting or judicial review. Also, where there are joint army and police operations, like those occurring in the arrest of criminals in Karamoja, the jurisdictional boundaries of the military and police are dangerously blurred. As the actors have no clear role it is impossible that they will have any clear accountability for their actions. While there may be instances where military intervention is necessary, it must always be carried out separately and in addition to a strong civilian police and judicial structure that exists to protect the community. Civilian policing tasks and roles must stay within the jurisdiction of civilian police.

Karamoja demonstrates how the human rights violations of the army in the region have led to an intense distrust from the community towards any security agency attempting to enforce law and order. This undermines the establishment

of an effective community police service, which is essential for stability and the security of the people, especially where there is a need to protect those who have disarmed and consequently are more vulnerable to cattle raids and attacks from neighbouring tribes who have not. Similarly, aggressive police tactics to control public protests create further community mistrust. In contrast to a brutal approach, policing that respects human rights can build peoples' trust and confidence necessary that benefits effective policing by reducing violent community reprisals, heightening police morale and building up effective community/police communication and intelligence networks.

As the 2007 Commonwealth Heads of Government Meeting in Kampala approaches (November), the attention of the Commonwealth should turn to the massive human rights violations that are being perpetrated in Uganda by police and security forces. The Ugandan Government is not simply directing the police to clamp down on criminal and terrorist activities. It is using the military and police force to bolster its own regime. Its actions are impacting upon the mechanisms that underpin democracy and ensure the proper functioning of the rule of law in a society: a free and deliberative people informed by a diverse press and assured justice by the judiciary. The police do have an important role to play in providing security and maintaining law and order in Uganda. However, *real* security for the nation, the Government and the people of Uganda can only be achieved if the role and the actions of *security* bodies are in accordance with the rule of law and respect the fundamental human rights enshrined in Uganda's treaty obligations and its Constitution. ■

CHOGM Report

Coinciding with the Commonwealth Heads of Government Meeting (CHOGM) in November, CHRI will be releasing a major report examining the effects of anti-terrorism legislation on policing in the Commonwealth. The report will look at increased police powers, enhanced discretion, and how new laws and policies have enabled police to use disproportionate force, arbitrarily arrest and discriminate against suspects. It will also look at the dilution of absolute human rights, such as the prohibition on torture. The counter terrorism measures of the Commonwealth must be consistent with fundamental human rights standards and ensure police are accountable for their actions. The report condemns increased human rights abuses committed by police, and the current disregard of many Commonwealth Governments towards their international human rights obligations in the name of maintaining security.

⁵ United Nations Press Release, 'High Commissioner Concerned Over Escalating Violence Against Civilians in North eastern Uganda': <http://www.unhchr.ch/hurricane/hurricane.nsf/view01/8BB25DE5CFB120ZFECZ12572C20031CCA3?opendocument>

⁶ Office of the High Commissioner for Human Rights, 'Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Uganda: Update Report on the Situation of Human Rights in Karamoja, from 16 November 2006 to 31 March 2007': <http://www.ohchr.org/english/docs/OHCHR.Karamoja.March2007.rev4.1.doc>, paras [23]-[33].

'Cosmetic' Commissions and the Rule of Law in Sri Lanka

Kishali Pinto - Jayawardena

The Commission of Inquiry established by the Government of Sri Lanka (GOSL) in 2006 was a response to domestic and international pressure regarding increased extrajudicial killings following renewed conflict. The Commission is mandated to investigate 15 selected incidents, though there is a clause that, liberally interpreted, would enable it to venture beyond these parameters. These cases include the assassinations of Minister Lakshman Kadirgamar, MP Joseph Pararajasingham, Kethesh Loganathan, the execution style shooting of 17 aid workers in Mutur and killings in Mutur, Trincomalee, Sancholai, Pesalai Beach, Keyts Police area, Pottuvil, Kebithagollawa, Welikanda, Digapathana and the disappearance of Rev Jim Brown, all of which occurred largely in the North/East at varying points of time during 2005 and 2006.

Responsibility for these crimes has been attributed to one or the other of the warring parties, namely the GOSL, the Liberation Tigers of Tamil Eelam (LTTE) and the recently added third element, the breakaway Karuna faction.

A novel feature of the Commission's functioning is that it will be 'observed' by eleven 'eminent persons' whose functioning is also governed by a mandate issued by the Presidential Secretariat. The Commission commenced its formal sittings in March 2007 and the team of observers, (including many well known international jurists), were put into place by that time. The Government has been strident in its assertions that the Commission will constitute an effective mechanism in re-establishing accountability for rights violations in Sri Lanka. It is against this expectation that its nature and functioning will be critically analysed.

The Nature of the Problem

Lack of state accountability for human rights violations in Sri Lanka has applied both to the conflict in the North/East as well as in regard to the estimated 40,000 Sinhalese youth who 'disappeared' during insurrectionist violence during the eighties and early nineties. Out of the thousands of extra judicial killings, only two cases have been effectively investigated and prosecuted to a successful close; namely the rape and murder of Krishanthi Kumaraswamy, a 17 year old Tamil schoolgirl and the murder of her mother, brother and friend who went in search of her by soldiers attached to the Chemmani checkpoint as well as the 'enforced disappearances' of 25 Sinhalese schoolchildren of Embilipitiya, a Southern hamlet, due to a private vengeance of their school principal acting in collusion with army soldiers.

In both these cases, junior officers were convicted, not their seniors, even though there was clear evidence (at least in the latter case), that the abuses were condoned by a senior army officer.

The barbarities committed by the LTTE and, its breakaway group, the Karuna faction, (the latter acting allegedly in concert with some sections of government security forces in countering the LTTE and perpetrating a series of disappearances and abductions for ransom as well as for coercive reasons) have been significant. However, the culpability and/or inaction of the State in redressing abuses by its forces, attracts greater criticism due to the rationale that expects a different accountability from a lawfully functioning government as opposed to terrorists. The prevalence of emergency laws which allows, *inter alia*, arbitrary arrests, *incommunicado* detention and admissions made to police officers above a particular rank has framed a convenient atmosphere for the continuation of these abuses and the conferring of impunity for the abusers.

Indeed, the impact of these laws was so great that, even during the short periods that Sri Lanka was at peace with the normal law of criminal procedure in force, law enforcement officers acted with all the brutality at their command in the darker days of the emergency. Endemic practices of torture resorted to by police officers, regardless of ethnicity or race and governed only by whether the victim belongs to the socially and economically marginalised classes, have been well documented. With the renewal of the conflict and the re-emergence of emergency law, the country experiences the abductions, enforced disappearances and extra judicial killings of journalists, academics, trade unionists, priests, businessmen and politicians, mainly Tamil but a few targeted Sinhalese as well, suspected of collaborating with the LTTE.

Inherent Deficiencies of the Commission of Inquiry

Act No 17 of 1948, (the law under which the Commission is established), was enacted in 1948 for a very different purpose than for what it is being currently utilised. The Act primarily facilitates small local inquiries concerning the administration of any department of Government or the conduct of any member of the public service among other things. Essentially, the current Commission is a fact-finding body and immediate prosecutions will not automatically follow from their recommendations. In addition, important limitations apply to its reports being made public. The lack of a comprehensive witness protection programme, (though

a draft law has been prepared for this purpose, it has yet to gain public acceptance), and the fact that the international observers are not permitted to actually supervise the commission and to intervene in its substantive functioning are all factors that go towards depriving it of legitimacy.

This Commission is not the first of its kind, though the importation of an international ‘observer’ element distinguishes it from its predecessors. In the early 1990’s, four zonal commissions of inquiry (as well as a subsequent commission of inquiry) were appointed under this same law to inquire into enforced disappearances of persons during the period of the southern insurrectionist terror. In this case as well, though these commissions recommended prosecutions against several army and police officers, little action was taken. Detailed measures recommended in regard to reparations were also not implemented beyond paying the victims small amounts of compensation.

Deficiencies in Sri Lanka’s constitutional and criminal law

Despite the many decades of enforced disappearances, we do not have a right to life constitutionally enshrined, unlike for example, the Indian Constitution which has been used to good effect by India’s Supreme Court in the voluminous spread of public interest litigation. **Very recently**, Sri Lanka’s Supreme Court, due to the efforts of one or two of its liberal judges, (in marked contrast to otherwise conservative judicial thinking that has now withdrawn from previous rights protection interventions), brought in an implied right to life, using the constitutional prohibition that no one should be deprived of life unless through court order. This reasoning has also been further developed in one instance of an enforced disappearance where, in the *Machchavallavan Case* (SC Appeal No 90/2003, SC (Spl) L.A. No 177/2003, SCM 31.03.2005, judgment of Justice Shiranee A. Bandaranayake), the Court innovatively declared a violation of the right in an appeal from the dismissal of a *habeas corpus* application from the Court of Appeal. **Yet**, even where the Supreme Court has been bold in its interpretations, this has had minimal impact due to non-adherence by the political, law enforcement and military establishment.

At the level of the criminal law, due to the absence of a crime of ‘enforced disappearances’ in the Penal Code, the prosecution has had to rely on normal criminal offences such as abduction as well as abetment and conspiracy in order to file indictment. Proving these offences in situations of extraordinary conflict has proved to be difficult if not impossible. The non-incorporation of the doctrine of

command responsibility in the criminal law has also proved to be highly problematic. Interestingly, the Supreme Court has, (except in one contra decision), affirmed the doctrine of command responsibility in the context of its fundamental rights jurisdiction, even in regard to the working of emergency regulations. We need however, criminal prosecutions affirming the responsibilities of senior officers rather than be content with scattered trials of junior officers for human rights abuses.

Conclusion

This analysis makes the point that much more needs to be done to address the prevalent culture of impunity than the appointment of fact-finding commissions of inquiry. Implementation of the rule of law in Sri Lanka stands at its lowest ebb today. Public faith in institutions meant to protect the rights of the people has greatly decreased. Politicisation of these institutions, including particularly Sri Lanka’s Supreme Court, has resulted in a serious crisis of confidence in the constitutional process. The recent actions by President Mahinda Rajapakke in ignoring the 17th Amendment to the Constitution and appointing people perceived as his personal and political confidantes to important monitoring bodies, such as the National Human Rights Commission and the National Police Commission has worsened this situation.

What the country needs therefore is an affirmation of the government’s commitment to constitutional democracy at the highest level. A right to life should be constitutionally incorporated and the criminal law should be revised, *inter alia*, in order to bring in a specific crime of disappearances as well as the concept of command responsibility and the shutting out of the defence of superior orders. An office of a Special Prosecutor, functioning independently from government with a team of dedicated investigators and lawyers at its command, is an indispensable necessity.

International human rights monitoring should be resorted only to the extent of compelling these needed revisions in Sri Lanka’s legal and political environment. Ultimately, the answer to the country’s current crisis of the rule of law needs to come, not from international actors with their varying *realpolitik* interests, but from the strength of public opinion in Sri Lanka, which should unceasingly demand accountability and justice from the country’s rulers. ■

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Human Rights in Fiji-A 'Clean Up Campaign' For Whom?

The writer is a human rights lawyer from Fiji

On 5 December 2006, Commodore Bainimarama, the Commander of the Republic of Fiji Military Forces (RFMF) staged a military takeover of the Qarase-led multi-party Government claiming to invoke the 'Doctrine of Necessity'. In an extraordinary move he went to great lengths to cite legal precedent to justify his actions, stating that it was a justifiable coup to conduct a 'clean-up campaign' to eliminate corruption and racism in government. A Declaration of a State of Emergency was proclaimed by the self appointed President Bainimarama arguing that it was to ensure that the military achieve the objectives of its campaign. The military claimed that the state of emergency meant that certain fundamental rights and freedoms were suspended. It warned the public not to interfere or criticise the military in any way. There were no specific Decrees issued by the military stating which rights were being suspended.

On 4 January 2007, after handing back executive authority to President Ratu Josefa Iloilo, Bainimarama was appointed Interim Prime Minister. His cabinet was sworn in and included a number of unsuccessful candidates from previous elections and a few members of the deposed multi-party cabinet. Bainimarama continued to hold the position of Commander. He subsequently removed the Chief Justice, D V Fatiaki, and appointed as Acting Chief Justice, Justice Anthony Gates. He also removed from office virtually all civil service heads of departments and heads of Government-owned corporations, including members of Boards who objected to his rule. Only those who agree with the Military have been appointed to powerful positions in Government and on Boards of institutions.

Since the takeover, a growing number of civilians have been illegally detained by the military. Most have been taken to the Queen Elizabeth Barracks (the military camp) and subjected to acts of humiliation, assaults and torture¹. The military has

maintained that this is necessary to eliminate any opposition to its regime to allow for its 'clean-up campaign' to run smoothly.

Those who have been assaulted and detained fall into two broad categories. The first is made up of those who have been openly critical of the military. This group includes prominent people like Qarase and members of his political party², unionists, and human rights and pro-democracy advocates. Women appear to have been subjected to particular indignities, including being threatened with rape. The detentions of human rights activists appear to have ceased since the end of March 2007 because of the media attention they attract.

In the early hours of the morning on Christmas Day, 2006, a day reserved for celebration and reflection in this majority Christian community and others in Fiji, six pro-democracy supporters who had been vocal against the takeover were subjected to humiliation, assaults (physical, verbal and mental) and degrading treatment by officers at the military barracks in Suva. They had been illegally arrested a few hours before midnight from their homes. In one instance the female complainant was hauled away in front of her three crying children. All complainants had guns cocked at their head with threats of death.

The second group of those being unlawfully detained is made up of those who have been suspected or accused of committing crimes or misdemeanors or being critical of soldiers. Accusations are being made by various complainants including, neighbours, by-standers, other witnesses or random soldiers who are guarding military checkpoints or patrolling the streets in army trucks. The vast majority of accusations falling into this category are opportunistic and unsubstantiated; and many are 'grudge complaints'. Some examples include the abuse of a group of young men returning from a night out. They were assaulted because their taxi driver complained to the soldiers at a military checkpoint that the men were joking about the soldiers. Neighbours or former associates have made accusations against each other about perceived or real harassment, noisy merry making, stone throwing, drunk and disorderly behaviour etc, which the military has responded to by arresting people and assaulting them.

¹ Article 1 of the Convention Against Torture & Other Cruel, Inhuman or Degrading Treatment (CAT) defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him....information....punishing him for an act he or a third person has committed or is suspected of having committed or intimidating or coercing him or a third person....when such pain or suffering is inflicted by or at the instigation of with the consent or acquiescence of a public official or other person acting in an official capacity"

² Qarase's Party is the *Sogosoqo Duanata ni Lewenivanua* Party

The blogspot *Vakainosavosa*, allegedly run by a female University academic has been removed from the web 'voluntarily'. The blogspot was critical of the coup, the military and those supporting the regime. The owners of Fiji Village website have 'voluntarily' removed the Forum discussion pages from the website. There were complaints against the website by the military. Most media organisations are practicing self-censorship as many journalists have been personally threatened and intimidated by the military.

A significantly notable trend of the complaints in this group is that the majority of complaints are being made by Indo-Fijians against indigenous Fijians, and the vast majority of detainees are indigenous Fijians. Anecdotal evidence from doctors at hospitals appears to corroborate this. Racial politics is a consistent feature of the Fijian political landscape and is being exploited on a daily basis. This trend will contribute to further polarisation of the two major races.

Two people have been killed during military detention. In both cases the military has denied responsibility for the deaths but admit the deceased were in military custody. The Military has openly admitted that 1,193 people have been 'disciplined' at the military barracks for speaking out against the military. The military appointed Attorney General, Aiyaz Khaiyum, has said that rights in the Constitution have been limited by the State of Emergency that purportedly exists in the country.

On 17 January 2007, a Presidential Decree was promulgated by the Interim Government granting criminal and civil immunity to members of the RFMF for all actions including the killing of those arrested or detained, during the duration of the State of Emergency. It allows any member of the RFMF, including the members of the Territorial Forces to execute any order during the duration of the State of Emergency. This Decree widens the growing power of the military to do whatever it wants without accountability and heightens the fear of civilians that human rights violations will continue with impunity.

The Bill of Rights, in Fiji's Constitution of 1997 protects fundamental rights and freedoms including freedom from cruel, inhuman & degrading treatment, unreasonable arrest and detention, unreasonable searches, freedom of speech and movement, and the right to non-discrimination. These provisions bind all the three arms of the state at all levels including the military. Section 43 (2) also enables the courts to apply international human rights laws without ratification. The Courts in Fiji have used s.43 to apply UN Conventions in several instances so the international human rights

obligations of the State have been kept in check and promoted by the judiciary.³

In an extraordinary turn-around the Director of the Fiji Human Rights Commission (FHRC) has also openly supported the military's takeover and the latter's stand in the limitation of human rights due to the purported existence of a State of Emergency.⁴ The Director, Shaista Shameem, published a report on 4 January 2007 (the same day Bainimarama appointed himself Prime Minister) essentially justifying the coup. Amongst the grounds stated as justification was that the Qarase government had been unlawfully elected both in 2001 and 2006 and was guilty of grave violations of human rights. She stated also that that the elections had been rigged, that the Government was guilty of racism against Indian Fijians, was corrupt and was attempting to pass into law three pieces of unconstitutional legislation. The only lawfully remaining Commissioner, Shamima Ali, has publicly disassociated herself from the Report.

The vast majority of citizens whose rights have been violated have not complained to the Commission because its independence has been seriously compromised and they fear further victimisation if they complain to it. As a result of its stand the FHRC has been suspended by the International Co-ordinating Committee of National Human Rights Institutions for the Promotion and Protection of Human Rights limiting its ability to work with UN bodies. The Commission was about to be investigated by the Asia Pacific Forum for National Human Rights Institutions which it chaired until its recent resignation, removing the necessity for the investigation.

There are daily violations of constitutionally guaranteed rights – freedom of speech, cruel or degrading treatment and unlawful arrests or detention. These violations continue and citizens are fearful of speaking out. On 5 April 2007 the Emergency regulations suspending human rights under the unlawful State of Emergency have been extended to the end of May 2007. The granting of immunity to the armed forces for all actions including causing death means that the future for the rule of law in Fiji is bleak. ■

³ Courts have applied the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of all forms of Discrimination Against Women and the Convention on the Rights of the Child.

⁴ The stand by the FHRC has been the subject of much debate in Fiji. Information on this has been covered widely by the national, regional and international media. The FHRC Director's Report on the takeover can be found on www.humanrights.org.fj.

Importance of Records Management

Kelvin Smith

Honorary Secretary, the Association of Commonwealth Archivists and Records Managers

Records management is a key business process that underpins strategic planning, decision-making and operational activities. In the context of human rights, records provide the information by which government and other organisations can meet and discharge their obligations to citizens and communities. For example, without good record keeping and adequate records citizens may not receive entitlements such as pensions or housing allowances. It is a sad fact, however, that so many organisations (understandably in some cases) concentrate heavily on their core functions and lack the records management mechanisms that will enable them to discharge these functions effectively.

Definition

Records are essential to the business of all organisations. They document the work of public authorities and private companies, support their operations and form the basis for the many services that are provided by them. They are essential to effective operations in several respects like:

- *Supporting the delivery of services* – documenting how policies and statutes are carried out, what services were provided, who carried out the work and how much it cost, and, in the longer term, an organisation's accomplishments.
- *Supporting administration* – by providing information for the direction, control, decision-making and coordination of business.
- *Documenting rights and responsibilities* – an organisation needs to provide evidence of the scope of its terms of reference, evidence of what it owns and evidence of its obligations.
- *Legal documentation* – many records comprise formal legal documents – regulations, local orders, etc – or formal documentation of the relationship between governments and people or institutions.
- *Evidence of the work of public authorities* – an organisation needs to document the decisions, actions and obligations that it undertakes, and in this way provide accountability measures.
- *Future research* – some of the records of organisations will be preserved and will form the contents of archival establishments, providing important historical information on political, social, economical and other issues.

Records are therefore created or received in the conduct of business activities and provide evidence and information about those activities. They come in all kinds of format and media. A formal definition of a record might be: *'Recorded information produced or received in the initiation, conduct or deletion of an institutional or individual activity, and which comprises sufficient content, context and structure to provide evidence of an activity, regardless of the form or medium.'*¹ Many organisations are moving quickly towards the creation, storage, maintenance and retrieval of their records and information solely in electronic form. In most areas, however, while many records are created electronically they are maintained in paper form - often filed systematically but just as often managed in personal systems. Records may also be created on media other than paper or electronic - microfilm, microfiche or computer output microform (COM); or as photographs (prints, negatives, transparencies and x-ray films), sound recordings on disk or tape or moving images on film or video. A set of records, in context, may be in more than one of these formats or there may be close organisational relationships between records in different formats.

Records management life cycle

The process for managing records is often likened to a living organism in that it /they are conceived and created, live and are used, become dormant and are retired, and die and are archived. Records management provides a framework to enable these actions to be undertaken. It aims to ensure that:

- *The record is present* - your organisation should ensure that it has the information that is needed so that it can reconstruct activities or transactions that have taken place. This ensures that the organisation is accountable to its stakeholders (whether they are citizens, parliament or shareholders).
- *The record can be accessed* – the people in your organisation must be able to locate information when required.
- *The record can be interpreted* – if required, your organisation must be able to establish a record's context, who created it, as part of which business process and how it relates to other records. This is a vital part of the organisation's accountability and transparency.
- *The record can be trusted* – records provide the 'official' evidence of the activity or transaction they document and must therefore be reliable and trustworthy.

¹ International Council on Archives, 1997

- *The record can be maintained through time* – your organisation will need to ensure that the qualities of accessibility, interpretation and trustworthiness can be maintained for as long as the record is needed. This is an issue that becomes more important in an electronic context.
- *The record will be disposed of* as part of a planned system, through the implementation of disposal schedules to ensure the retention of the minimum volume of records consistent with effective and efficient operations. Is your organisation keeping more records than it needs? This is often the case in very many organisations. The information that does not need to be kept gets in the way of the important information.

There are many principles underpinning the management of records. One of the important things to remember is that records are a corporate asset. They form part of the corporate memory of an organisation and are a valuable corporate resource. From the point at which a document is created as a record and used in the course of official business, it becomes corporately owned. The records you and your colleagues create and use don't belong to you – they belong to the organisation. The second most important thing to remember is that *electronic records* that are generated by or received in an organisation in the course of its business are in this context no different from any other records – they are official, corporate records. Although most current practice is still to print electronic information to paper, your organisations should be making plans to maintain their electronic information as electronic records.

Thirdly, it is imperative that *records should be reliable, authentic and complete*. They should be able to function as evidence of business activities and processes through sound record keeping practices. In order to be reliable and authentic they must adequately capture and describe the actions they represent and once created must not be altered without creating a new record. Fourthly *records should be accessible* and the record keeping systems should aim to make records available quickly and easily to all staff and to others who are entitled to access information from them. Information is the lifeblood of any organisation; yours or any other cannot hope to function effectively without it. And lastly the responsibility for capturing, maintaining and ensuring access to records rests with everyone in the organisation, and all staff should ensure that they are familiar with and are adhering to the records management policy and any procedures and guidelines that are issued through it. Good record keeping is not just the province of the records manager – it's everyone's responsibility.

Benefits

The organisations with good records management practices benefit in many ways, for example:

- Staff time is saved both in filing records and in retrieval when they are needed again
- Decision-making and operations are properly supported and informed by relevant records
- Record storage is more cost-effective because redundant records can be removed
- Records are created and managed in compliance with and as required by legislation, standards and regulations
- Accountability is demonstrated because the records provide reliable evidence of policy, decision making and actions/transactions
- Duplicates and versions are removed as soon as possible

Some of the symptoms of poor records management are inaccurate or incomplete information, out of date information, duplicate records, not knowing which is the latest version, related information in different locations and unable to be linked, and information that is susceptible to loss or damage from fire, flood, etc. Time is also wasted in looking for records through having a complex filing system, keeping too many records unnecessarily or not controlling the creation of records. Some other symptoms are poor decision-making and poor working environment, user dissatisfaction, non-compliance with legislative requirements, lack of security for information and space wasted by storing unwanted records.

A good and efficient organisation could double its output by having a sound records management mechanisms in place and would prioritise on the latter along with its main programme areas. ■

The **Association of Commonwealth Archivists and Records Managers (ACARM)** was founded in 1984 to promote professional development in the field of records and archives management throughout the Commonwealth. It provides a link for Commonwealth archivists, archival institutions and records managers which is especially important because of the common heritage of legal and administrative systems, and hence of record keeping practices, which the countries of the Commonwealth share. ACARM shares practical solutions to the problems of managing records and archives, and disseminates professional and technical information through its *Newsletter*, listserv and website – www.acarm.org

Lesotho

Parliamentary polls were held in Lesotho on 17 February, 2007. The ruling Lesotho Congress for Democracy (LCD) won 61 of the 80 constituency seats that went to polls. Elections were earlier slated for May, but the Parliament was dissolved in November 2006 to pave the way for early polls. The opposition has alleged that polls were proposed in order to stop defections from the LCD. The last legislative elections were held in 2002. The Commonwealth Expert Team in its report to the Commonwealth Secretary General have stated that conditions existed for free and fair elections in spite of the 'politically charged atmosphere' and were transparent even though there were some irregularities.

Zimbabwe

The country's main opposition leader Morgan Tsvangirai of the Movement for Democratic Change and his supporters were assaulted and arrested at a banned prayer rally in early March drawing international condemnation from United States, United Nations and the European Union. South Africa was quick to condemn the action and asked Zimbabwe's President Robert Mugabe to 'respect the rights of citizens, including opposition leaders'¹. The country is in political turmoil with growing social and economic crisis exacerbated by international sanctions. In a summit of the 14 southern African nations held in end March in Tanzania, the meeting called on the west to drop sanctions against Zimbabwe and also mandated South African President to foster dialogue between President Mugabe and the opposition. President Mugabe has ruled the country for the last 27 years.

¹ <http://news.bbc.co.uk/2/hi/africa/6448559.stm>

Maldives

There were widespread protests in Maldives after the discovery of an alleged torture victim's dead body floating in a Male harbour. Hussein Salah's body was discovered in Western Harbour, near the Atolwehi police station, in the early hours of 15 April. Salah, a construction worker, was arrested on 9 April on drugs-related charges. Police claim that he was released on 13 April. His family has claimed that they did not have any contact with him after 12 April. The Maldivian Democratic Party (MDP), the major opposition group in the Maldives, has claimed that there are eye-witness reports that Salah was in detention on 14 April. The MDP had claimed that Salah was beaten to death while in custody. Police issued a media release on 15 April saying that Salah's body had been found and that there were 'no major visible injuries'.

After sustained protests, the body was flown to Sri Lanka for a medical examination. However an independent autopsy ruled out torture and had stated that man had actually drowned. Please also note CHRI's media Release "Injuries as visible as police misconduct –Dead body of suspect discovered floating in Male harbour" is also available in the 'What's New section on our website.

Conference on NHRIs

A three day Commonwealth conference on National Human Rights Institutions (NHRIs) was organised by the Human Rights Unit of the Commonwealth Secretariat at the end of February in London, United Kingdom. The objective of the conference was on building the capacity of National Human Rights Institutions and to promote the network of NHRIs in the Commonwealth. The forum brought together 40 participants from international organisations including the UN and national human rights institutions (NHRIs) in Commonwealth countries. Speaking at the conference, the Secretary-General Don McKinnon emphasised that the important feature of NHRIs was 'independence' and felt that they are 'part of the way in which member countries can uphold the Commonwealth's fundamental political values'. Only 35 countries in the Commonwealth have NHRIs in place, either in the form of commissions or offices of ombudsmen.

Source: <http://www.thecommonwealth.org/news/160512/260207expertsdiscuss.htm>

Commonwealth

Sri Lanka

Violence continues to escalate in Sri Lanka. Both the government and the Liberation Tigers of Tamil Eelam (LTTE) engaged in violent attacks and blamed each other for abuse of civilians, causing civilian casualties and using civilians as human shields. The government continued to conduct aerial bombardments in the North and the East. On 26 March, the LTTE for the first time conducted an aerial bombardment on the main government air force base near the country's only international airport. After unveiling its new air wing, the rebel group conducted a second aerial attack on a government air force base in the North on 23 April. As the government and the rebels increased their levels of violent confrontation, hundreds and thousands of people continued to be displaced in the North and the East. Estimates indicate that 500,000 people may be displaced in Sri Lanka at the moment.

Reports also indicate that media freedom in Sri Lanka is in an alarmingly dire state. It was reported that Tamil media in particular has been sabotaged by both the government and the LTTE. However, additional reports indicate that the government may also be clamping down on Sinhala media which is critical of the government. While the government and the LTTE engaged in a fierce propaganda war, recent reports from various news groups indicate that it is impossible to know the real ground situation anymore due the impossibility of independent verification of facts. As the war intensifies the government, faced with an alarming rise in its war budget has been contemplating foreign tenders to develop possible

Nigeria

Controversy surrounds the Nigerian Presidential and Parliamentary elections that was held on 21 April with international observers calling it highly flawed. Elections were marred by wide spread violence and vote rigging. The European Union election observers called it a 'charade' while the Commonwealth Observer Group while praising the patience of the Nigerian people, said that there were 'significant flaws' in the way elections were conducted. In their interim statement, they have listed 'late opening of polling stations in many areas, cases of under-age voting, lack of secrecy in the voting process, instances of ballot stuffing and inconsistent application of polling procedures' as some of the deficiencies in the polls which they have brought to the notice of Independent National Election Commission.

offshore oil fields. Indian, Chinese and American companies are expected to be possible investors. On the other hand several states continue to supply arms to the government amid calls by international bodies to halt the war. Recently International groups remained critical of government investigations into the 2006 killing of 17 humanitarian workers. In this regard many have pointed the finger of suspicion at the military, a charge that the government denied. Following international pressure the government formed a Commission of Inquiry to look into allegations of human rights violations. Various groups have remained critical of the ability of the international group to monitor the Commission. Human rights groups have been vigorously pressing for an independent UN human rights monitoring mission for Sri Lanka, a demand that the government has been unhappy with.

Guyana

The Guyanese Government has withdrawn advertisements from the country's leading private daily *The Stabroek News*. Following this, it has been reported that more state owned companies who have their own advertising policies decided to follow suit.² The daily have been critical of President Bharrat Jagdeo's Government. Reporters Without Borders condemned the action stating that the Government's action goes against the Chapultepec Declaration, which Guyanese President Bharrat Jagdeo himself signed.³ *The Stabroek News* has interpreted this as an attack on the press freedom. The Commonwealth Press Union has expressed concern at the pressure being applied by the Government on the newspaper and believes it is an 'attempt to undermine an independent paper that has been critical of the Government, by financial means'⁴ and would damage the 'government's democratic credentials locally, regionally and internationally.'⁵

² <http://www.ifex.org/20en/content/view/full/80889/>

³ http://www.rsf.org/article.php3?id_article=20424

⁴ <http://www.cpu.org.uk/pfnews.html>

⁵ <http://www.cpu.org.uk/pfnews.html>

The Rule of Law and Safeguards to Democracy

- The Right of Dissent

Sam Okudzeto

Member of CHRI's Advisory Commission

Recent developments in Fiji where the elected government was forcibly removed from office; Zimbabwe where the members of the Opposition were not only prevented from holding a rally and prayer meeting but were arrested and beaten by the police while in custody; and Pakistan where the chief justice was suspended under circumstance which undermines the separation of powers and the rule of law; all this calls for a re-examination of the Rule of Law and the concept of democracy.

The International Commission of Jurists at its New Delhi Congress in 1959 defined the Rule of Law as a dynamic concept and as: "The principles, institutions and procedures, not always identical but broadly similar, which the experience and traditions of lawyers in different countries of the world, often having themselves varying political structures and economic backgrounds, have shown to be important to protect the individual from arbitrary government and enable him enjoy the dignity of man."

It is now universally accepted that the principles of the Rule of Law have found expression and realisation in divergent societies and cultures and can be distilled from the Universal Declaration of Human Rights adopted by the United Nations in December 1948. A recent restatement of the concept was made by Justice Anthony M. Kennedy of the United Supreme Court at the American Bar Association's Annual Conference held at Honolulu, Hawaii in August 2006 as the :

The Rule of Law:

- 1) The Law is superior to, and thus binds, the government and all its officials
- 2) The Law must respect and preserve the dignity, equality, and human rights of all persons. To these ends the law must establish and safeguard the constitutional structures necessary to build a free society in which all citizens have a meaningful voice in shaping and enacting the rules that govern them
- 3) The Law must devise and maintain systems to advise all persons of their rights, and it must empower them to fulfill just expectations and seek redress of grievances without fear of penalty or retaliation.

- 4) It is now accepted that the Rule of Law can only be realised where the democratic institutions provide the framework which then can guarantee the rights formulated in the Universal Declaration of Human Rights. The concept of democracy has now been universally accepted. What it means however is not so easily understood by political leaders. Almost all countries claim to be democratic. Political scientists however often qualify the noun with expressions such as "basic", "guided", "paternal" or "people".

The clear original meaning of the word Democracy as it evolved from the *Greek City* states is that it is a form of government where the right to make political decisions is exercised directly by the whole body of citizens acting under procedures of majority rule. This is called "direct democracy". Few societies practice this form of governance. The second and the most usual meaning of the word is "a form of government where the citizens exercise the same right but through representatives chosen by them and responsible to them through the process of free elections." This is called "representative democracy"

It is the latter definition which forms the basis of all governments in the Commonwealth both those who have the Queen as head of state or those with elected presidents.

The basic principles of democracy can be enumerated as follows:

- (a) Free elections
- (b) General "Freedom of Expression"
- (c) Independent political parties
- (d) A written constitution and
- (e) An independent Judiciary.

Free elections are said to be a necessary and inevitable concomitant of democracy. But what do we mean by "free elections?" Free election implies that at reasonably frequent intervals the people, without regard to any factor other than adult standing and their own disqualifying conduct, should have the opportunity of expressing their wishes as to the lines of policy to be followed by their society and also to the person or persons who should implement that policy.

It is difficult to conceive of representative democracy without political parties. Political parties provide a choice for the electorate. The basic attribute of the system is that political parties provide alternative programs and therefore the people choose between programs provided by government and the criticism of those in power by the opposing party or parties.

The concept of opposition has become the bane in many of the new democracies. In the struggle for independence internal differences that exist are buried in favour of the common desire for independence from colonial rule. Indeed it normally ends up in a dominant political party whose leader is perceived as the liberator. Any attempt after independence to criticise such a leader may be construed as treason particularly by those who are beneficiaries of the system because they occupy positions of power with its attendant financial rewards.

The events referred to in some Commonwealth countries of Zimbabwe, Pakistan and Fiji calls into question the fundamental basic principles of The Rule of Law and of Democracy – the right to differ – the right of alternative view point or what I will prefer to refer to a “The Right of Dissent”.

Perhaps democracy should be described as a system that permits several view points to be put across and the electorate allowed to sift them and decide which of the alternatives to follow or even which combination to accept or reject. It is important to emphasise the choice does not mean that the one not accepted is bad. At times the choice may even depend on the biases of the voter or the charm of the leader putting across his view-point.

The essential issue is that there is a right of dissent – to agree or not to agree. It was the French philosopher Voltaire who was reputed to have said “I disapprove of what you say, but I will defend to the death your right to say it.”

There have arisen traces in many developing countries of a warped understanding of what an election is. They seem to understand that an election gives a cart Blanche mandate to the elected government alone to speak for the people and any alternative view is considered an anathema.

The people have a right to disagree with any measures enunciated, contemplated or adopted by the government. These rights can be manifested in several different ways. It

may be by letters to elected members of parliament; direct to the president or ministers of government; by publication in the newspapers, radio or television programs.

The right to dissent can also be expressed individually or collectively by demonstrations, by strikes and sit downs. The right is not limited to political parties and can be expressed through pressure groups, such as students unions, trade unions, professional associations such as lawyers, engineers, doctors etc.

The exercise of the right of dissent is sometimes called “peoples power” and has resulted in some countries into bringing about a change not only of policy but forcing the government to resign.

The Rule of Law and the observation of basic Human Rights are embodied in the democratic concept. The Harare Declaration and the Latimer House Principles embody this basic understanding.

All members of the Commonwealth are also members of the United Nations. Universal Declaration of Human Rights which represents the elementary considerations of humanity is also an authoritative guide to human behavior. Three Articles of the Declaration namely:

Article 18 “The freedom of thought, conscience and religions”, Article 19 “Everyone has the right to freedom of opinion and expression. This right includes freedom to hold opinion without interference and to seek, receive and impart information and ideas through the media and regardless of frontiers” and Article 20 “Everyone has the right to freedom of peaceful assembly and association” were further enhanced by the International Covenant on Civil and Political Rights.

The combined effect of the following Articles 18 “the right to freedom of thought, conscience and religion, Article 19 “the right to hold an opinion without interference” and Article 21 “The right of peaceful assembly” and Article 22 “the right to freedom of association with others...” of the **Covenant** is to accord to citizens of Commonwealth countries the universally accepted rights which represent the fundamental principles that holds the Commonwealth together. We must jealously guard these rights. They are the only safe anchor we have if democracy is to survive and human rights respected. ■

Hate-on-the-Net Targeted by Rights Commission in Canada

Murray Burt

Member of CHRI's Advisory Commission

Hate mongering on the Internet is a human rights issue, and the Canadian Human Rights Commission (CHRC) has undertaken to help curb, if not eradicate, it. Examples under a recent week's public examination in headlines include:

- Invasions of privacy using cell phone cameras to intrude on activity in public washrooms and particularly women's sports change lockers;
- Anonymous, embarrassing and often fabricated accounts by students of their school teachers' behaviour, in public and private, posted on a website;
- Political circulars by mail and on the net carrying diatribes describing rival politicians (in one instance, the Canadian prime minister) as Nazis.

These cases, and others like them of course, are getting the attention of media and civil agencies as being human rights issues, but the frequency of similar instances, many only marginally criminal, has prompted human rights authorities to look to the tools they have to manage and curb the insidious creep of the behaviour.

The CHRC sees itself as 'having a unique role in combating hate on the Internet.' It also appreciates that the hate battle on the net is only part of broader fight against any hate-motivated activity in Canada and around the world, and that the expunging effort requires wider coordination and co-operation beyond Canada's borders. The CHRC's website carries a thorough question-and-answer sector outlining what recourse individuals have to defend themselves — how to file a complaint; what to do when it's filed; non-involvement of police; what happens when a violation has been identified; remedies that can be ordered (up to fines, reimbursement, even jail, to name a few of the elements).

Prime legislative authority is provided by the Canadian Human Rights Act, as legislated by Parliament, and revised. Section 13 of the Act, dating from 1985, gives specific powers to the Commission to deal with complaints about Internet-transmitted hate messages. The Commission believes that it has the only non-criminal legislation in the world to deal with Internet hate.

Hate messaging, of course, is addressed in the Canadian Criminal Code, and code breaches would be a police matter, but cases put to the human rights commission do not involve the police. The commission prefers to exercise the services of an independent tribunal to investigate and hear complaints brought to it. The tribunal has the capacity to issue interlocutory order of restraint and penalties.

And the penalties have teeth. If a tribunal finds in favor of a complainant, that a section 13 has been violated, legislation provides that the respondent:

1. Cease immediately any activities contrary to the section and desist from operating any website containing such contested data;
2. Compensate a victim identified on the website up to \$20,000 if the material has been judged wilful or reckless;
3. Pay a penalty of not more than \$10,000.

Failure to comply with a tribunal finding can lead to a Federal Court order, which carries the threat of imprisonment for contempt if ignored by the respondent.

Since 2001 when the law was passed, the Commission has received 51 complaints under section 13. The breakdown of these shows 27 went to the tribunal for more investigation; six remain under investigation; nine were closed for want of evidence; and nine await decision on admissibility.

The commission says that any remedy awarded by the tribunal will serve a number of purposes, not least the reduction and prevention of discriminatory practices, which undermine human rights. But it will also have significant symbolic values and raise public sensitivity and awareness and hasten acceptance of denunciation of what often start as ill-thought-out pranks or anger over a petty matter.

The school children's behaviour mentioned above is an April prank that got out of hand on a student-built website chat line and in four days attracted 670 participants. The teacher involved was embarrassed and devastated about remarks related to his character and the nature of his dancing at public bars and supported by his teachers' society, school and school board.

The political abuse involved a constituent railing against government agriculture policy, its 'dirty tricks' and 'dictatorial attitudes.' The constituent' letter, as it appeared on the net, angrily described the Prime Minister as 'our own Canadian Hitler,' and the Agricultural Minister was likened to Hermann Goering, No. 2 Nazi in Germany and head of the Luftwaffe in the Second World War. Canada was the first non-European country to endorse protocol against racism and xenophobic material on the Internet.

While the examples given here are less horrendous than cases of rights breaches which invoke killing and violence, the fact they so readily make news headlines is testimony to the public's heightened sensitivity to human rights privacy. ■

Making Access to Information Law Work for People in the Caribbeans*

Reshmi Mitra

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In the 15th Century, Sir Francis Bacon said that knowledge is power. The reality of this observation has been witnessed time and time again in many societies across the globe where the system of governance operates in such a way as to allow certain citizens to abuse their position of power, manipulating and monopolising information - while the majority remains voiceless and powerless due to their inability to access adequate information.

The Caribbean countries continue to experience such challenges even today, as they struggle to overcome the cultures of secrecy which deeply pervade their political and bureaucratic systems. Inequitable access to information and antiquated secrecy laws adopted by former colonial regimes feed the power that information has in the hands of the few.

However, the region has taken steps toward openness in the last decade, with some Caribbean countries embracing the global trend to adopt comprehensive access to information laws which facilitate access to government held information. Looking especially at the Commonwealth Caribbean today we find that Belize, Trinidad and Tobago, Jamaica, Antigua and Barbuda and Saint Vincent and the Grenadines have all enacted access to information laws. Even more countries in the region are lining up to join this trend - Guyana, Saint Kitts and Nevis and the Cayman Islands are all in the midst of the long process of developing and enacting their laws which will be integral to establishing a more transparent and accountable system of governance .

Yet one particular experience in the Caribbean has proved a timely reminder that it is not enough to simply enact a law – it must be implemented.

One of the major challenges to making an access to information law effective is overcoming a lack of genuine commitment among senior leadership toward opening up the government and implementing the people's right to access information. Unfortunately, the Saint Vincent and the Grenadines Freedom of Information Act (FOI Act) enacted in year 2003 is a prime example of the debilitating effects of such ambiguous political will.

Although enacted in 2003, the implementation of the law has been so poor that very few people even know about the very existence of the Saint Vincent and the Grenadines FOI

Act. There is a distinct lack of media reports and so far no statistics is available on the status of the number of requests for information under the Act. In 2006, CHRI attended a workshop on Freedom of Information in the Caribbean at which even civil society representatives from the country itself were not aware the law existed.

There may be many reasons for the lack of interest in implementing the Saint Vincent and the Grenadines law. When you look at the law itself, it is easy to see that it has some implicit drawbacks that may have contributed to the minimal effort by the government to implement it. For example, the Act makes the classic mistake that many other FOI laws do by failing to designate a strict time line in which the Act will become operational. As a result, even though the law has been enacted it has still not been put to actual practical use. Secondly, the law stipulates no clear dates for the completion of various implementation steps, nor any detailed plan of action identifying key steps to ensure that any slippage is queried and remedied if necessary.

Even though the act does not specify implementation steps, there is still little evidence that the government itself has proactively done anything to implement the law. The problem of bureaucratic resistance could be addressed if the civil society trains government officials to understand their duties under the law and the potential benefits under the law. To be practically effective in facilitating the public's right to information, it is important to develop strategies which promote government community implementation partnerships. Besides training the government itself, the citizens should also be educated on the very existence of such a law, and how the law can be used to benefit them in their every day lives.

The enactment of a comprehensive right to information law is a major step towards open government. Nonetheless, the experience of Saint Vincent and the Grenadines evidences the need for a stronger commitment to implementation. While drafting and preparing for their laws, it is recommended that other Caribbean governments (and many others around the world) consider their plan for implementation to ensure an effective right to information law. ■

* In the next Newsletter we will be discussing the salient features of the St Vincent and Grenadines Freedom of Information Act 2003.

Pakistan: Danger and Anticipation in its 60th Year

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A stable and democratic Pakistan is crucial to both regional and world stability. The population of Pakistan deserves fair representation and protection from human rights violations. A realisation of the basic rights endowed to the people by international accords is conducive to a stable and secure Pakistan. The security and stability of Pakistan is currently at risk from two internal issues. Ineffective, undemocratic governance and religious extremism have the potential to destabilise the country, and have already caused significant problems. The situation in Pakistan is particularly pressing because elections are scheduled for the end of this year.

Suspension of Chief Justice Chaudhry

On March 9 2007, President Musharraf summoned the now suspended Chief Justice Iftikhar Chaudhry to his official residence. The Chief Justice was asked to explain his position on a list on charges made against him by the government. Unsatisfied with the response given, President Musharraf suspended the judge, enacted the Supreme Judicial Council (SJC) to investigate the matters, and appointed an acting Chief Justice.

The suspended Chief Justice was held under house arrest and incommunicado for over forty-eight hours, had his phones disconnected and residence searched by intelligence agents. A list of charges was not immediately produced but it has now emerged that Justice Chaudhry is accused of a 'misuse of office,' specifically that he used his position of power to place his son in a favourable job.

A UN press release dated 21 March 2007, states that the Special Rapporteur on the independence of judges and lawyers and the Special Representative of the Secretary-General on the situation of human rights defenders expressed "serious distress about recent events in Pakistan."¹ Charges against the Chief Justice originate from President Musharraf, and are an attack on the independence of the judiciary.

The suspended Chief Justice addressed issues contrary to government interests such as cases related to human rights and women, and often criticised senior officials and police officers.² The charges appear politically motivated; both the suspension of the Chief Justice in this manner and the conduct of the trial are in contravention to international law and the

Pakistani Constitution. As well as challenging government interests in cases before him, Justice Chaudhry may have also played a role in blocking a further extension of Musharraf's total control over the government and the army by exercising judicial review of any extension when it comes up at the end of the year. Musharraf has held on to his positions as both President and Chief of the Army through a Constitutional amendment that expires on 16 November 2007.³ Originally, the Constitution dictated that the President could not hold the position of Chief of the Army as well. Speculation indicates Musharraf supported the suspension of the Chief Justice because Chaudhry was likely to block his moves to continue as President and Chief of the Army.⁴ The trial of the suspended Chief Justice is ongoing and is unlikely to be resolved in the near future. The proceedings are currently being held behind closed doors and Chaudhry's defence is being met with significant opposition. It is critical that the trial is fair, independent and open. All citizens of Pakistan, including government ministers must be held to account on the same laws, and face uniform standards of enforcement. The trial must abide to international legal standards if the outcome is to be viewed as legitimate.

Protests

The suspension of the Chief Justice provoked resignations of a number of senior judges, and sparked wide spread protests against political interference with judicial independence around the country. Lawyers and judges have stood with Islamists, opposition political parties and civil society to express their distress at the attack on the independence of the judiciary. Furthermore, the suspension of Justice Chaudhry has increased dissent and unified opposition to military rule. In protests against the suspension of the Chief Justice on 16 March 2007, police used tear gas and baton charges to shut down the demonstrations and detained approximately 150 people in several cities.⁵ Security forces attacked the popular Geo TV station that was broadcasting scenes of police brutality. Despite Musharraf later apologising for the incident, another leading television channel, Aaj, is currently facing threats to shut it down from the government over its coverage of the Chaudhry affair.⁶ The approach of the government towards the Chief Justice and the resulting protests illustrates its contemptuous attitude

³ <http://www.rediff.com/news/2007/apr/16guest.htm>

⁴ <http://www.reuters.com/article/worldNews/idUSISL163620070423?pageNumber=3>

⁵ <http://www.reuters.com/article/worldNews/idUSISL717020070316?pageNumber=1>

⁶ http://news.bbc.co.uk/2/hi/south_asia/6583695.stm

¹ <http://www.unhchr.ch/huricane/hurricane.nsf/view01/B3076DBAE35B0F97C12572A5005D4209?opendocument>

² http://news.bbc.co.uk/2/hi/south_asia/6442829.stm

towards international law, human rights and dissent directed at the ruling party.

Religious Extremism

Religious extremism poses a significant and growing threat to the security of Pakistan. Poor governance has enabled extremist organisations to exploit the grievances of disaffected groups, which adds to the complexities faced by the government. Human Rights Commission of Pakistan Secretary-General Iqbal Haider describes the situation in Pakistan as, “There was no doubt about the government’s inability to answer the threat of Talibanisation in a straightforward and transparent manner had enabled the militants to extend their control over large areas.”⁷ The problems of religious extremism and poor governance have exacerbated each other, further eroding the security of Pakistan’s citizens. The consequences of growing religious extremism are experienced at varying levels. On 14 March 2007, two men and a woman were sentenced to death by stoning for committing adultery. This took place in the semi-autonomous Khyber tribal area and was ordered by a council of elders, known as a jirga. A government official stated, “We do not get involved in such matters which are decided by jirgas themselves.”⁸ This shows the lack of initiative of the government in dealing with extremism.

The government has recently encouraged local tribes to fight against foreign militants in the tribal region of South Waziristan. Foreign powers have accused the Pakistani government of harbouring militants loyal to al-Qaeda in this region. The government was quick to champion the cause; overlooking that they were using civilians to fight a military battle and that it supported a ‘war that appears to have cemented the authority of a Taliban militia.’⁹ As a result of the fighting, militant leaders have emerged and are able to assert authority to a greater extent. There is danger that the population of this region will now view the local militia as a legitimate governing force. However, some tribal elders of this region have since asked the government to provide security in the area¹⁰, further illustrating the government’s failure to provide the basic functions of a state. Explanations for the troubles include the fact that in this region of religious extremism, education levels and government investment are among the lowest in the country.

Pakistan’s main intelligence agency, the Inter-Services-Intelligence Agency (ISI) has a history of supporting and inciting religious extremists. Governments have exploited

⁷ <http://www.dailyindia.com/show/129907.php/Talibanisation-a-threat-to-Pakistans-integrity-HRCP>

⁸ <http://www.reuters.com/article/worldNews/idUSISL33757620070315?pageNumber=1>

⁹ The Economist ‘Pakistan’s Militant Drift’ Page 25, published 14 April 2007.

¹⁰ http://news.bbc.co.uk/2/hi/south_asia/6559365.stm

religious militancy to act in their interests, often using the ISI as a facilitator. In seeking to control and exploit religious militancy, the government has empowered such groups. However, many groups of religious extremists are autonomous from any such control. Critics of the ISI charge that sections of it have been radicalised and pose a direct threat to Pakistan. Former Pakistani High-Commissioner to the UK, Wajid Hasan describes it as ‘a state within a state.’¹¹ The threat of religious extremism is of grave concern as it has infiltrated many levels of society in an organised, sustainable and institutionalised way.

The chief cleric of the radical and increasingly popular Islamabad Lal Masjid or Red Mosque, Abdul Aziz, and his followers advocate a Taliban style system of justice with Sharia Law considered above state law. This group of individuals is a typical example of extremist elements in Pakistan. However, they have managed to assert their power and belief systems with an aggressive stance more than most groups.

Despite large protests against the extremists in Lal Masjid, recent reports indicate that the government has ignored the wishes of the wider population, bowed to pressure from Lal Masjid and agreed to accept all demands put forward.¹² Demands included reinforcement of Sharia Law throughout the country, which threatens the rights of all. The government is concerned that attempts to restrain the growing militancy of Islamic radicals will be met with violence and resignations from religious groups in Parliament, further threatening Musharraf’s rule. The government must take steps to stem the growth of religious extremism to secure its citizens and wider region.

Action

Pakistan is facing a critical time in its short history. Ineffective and authoritarian governance has cemented the grip of radical groups. The government is acting to consolidate its power without consideration for the norms of democracy, as demonstrated with the Chief Justice affair.

The Government of Pakistan needs to lead a comprehensive resolution to religious extremism. Democratic elections would provide the government with a clear mandate, and it should then confront the problem with the people of Pakistan. A multi-pronged comprehensive approach is required if the problem is to be addressed in a productive and sustainable manner.

Elections this autumn invoke hope and anticipation. Peaceful and fair elections, followed by respect for human rights potentially provide the foundations for a solution to many of the problems currently faced. ■

¹¹ http://news.bbc.co.uk/2/hi/south_asia/1750265.stm

¹² <http://www.dawn.com/2007/04/25/top2.htm>

Laying the Foundations for a Peoples' Campaign for Better Policing

Shobha Sharma

Consultant, Access to Justice Programme, CHRI

Commonwealth Human Rights Initiative (CHRI) has been working on police reform in India for a decade now. The Supreme Court Judgment in *Prakash Singh and others versus Union of India and others* in September 2006 provided a tremendous boost to this ongoing endeavour.

Since the judgment was handed down, CHRI has embarked on a three-pronged process that includes:

1. tracking compliance with the directives by states and territories;
2. analysing legislation of those states which have ushered in new police laws; and
3. informing civil society across the country about the implications of the judgment and the importance of engaging in this process.

In the first half of 2007, CHRI has held a series of state level consultations in the North East, Chhattisgarh, Madhya Pradesh, Tamil Nadu, as well as a national workshop and one with countries of South Asia in New Delhi. Consultations have also been planned in Karnataka, Kerala and Uttar Pradesh in coming weeks. The states of India represent a vast and complex diversity however there is singular synergy in what we heard across all the consultations in the campaign for better policing.

The following factors contained in the table below were identified in all consultations, i.e. what are the **causes** of problems in policing, the **complaints** with policing and the **problems faced by police** in doing their job was raised in discussion.

Causes of problems	Main complaints	Problems faced by police
Archaic laws	Non registration of FIRs	Poor working conditions
Lack of clarity on role of policing	Impunity	Lack of appropriate and regular training
Poor infrastructure, training	Insensitive to women, children	Inadequate supervision and management
Hierarchy in organisation	Discriminatory behaviour	Vulnerable to frequent transfers
Disconnect between people and police	Corruption	Often brutalised themselves
Weak leadership	Political interference/tool in the hands of political parties	Vulnerable to manipulation and corruption due to poor pays and insecure posts
Lack of accountability	Abuse of power	Long/inhumane working hours
Police subculture	A force not a service	Unrealistic and conflicting demands placed on them
Caste and gender bias still continues	Use of force disproportionate to offence/crime	Low morale
Feudal bias	Poor investigation leading to low conviction rates	Inefficiency within police as well as broader criminal justice system

Through the consultations CHRI raised awareness about how implementing the Supreme Court directives may solve some of the deep rooted and systemic problems in policing. Whilst there was robust debate on whether and to what degree the Supreme Court directives could solve the problems in policing, two things were universally agreed upon:

- There is an urgent need for better policing; and
- The state needs to involve the people in this process of improvement.

Some of the actions taken, or proposed by participants after the consultations have been as follows:

North East

- Letters to state Chief Ministers requesting transparency in the police reform process and involvement of people
- Numerous and ongoing series of articles by journalists of the North East states tracking the reform process
- Right to Information applications to obtain government notifications on compliance with the Supreme Court directives
- District and local level workshops to raise awareness
- An active electronic network of activists, sharing regular information and strategies
- Advocacy at the North East Council – a body on which all the Chief Ministers of the North East states sit

Chhattisgarh

- Six-point memorandum to the Chief Minister, Home Minister, Director General of Police, Law Minister and Chief Secretary
- Meeting with the Home Minister
- Sahara TV interviews with CHRI Chhattisgarh staff on police reform
- Wide and ongoing local media coverage, including on the newly appointed drafting committee for the new police act for Chhattisgarh
- Meeting elected members of Legislative Assembly
- Ongoing district level workshops to raise awareness about the directives

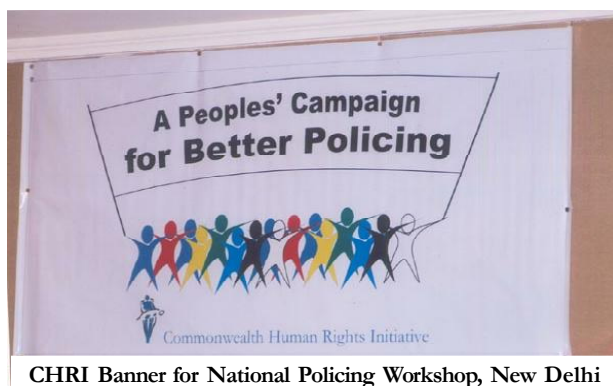
Madhya Pradesh

- A coordinated public awareness campaign including:
 - Posting hand written postcards with two demands – transparency about the proposed draft police bill and immediate implementation of the Supreme Court directives

- Signature campaign on a large banner, to be submitted to the Chief Minister
- Posters of the Supreme Court directives in Hindi
- A series of district level and zonal workshops
- A series of press conferences in regional centers
- Forwarding of names of civil society representatives for inclusion in the Madhya Pradesh Police Bill drafting committee

Tamil Nadu

- Meetings with various district Bar Associations on need to monitor compliance
- Meetings with District Criminal Advocates Association
- Discussion on a campaign on police reform by the Bar Associations in Tamil Nadu
 - Distributing police reform information to the Federation of Consumer Organisations in Tamil Nadu and Puducherry encouraging them to initiate a campaign for better policing
 - Addressing community policing groups on the need to monitor compliance
 - Meetings with Tamil Nadu government regarding the status of the draft police bill.



National Workshop

Some of the strategies identified by participants were:

- Identifying 'Model Police Stations' and developing ten standards that must be in place for good policing services – implementing this as a pilot program in a few states
- Creation of citizen's watch groups by Non Government Organisations to monitor policing
- Mobilising people on better policing using existing Non Government Organisation networks, self government institutions, legal aid committees, self-help groups, consumer rights organisations
- Generating more user-friendly material on police reform/ better policing in a wide range of regional languages
- Preparing a checklist on what constitutes good policing
- Educating the media so that all stories on policing make links with systemic reform issues
- Holding state and district level workshops and consultations to raise public awareness

The task of maintaining the momentum of this campaign for better policing is enormous and must be a shared responsibility among civil society across the country. CHRI will continue to support and resource civil society nationwide in a sustained effort to create a peoples' campaign for better policing. ■

CHRI Calendar : January - March 2007

CHRI Headquarters

January 2007

- The Director met with Larry Cox of the Ford Foundation in New York.
- The Director attended the board meeting of the International Women's Health Coalition in New York.
- CHRI argued before the Supreme Court of India in *Prakash Singh v/s Union of India* against submissions of the state that sought to review the judgment.
- CHRI's in-house radio production on RTI launched in the Northern Indian states of Bihar and Jharkhand. (It covers all local stations)
- CHRI's Media Unit got a grant from Canadian International Development Agency for developing a radio programme and storybooks on good policing.

February 2007

- Venkatesh Nayak resourced workshop for training of government officials in Kampala, Uganda.
- Daniel Woods spent three weeks at the CHRI Ghana office to assist with the completion of a report on police accountability in Ghana.
- CHRI brought out a desk calendar depicting instances gathered from across the country of the successful use by the public of the Indian Right to Information Act, 2005.

• CHRI held a workshop for about 40 judges of Chittoor district at Tirupathi as part of the series of planned workshops to sensitise judges to the use of human rights in the administration of justice.

March 2007

- Director went to Dhaka, Bangladesh to Launch Bangla version of 2003 CHOGM Open Sesame, published in collaboration with Manosher Junno.
- CHRI organised a two-day Roundtable on police reform experiences in South Asia in New Delhi. This was attended by civil society, police and government officials from Bangladesh, Pakistan, Sri Lanka, Maldives and India.
- Cecelia Burgman and Claire Cronin co-facilitated a conference in Colombo, Sri Lanka on the right to information for Pakistani and Sri Lankan NGO activists with the Public Affairs Centre.

CHRI Africa Office

January 2007

- Nana Oye Lithur and interns visited the Family Court to investigate the non payment of maintenance costs paid by a father by the court officials in Ghana.
- Nana Oye Lithur and interns met with the Minister of Interior at the Ministries on custody of babies born to female prisoners in Ghana.
- Nana Oye Lithur and interns attended a workshop on Abortion at La Palm. The

workshop was organised by Gynuity Health Projects, Pathfinder International and Population Council to deliberate on medical abortions and the new technologies for safe abortions in Ghana.

February 2007

- Nana Oye Lithur and Wilhelmina Mensah met with DSP Ofori and ASP Timothy Ashley of PIPS to discuss the Police Accountability project and public lecture of 50 years of policing in Ghana.
- Letters were submitted to the Presidential Secretary, the Minister for Interior, and the Attorney General to find out the status of the RTI bill and government's position on the passage of the bill.

CHRI Trustee Committee Office (London)

February 2007

- Stephanie Aiyagari, participated in a conference on National Human Right's conference organised by the Commonwealth Secretariat in London.

March 2007

- Stephanie Aiyagari met Rabab Fatima, Head of the Human Rights Unit at the Commonwealth Secretariat along with Richard Bourne.
- Stephanie Aiyagari and Justin Foxworthy met with Dr. Victoria TeVelde Ashworth, Neville Linton (Trustee) and Richard Bourne regarding the terms of reference for a paper commissioned from Dr Ashworth.

The Commonwealth Human Rights Initiative was founded in 1987 and is currently constituted by the Commonwealth Journalists Association, Commonwealth Lawyers Association, Commonwealth Legal Education Association, Commonwealth Parliamentary Association, Commonwealth Press Union and Commonwealth Broadcasting Association. These sponsoring organisations felt that while Commonwealth countries had both a common set of values and legal principles from which to work, they required a forum from which to promote human rights. It is from this idea that CHRI was born and continues to work.

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