

Commonwealth Human Rights Initiative



Newsletter

Volume 12 Number 2
New Delhi, Summer 2005

Inside

- Legislators and Human Rights: A Malaysian Snapshot
- The National Commission for Human Rights Bill, 2005: Pakistan's Defining Moment for Human Rights
- Extracting Information, Extracting Lives
- The 2005 Commonwealth Human Rights Forum
- Around the Commonwealth
- White Paper on Commission for Equality and Human Rights
- Holding the Police to Account: Civilian Complaints Agencies in the Commonwealth
- Legalising Corporal Punishment in Botswana
- Justice Still Elusive: The Grenada 17 Case Study
- UN Special Rapporteurs to Give Fillip to Struggle for Dalit Rights
- Moral Policing or Moral Terrorism
- Between International Justice and Domestic Peace



CHRI has launched an Electronic Magazine 'Commonwealth Police Watch'. Please visit www.commonwealthpolicewatch.org

Small Change Needed - What the Secretariat is Costing the Commonwealth

- Richard Bourne

Head, Commonwealth Policy Studies Unit (CPSU)

The Commonwealth Secretariat, the key international agency which serves all 53 member states, turned forty on 25 June 2005. However, much as the cause is for celebration, it's clear that the Secretariat is stuck in a time warp. High time that the finances and the structure of the Commonwealth Secretariat were overhauled, before it completely reduced in real value, resulting in adverse consequences for the work it could do and the values it is meant to represent.

Neither of the two recent reviews of the Commonwealth under Prime Minister Mahathir Mohammed of Malaysia in 1989-1991 or under President Thabo Mbeki of South Africa in 1999-2001 have dared to tackle this. The present structure seems to have been put in place in the mid-sixties, in a pale reflection of the system which paid for the United Nations.

Problems galore...

- The subscriptions now bear little relation to the growth, or ability to pay, of different member countries. Specifically they distinguish between "developed" and "developing" countries in a way that cannot be justified.
- Four countries - the UK, Canada, Australia and New Zealand - pay nearly 61 per cent of the budget between them, which means that they can often negate proposals which might be attractive to other members.
- The subscriptions have not kept pace with the changing costs of an international body, so that staffing has dropped from around

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.

The Commonwealth Human Rights Initiative (CHRI) is an independent international NGO mandated to ensure the *practical* realisation of human rights in the Commonwealth.

- 420 in 1990 to around 280 in 2005. The total budget in 2003/4 was only £11.4 million.
- Arrivals such as that of South Africa or departures like Zimbabwe tend to be dealt with in an ad hoc fashion when it comes to the Secretariat subscriptions; these have failed to take into proper account the fact that there has been a net increase of four members in the past 15 years.
- Membership of the Commonwealth is supposed to equate to that of the payment of subscriptions to all inter-governmental bodies, but fails to do so. South Africa and Bangladesh are among the governments which have chosen not to join the Commonwealth Foundation that supports civil society, arts and professional links and Australia last year also pulled out of the Commonwealth of Learning, the distance teaching service.

Why it matters...

The Secretariat hangs on to a definition of a “developed” state which ignores the analysis of the World Development Report which found in 2004, that 13 of the 53 member states were rated as having “high” human and economic development. The implication is that no developing state will ever stop being “developing,” and some would say that the idea that only largely white states are “developed” is grossly racist.

In fact the gross domestic product per head in Singapore in 2004 was \$20,886 as compared with \$14,872 in New Zealand, and on a purchasing power parity basis Singapore was still ahead. On a purchasing power parity basis India’s gross domestic product (GDP) at \$2,799.6 billion was larger than the UK’s at \$2,618bn, and its growth rate of over 7% in the last two years was more than twice that of the UK. Yet, the UK’s 30% contribution to the Secretariat budget (£3.43M) was nearly ten times the size of India’s 3.34% (£381,965).

There is no doubt that, when the Secretariat budget was first put together, it was designed to have a

redistributive element. Richer countries were expected to pay more. But all this has got set in stone and Colin Ball, former Director of the Commonwealth Foundation, is not the only one to have said publicly that the richer countries have used their financial muscle – although their absolute contributions are tiny by UN or European Union standards – to say no to Commonwealth innovations.

Leaving the UK, Canada, Australia, South Africa, India and New Zealand aside there are only four levels of subscription. Three countries (Nigeria, Malaysia and Singapore) pay 1.37% each (or £156,674 in 2002/3); 15 (from Bangladesh to Zambia) pay 1.02% each (or £116,648); ten (from Bahamas to Sierra Leone) pay 0.59% (or £67,473); and 17 (from Antigua and Barbuda to Vanuatu) pay 0.35% or (£40,026). The arbitrary nature of all this was illustrated when Zimbabwe was suspended from the Commonwealth and the 42 states in the three cheapest categories were each asked to pay 0.01 % more— just over £114 a year.

There are some peculiar consequences of this system. Secretariat budgets never rise by more than the cost of living – zero net growth. Commonwealth NGOs are supposed to be in principle representative of every member country. This is almost a condition now for “accreditation to the Commonwealth” under the rules operated by the Commonwealth Secretariat which give NGO status at Commonwealth summits, and for funding by the Commonwealth Foundation. However more member countries do not equate to more NGO members or to supply more income for the NGO members.

The Commonwealth Foundation is embarrassed to support activities in countries which do not subscribe to it. Further, it has switched off funding for civil society in Zimbabwe, even though Robert Mugabe never consulted his people before taking the regime out of the Commonwealth. The Commonwealth has played a fine role in helping black South Africans, during South Africa’s absence in the apartheid years.

At heart, the issue is that the Commonwealth has not adjusted to the changing balance of power within it. The key change is the rising economic and political

significance of India, particularly in the context of warmer relations with Pakistan. The UK's international development committee in Parliament has reported that aid to India ought to be phased out as unnecessary, and some experts anticipate that within 20 years the Indian standard of living will be close to the UK's.

Already the last two runners-up in elections for Commonwealth Secretary-General have come from Bangladesh and Sri Lanka. A readjustment of the financial basis for the Secretariat, and the other inter-governmental institutions, ought to be linked to the electoral campaign of the next Secretary-General in 2006-7, and that to renewed purposes for the Commonwealth.

It would be easy to imagine a coalition put together by countries like India, South Africa and Nigeria – perhaps behind an Indian-backed Pakistani¹ for Secretary-General. It should not ignore the needs of small states, but it would signal that many Commonwealth countries are making a success of their development, even though issues of poverty and human rights abuse have not gone away. The UK, Australia and Canada should still be the largest contributors to the Secretariat budget, but their share should drop below 50%. Subscriptions, and the current banding system, ought to be reviewed every ten years.

The Commonwealth is a mutual association, not owned by any member or handful of members. Its strength lies in its diversity, not only for its own citizens but for the wider world, for it cannot be an island. Yet in UK company law a shareholder with 30 % of the shares is assumed to be the owner, where no other shareholder has a larger holding. The Shridath Ramphal² years demonstrated that, politically, the Commonwealth was autonomous, responding to the demands of its broad constituency. It is time to take this logic further. ■

¹ The possibility of an Indian-backed Pakistani may seem surprising, but it is common in other international institutions for neighbouring countries to support each other, and in the context of improving Indo-Pak relations this would go down well with the Commonwealth at large. Although it is not certain it seems likely that both India and Pakistan supported the last two South Asian runners-up for the Secretary-General post.

² Shridath Ramphal, a Guyanese, was Secretary-General of the Commonwealth Secretariat from 1975-1990 and led opposition to the British Government over sanctions against South Africa.

Africa Commission on Human and People's Rights

The 37th session of the Africa Commission on Human and People's Rights met in Banjul, Gambia from 27 April - 11 May 2005.

The African Commission on Human and Peoples' Rights, composed of 11 African experts, was chaired by Commissioner Salamata Sawadogo. The Commission addressed the necessity to operationalise the African Court on Human and Peoples' Rights, as well as the violations



Source: Google Images

Commissioners attending the 37th session

of human rights in the Democratic Republic of Congo, Ivory Coast, Mauritania, Zimbabwe and Togo.

The Commission specifically discussed the human rights situation in Togo, drawing attention to the absence of freedom of expression among other violations of human rights. More than 100 people died and thousands more were wounded in Togo before, during and after the presidential elections that ended on 24 April 2005.

The Session was attended by 300 participants representing 28 State Parties, 6 National Human Rights Institutions, 6 Intergovernmental Organisations, and 110 African and International Non-Governmental Organisations.

The 38th Ordinary Session of the African Commission will be held from the 21 November -5 December 2005 provisionally in Nairobi, Kenya.

Legislators and Human Rights: A Malaysian Snapshot

Edmund Bon

Advocate and Solicitor, High Court, Malaysia

It is ironical indeed that the actors who are responsible for upholding the law are the principal violators of human rights around the world. Human rights protection cannot subsist without State participation. Lawmakers and legislators play a vital role in protecting and promoting human rights through legislation and democratic practices. In Malaysia, law makers are unfortunately blase about human rights and its impact on the society.

Since its inception, the Human Rights Commission (SUHAKAM) has actively carried out its mandate culminating in no less than 15 reports. Of all the annual reports submitted to the Parliament none have been either tabled or debated. The Government has appeared reluctant in explaining why adequate time was not given for consideration of these reports. Besides pointing to the Government's lack of respect for SUHAKAM, it also impairs its right to defend human rights which is an abdication of responsibility on part of the Government.

A genuine desire to uphold human rights is usually clouded by political motivations. After attending the Cabinet meeting on 2 March 2005, Datuk Azmi Khalid, the Minister of Home Affairs, said, "Bona fide refugees, as well as those who had applied for refugee status, would not be targeted during the current *Ops Tegas* against illegal immigrants." This decision was welcomed as it represented an open acknowledgement of the principle of non-refoulment which forms the core content of the Convention Relating to the Status of Refugees, 1951.

The next day however, the Deputy Prime Minister, Datuk Seri Najib Razak, reversed the Government's

position and said, "We will take action against anyone who is here illegally. There is no exemption on this including those who are carrying letters, genuine or otherwise, from the UNHCR."

At the international level, Malaysia has been repeatedly defensive of its human rights record and continually deflects attempts to improve the monitoring

mechanisms promoted by the United Nations. Recently, Malaysia resisted the recommendation of the United Nations to prepare an annual report on the situation of human rights worldwide in view "of the varying human rights perspectives and different political, historical, social, religious, cultural and developmental characteristics". Yet, in the same breath, legislators maintained that not enough was being done to address poverty, underdevelopment, marginalisation and instability as "the universality

and indivisibility of all human rights have been accepted as far back as 1993, at the Vienna World Conference on Human Rights."

The problem is endemic. Contradictory public statements such as the ones quoted above are not isolated. This displays a deficiency on the part of MP's in understanding the struggle, thereby rendering other useful statements on the commitment to human rights as mere lip-service.

Criticising the legislators is no solution to the problem. We must make an attempt to understand them and where they are coming from. Human rights activists and non-governmental organisations find it easy to take an altruistic position, legislators on the other hand are constrained by the political realities of the day.



Malaysia

Source: Google Images

Indian Parliament Passes the Right to Information Bill 2005

After a decade long struggle and an intense period of legislative lobbying by civil society over the last one year, on 12 May 2005 the Indian National Parliament finally passed the Right to Information Bill 2005, which will replace the defunct Freedom of Information Act 2002 once it receives Presidential assent. India is now poised for a new regime of openness and access. The successful passage of a comprehensive national law, elusive for so long, marks the end of the hard fought battle. Some discouraging amendments apart, the Act strengthens the presumption in favour of disclosure and, followed up with effective implementation, has the potential to put good governance within closer reach.

Good Legislation is a Start

A well-drafted law is important to lay the foundations for a right to information, which can be exercised, cheaply, quickly and effectively. The new RTI law has incorporated a large number of civil society recommendations, which were based on international and state-level legislative best practices.

The new law covers all states and local government bodies, as well as public authorities of the Center and Union Territories. For states that do not currently have information access legislation of their own, this is good news. However, for the eight states and one territory that do, this could cause confusion, at least early on during implementation because the position of State laws vis-à-vis the central law remains unclear.

The government is required to proactively disclose a wide range of information, without having it specifically requested. Categories of information subject to proactive disclosure are significantly more numerous in the new Act. This is intended to put as much information in the public domain as possible and make an actual formal request a last resort of sorts.

The Bill is an important landmark in marking the beginning of open governance. For it to be an effective initiative engagement of the civil society must continue taking along with them a more aware and proactive citizenry.

Legislators are elected and sustained by the power of numbers. It is these numbers they must keep to hold onto power. Human rights transcends the power and numbers game and hence the dilemma.

Battles however have been won, and the statement of Datuk Azmi Khalid on 2 March 2005 exemplifies that. It was a battle fought and won by a combination of unrelenting and tireless NGOs, human rights activists and the United Nations High Commissioner for Refugees (UNHCR) to uphold human rights.

Yet, as the struggle continues, the feeling is that the legislators use concepts of human rights to serve their own hidden agendas. Saying so doesn't negate the fact that, in reality, they are indispensable to the process of furthering the cause effectively. The focus must now be to re-educate and re-democratise our country.

There must be a concerted agenda for MPs to pursue in terms of human rights protection and promotion. Almost every issue in an election can some way or the other be articulated in the language of human rights. The promotion of human rights issues must then be shaped in different forms to reach out to different sectors of the electorate – the poor, the disabled, the middle-class, the rich, the educated *et al.*

As long as the Opposition continues to be fragmented and disorganised, there can be no effective challenge to the ruling Government. Exercises in excess of power will continue. The baggage which PAS¹ brought to the Opposition was probably the major factor in the overwhelming majority voting for the BN².

Despite PAS's stated commitment to human rights, its basic ideology and *raison d'être* does not sit well with international rights norms.

There must be a concerted human rights agenda based on clear policies (at the macro and micro level) of a shadow or alternative government for the electorate to choose from. The human rights cause cannot be fought on a piecemeal basis. It must be advanced as a whole in every aspect of the administration and management of the country. ■

¹ PAS is the opposition party based on Islamic religious ideals – “Parti Islam Malaysia”

² BN is the ruling coalition government – “Barisan Nasional”.

The National Commission for Human Rights Bill, 2005: Pakistan's Defining Moment for Human Rights

Mandeep Tiwana

Consultant, Access to Justice Programme, CHRI

With the drafting of its National Commission for Human Rights Bill, Pakistan seeks to join a growing list of Commonwealth nations with National Human Rights Institutions (NHRIs). This is relevant given the demand from many quarters – both from within and outside Pakistan – urging the government to put in place institutional mechanisms that guarantee the protection and promotion of human rights.

In the statement of objectives and reasons – accompanying the Bill – the government claims the formation of the commission will not only fulfil international obligations but also act as a “driving force for negating the propaganda of human rights violations in Pakistan”. Perhaps this is why a function of the Commission is to pursue or defend human rights complaints in consultation with the Federal Government’s Foreign Affairs Division before “any international organisation and foreign government or non-governmental organisation”. Such a provision, if passed by Parliament, will totally negate the internationally accepted *Paris Principles*,¹ which require an NHRI to be independent of government.

In fact, governmental control is a defining feature of the Bill, which provides for the appointment of human rights commissioners by the President who “may seek nominations and recommendations through the Federal Government”, effectively blocking all channels for public participation in the appointments process.

In addition, the Bill seeks to appoint two Members of Parliament as full-time members of the commission without thought to whether they will be able to properly attend to their functions – including inquiry of complaints – given their political affiliation, duties in Parliament, and obligations to their parties and constituencies. Governmental influence is reinforced

by provisions that allow the appointment of former judges or high-ranking former government servants as members. Presidential control is further evidenced in a provision that allows the Chair to appoint two persons as adhoc members, but only with the President’s approval. These anomalies in the appointment criteria negate some of its positive provisions, such as the appointment of two members from minorities; at least two women members; and a member from each province and the two federally administered territories “having the knowledge, experience and background of human rights”.

It is of some significance that neither the Members of Parliament, nor the former judges or former senior government servants, nor persons qualified to be judges who may be appointed to the commission, are required to have knowledge, experience or background of human rights. This unbalanced criteria may create a situation where former government servants are at loggerheads with those from non-governmental sectors.

The composition of the commission’s support staff is also heavily loaded in favour of government employees. The Secretary, who is the chief administrative officer, has to be a former high ranking government servant with experience of working in the human rights field. Director Generals, Directors, Deputy Directors and Assistant Directors are to be appointed from amongst Federal Government officers. The Bill stipulates that officers and employees of the Human Rights Wing of the Federal Government shall be absorbed into the commission “if not found otherwise unfit”.

Though the Bill allows the commission to appoint advisors and consultants, drawn independently, the heavy dependence on government employees to fill top-level positions may reduce it to just another government bureaucracy. The *Paris Principles* require

¹ Paris Principles or Principles relating to the Status of National Institutions were developed after a consultation with representatives of National Human Rights Institutions (NHRI); States; the United Nations and its specialised agencies; and Inter-governmental and Non-governmental organisations from across the world. They have been endorsed by the United Nations Commission on Human Rights in 1992 (resolution 1992/54) and by the General Assembly of the United Nations in 1993 (resolution 48/134).

NHRIs to have their own staff and premises for the very purpose of freeing them from governmental influence.

Other areas requiring intervention are:

Broadening the definition of human rights: The Bill limits human rights to rights relating to life, liberty, equality and dignity guaranteed in Pakistan's constitution or embodied in the international instruments of human rights ratified by Pakistan and enforceable by its courts. Pakistan has not ratified the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). The *Paris Principles* state that an NHRI should be vested with the competence to protect and promote human rights. This "competence" is determined in great measure by the breadth of human rights laid down in the Act governing the NHRI. Fiji's Human Rights Commission Act provides a good example of a broad and inclusive definition of human rights - "rights embodied in the United Nations Covenants and Conventions on Human Rights and includes the rights and freedoms set out in the Bill of Rights."

Widening the mandate: The *Paris Principles* call for as broad a mandate as possible for an NHRI. Though the Pakistan Bill does prescribe a list of functions, the value of the commission will be enhanced by prescribing wider functions, based on international best practice. In New Zealand, the National Human Rights Commission develops a national human rights action plan in consultation with interested parties and makes public statements to promote an understanding of the Bill of Rights. In Sri Lanka, the National Human Rights Commission can appoint conciliators and mediators in situations of infringement or imminent infringement of fundamental rights.

Greater role for civil society in appointments: Civil society, which is often best placed to comment on human rights matters, has been excluded from the appointments process under the Pakistan Bill. Malawi provides a good example of civil society involvement. The government is obliged under the constitution to invite credible civil society groups, who are concerned with the promotion of constitutional freedoms, to nominate the names of persons suitable for appointment as members of the Malawi Human Rights Commission.

Greater powers: Though the proposed commission has been vested with the powers of a civil court while inquiring into complaints, its powers to elicit the cooperation of government agencies in the performance of its other functions are somewhat lacking. For instance, a function of the commission is to visit jails to study and report on the living conditions of inmates. If the authorities refuse to allow the commission unhindered access to prisons, then there is virtually nothing the commission can do to enforce its functions. By contrast, Uganda's Act provides for a fine and/or punishment with imprisonment up to two years for wilful interference or obstruction with the functions of the Uganda Human Rights Commission. In South Africa, all state organs are required under its Act to afford such assistance as may be reasonably required for the effective exercising of the Human Rights Commission's powers, and performance of its duties and functions.

Ensuring adequacy of funds: The Bill provides for the creation of a separate fund to hold grants by Parliament and contributions from other sources for incurring the commission's expenses. There is however, no provision to ensure sustainability or adequacy of funding. The *Paris Principles* stipulate that an NHRI should have an infrastructure, suited to the smooth conduct of its activities, with particular emphasis on adequate funding. The Human Rights Commission of Malaysia Act obliges the government to provide its commission with adequate funds on an annual basis.

It is encouraging that the Government of Pakistan has taken the initiative to draft the National Commission for Human Rights Bill, 2005. Two positive provisions of the Bill are that it does not contain a limitations clause that would prevent a complaint from being taken up after the lapse of a specified time period since the violation was committed, and that it allows the commission to inquire into complaints against any state agency, including the armed forces. However, the true test of the government's commitment to ensuring the better protection and promotion of human rights lies in whether it will accept demands to fully attune the Bill to the *Paris Principles* and international best practice, before submitting it to Parliament. If those in power fail now, then the people of Pakistan will have lost a defining moment to shape their human rights destiny.²

²For a detailed analysis visit our website at: http://www.humanrightsinitiative.org/publications/hrc/chri_analysis_nchr_bill.pdf

Extracting Information, Extracting Lives

Mandakini Devasher

Project Assistant, Access to Information Programme, CHRI

Ironically, resource rich countries in the world are also amongst the most underdeveloped. In the Commonwealth for example, Nigeria, Ghana and Cameroon in Africa have large fossil fuel reserves and PNG, Solomon Islands and Vanuatu in the Pacific have abundant forest and/or mineral resources. Access to natural wealth has, however, failed to translate into higher or more equitable standards of development. Too often, profits accrued from the development of countries' natural resources have not flowed back to reinforce and strengthen the economies – and communities – that generated them. The world over, loss of traditional rights of access to natural resources, coupled with the inequitable distribution of profits from their sale have been at the heart of conflicts and rights violations.

The Report of the UK Commission for Africa, released in March 2005, offers some important insight into this problem, placing particular emphasis on the need for transparency in the allocation, distribution and management of natural resources such as oil, natural gas and forests.

Paradise Lost

It is a well-accepted fact that lack of transparency in the management of natural resources has contributed to vast numbers of people being denied access to revenue – and development benefits – that should rightly have accrued to them. Increasingly, it has been recognised that the complicity between governments and MNC's in encouraging inequitable resource distribution has been at the root of the problem. MNCs bid to win tenders and contracts from governments who often are only too willing to bring them in to extract their natural resources. But the systems that facilitate such deals are notoriously opaque. In the absence of effective oversight and monitoring mechanisms the actions of governments and the corporate world too often go unaccounted - as do vast sums of money. There

are many examples in the Commonwealth which bear this out.

Nigeria: Although the largest oil and gas producer in Africa, in 2004, Nigeria was ranked a poor 151 out of a total of 177 countries in UNDP's Human Development Index. Massive corruption in natural resource management by the government and the oil companies has robbed Nigerians of the benefits of development. Most memorably, in 1995 the international community was stunned by the execution of Nigerian activist Ken Saro Wiwa by the Nigerian Government after Wiwa spoke out against the oil mining activities of Royal Dutch Shell Oil in the Niger Delta. A 2005 Human Rights Watch briefing paper estimated that the infighting in the region has led to serious human rights abuses.

Papua New Guinea: Spread over almost three quarters of the island nation, the tropical forests of PNG have long been witness to indiscriminate exploitation. Due to a strong nexus between logging companies and the political elite, shady deals remain veiled. For example, in 2002, the Ombudsman Commission finalised a three-year investigation into the Government's decision to award a lucrative logging concession to Rimbunan Hijau, a Malaysian company with a notorious history in the region. The Commission's findings revealed the poor human development record of the company in its operating region and its failure to comply with its contractual obligations. A Green Peace study identifies that the company and its subsidiaries control more than 50% of PNG's large scale commercial logging operations and in 2002 exported logs worth more than US\$ 50 million from PNG.

Nauru: Nauru is a chilling testament of the immense havoc caused by the mismanagement of natural resources by governments and large corporates. At one time the small population of around 10,000 people enjoyed one of the highest per capita incomes in the

world. However, reckless devastation of the country's environment and massive corruption in government has brought Nauru to the brink of extinction. In 1968, the Nauruan Government won compensation for the decades of mining that had preceded Nauru's independence, getting settlements from Australia, New Zealand and the UK worth tens of millions of dollars. This money has almost entirely been frittered away in investments in dozens of Nauruan offshore holding companies, which under Nauruan laws are allowed to function in complete anonymity making the tracking of assets practically impossible. The personal stake of government officials in many of these companies has made accountability a non-issue. Individually worth nearly USD\$ 500,000 at the time of independence, today Nauruans are facing along with a loss of their livelihood, their identity and their nation.

Stopping the Rot

In the coming years, as natural energy reserves dwindle, the scramble for resources will accelerate. As governments search for new sites from where to source fossil fuels, the danger to developing economies – from the mismanagement of finite resources coupled with wasted and/or stolen revenue from corruption – is all too real.

Key to ensuring sustainable management and equitable distribution of natural resources is transparency. Entrenching a legal right to information is a key mechanism for tackling corruption by fostering an environment which is pro-transparency, pro-democracy and ultimately pro-people.

The right to information is ordinarily premised on the public's right of access to government held information. In the context of extractive industries however, the right to information has been effectively implemented to require governments to *proactively* publish the details of tenders and contracts entered into with corporations involved in natural resource extraction, as well as more general information about negotiations and revenues earned.

The G-8 Declaration on Fighting Corruption and Improving Transparency (2003), EU Transparency

Directive (2004) and the Transparency Compacts between G8 and developing nations at the Sea Island Summit (2004) are some of the efforts that reflect growing commitments by governments to openness in the extractive industries sector, with a focus on making transparent details of public budgets, revenues, government procurement and payments. Most notably, in 2001 the World Bank launched the Extractive Industries Review (EIR), a stakeholder and civil society consultation directed at drafting a set of recommendations to guide the involvement of the World Bank Group in the extractive industries sector. In 2003 the EIR published its report with recommendations for the World Bank to consider. The World Bank Management Group responding positively to the report has affirmed that in the future "... the Bank Group will require transparency as a condition for new investments in EI [Extractive Industries] in line with our support of the EITI [Extractive Industries Transparency Initiative]. For new large projects we will require transparency immediately to ensure that revenues are properly and transparently accounted for; for new smaller projects, we will expect it within two years."

Publish What You Pay

The Publish What You Pay Campaign (PWYP) was launched in 2002 by the Open Society Institute in collaboration with other NGOs. It is a civil society initiative which encourages and monitors the disclosure of information on contracts, payments and the like by governments, corporations and funding agencies like international financial institutions. The Campaign's main agenda is to get multinational oil, mining and gas companies to publish details of the payments they make to states in the developing world.

Extractive Industries Transparency Initiative

The EITI is a positive example of how the push for transparency in natural resource management has been implemented in practice. Responding to the growing need for transparency in extractive industries due to massive corruption and illegal exploitation in the sector, in 2002 the EITI was launched by UK Prime Minister,

Tony Blair, at the World Summit on Sustainable Development in Johannesburg. The initiative has been spearheaded by the UK Department for International Development and has the active involvement of the World Bank Group.

Though currently restricted to extractive industries such as oil, gas and mining, there is growing pressure that the principles of EITI should be extended to other natural resource sectors like forestry and fisheries. Within the Commonwealth, countries that have signed up to the EITI include Nigeria, Trinidad and Tobago, Ghana and most recently Cameroon. In these countries, this nascent initiative is already showing success.

Commonwealth Involvement in EITI

Ghana: Rich in gold, diamond, bauxite and manganese mines, in 2003, Ghana announced its decision to join the EITI. In the same year, the Mineral Commission began releasing its revenue figures, production data, company receipts etc to national newspapers. Meanwhile an Interim Management Committee (ICM), a multi-stakeholder steering committee of government and civil society representatives, has been formed to oversee implementation of the EITI. Reporting guidelines and templates have already been designed for companies and the government.

Nigeria: Nigeria also committed to the EITI in 2003. Nigeria's work in this area includes amongst other things an independent audit of revenues and payments in Nigeria's extractive industry and the publication of all data and information an audit of the oil sector. A draft EITI bill was submitted to the National Assembly in early 2005, to be passed as a law.

Trinidad and Tobago: With most of its income accruing from oil and natural gas, in Trinidad and Tobago the EITI was introduced in January 2005. Implementation is too new to be able to draw conclusions about the effectiveness of EITI efforts, but it is a positive step forward for the Caribbean that the country has taken the lead in signing up to this important initiative.

Campaigns and initiatives like the EITI are however hampered by their voluntary nature. The EITI enforces mandatory disclosure only after a country has agreed to be bound by its principles. It is imperative that resource rich countries in the Commonwealth are strongly encouraged – by their public and their peers – to sign up to the EITI, as the best means of ensuring their economic futures.

Only the Beginning

Governments hold natural resources in trust for the people whom they are elected to serve. It is their responsibility to ensure that the benefits of the development of these resources are distributed equitably across society and not merely to facilitate individual interest. Just the new push for corporate social responsibility recognises that it is no longer conscionable to argue that profits should come before people.

Commonwealth governments could consider entrenching the following measures¹:

- To require all companies to inform local residents and traditional owners of resources about the details of proposed contracts and tenders.
- To require all companies working within their territories to publish detailed information on their corporate structure, contracts, tenders and revenue etc.
- To proactively publish details of the tenders, contracts and payments made and received from corporations in the extractive sector.
- To become signatories to initiatives such as the EITI and abide by its guidelines and reporting procedures.
- To foster a culture of transparency and openness through the enactment of access laws i.e. right to information.
- To encourage the participation and oversight of citizens in designing, implementing and monitoring government activities and those of companies. ■

¹Drawing on the good example and best practice of initiatives like the EITI and PWYP

The 2005 Commonwealth Human Rights Forum

Clare Doube

Coordinator Strategic Planning and Programmes, CHRI

With only six months to go until the next Commonwealth Heads of Government Meeting (CHOGM), our minds are turning to Malta and ways to take forward the human rights agenda. CHOGM sets the policy of the Commonwealth and as such is a crucial target for any organisation seeking to influence the future directions and programmes of the association. It is important, though, to also remember that an association is the sum of its parts – and the government in your home country could be a key ally in taking forward your concerns. Now is the time to be knocking on those doors!

While the Commonwealth has been traditionally seen as an inter-governmental organisation, there is increasing recognition of the integral role of the People's Commonwealth as well. The Commonwealth People's Forum, to be held in Malta from 21-25 November, is organised by the Commonwealth Foundation and the theme this year is Networking Commonwealth People. It is an important opportunity for civil society voices to be raised – let us hope that governments will be listening.

While CHRI will be active in Malta on a number of fronts – including launching a pan-Commonwealth report on accountability of the police – a major event will be the Commonwealth Human Rights Forum (CHRF). It will bring together human rights activists from across the Commonwealth and the focus of discussions will be on 'Civil Society Space'.

The first CHRF was held in Nigeria in 2003 immediately before the last CHOGM. Participants have maintained contact through the Commonwealth Human Rights Network, a network of civil society activists that aims to increase human rights advocacy in the Commonwealth. The success of the 2003 CHRF - combined with feedback from participants and demand from CHRN members as well through communiqués of international human rights meetings - has provided

the impetus to hold another Commonwealth Human Rights Forum.

The theme of both CHOGM and the Commonwealth People's Forum relate to networking. A crucial part to networking in order to promote, protect and fulfill human rights is having the 'space' in which to do so, as an individual or an organisation. The theme of the CHRF will therefore be on civil society space, and the agenda will include discussions related to restrictions to such space including related to: registration of NGOs, limitations on freedom of association and expression, security and anti-terror measures. There will be case studies from around the Commonwealth, as well as a focus on sharing advocacy strategies and successes in resisting restriction of space.

The main objectives of the 2005 CHRF are to:

- Raise the profile of human rights issues and concerns in the Commonwealth, particularly related to space for effective functioning of civil society and Human Rights Defenders.
- Advocate common human rights concerns to Commonwealth government delegations.
- Provide a platform for sharing not only human rights concerns but also, actions and good practice across the Commonwealth from a civil society perspective.
- Provide a space for interaction between civil society groups and National Human Rights Commissions.
- Build skills for advocating on human rights, particularly within the Commonwealth system.
- Enable consolidation and growth of the CHRN.

CHRI looks forward to working with diverse Commonwealth groups during the Forum. Let our Networking at the CHRF and wider CHOGM events be for the human rights of all across the Commonwealth¹.

¹If you would like to be involved in the CHRF, become a member of the Commonwealth Human Rights Network or require further information about CHRI's plans around CHOGM, please contact Clare Doube at clare@humanrightsinitiative.org

Around the Commonwealth

Vaishali Mishra

Media and Information Officer

Cameroon

Government acquits military police captain of arbitrary torture charges

Minority Rights Group International (MRG) has raised serious concerns with the government of Cameroon regarding its respect for the due process of law following the acquittal of a military police captain on charges of arbitrary arrest and torture of a member of the Mbororo pastoralist community. The rights group has complained directly to the government about the actions of a military tribunal and called for an independent appeal hearing, highlighting a list of judicial irregularities, which cast doubts over the validity of the acquittal.

Nigeria

HIV/AIDS policy will protect workers

The government of Nigeria has released its National workplace policy on HIV/AIDS, which aims to protect people with the virus from any form of discrimination and stigmatisation, particularly in the workplace. The policy will promote and protect the rights and dignity of affected workers, provide them with access to HIV/AIDS information and services, manage and integrate impact of the virus within the workplace and eliminate and reduce stigma and discrimination.

Human Security Centre launches free e-resources

The Human Security Centre at the Liu Institute for Global Issues at the University of British Columbia, Canada, has launched three free e-resources: the Human Security Gateway, Human Security Research and Human Security News.

These e-resources were developed with the aim of making human security-related research more accessible to the policy and research communities, the media, educators and the interested public. The Human Security Gateway is a searchable online database of human security-related resources including reports, journal articles, news items and fact sheets. For further information visit <http://www.humansecuritycentre.org/>

World Press Freedom Day

The third day of the month of May 2005 was celebrated as the World Press Freedom Day. The day marks the crucial role a free press plays in strengthening democracies and fostering development.

Celebrated each year since 1993, when it was proclaimed by the United Nations, the day is an occasion to pay tribute to journalists who have been killed because of their work and to promote the importance of protecting the right to freedom of expression.

Ghana

Ghanaian Government Releases Truth Commission Report

The government of Ghana released the final report of the National Reconciliation Commission (NRC) on 22 April 2005. It was appointed in May 2002 to investigate past human rights abuses in the country. The report recommends reparations for victims and institutional reforms, and exposes some of the causes for the collapse of democracy in Ghana.

Over the course of 18 months of hearings, the NRC heard testimonies from more than 2000 victims. Some 79 perpetrators also testified. Victims reported a wide range of violations dating back to Ghana's independence in 1957.

The Commission offered the first opportunity for Ghanaians to publicly relate their experiences of abuse, uncover the truth about the past, and seek redress.

Although Ghana is today considered to be a comparatively peaceful and democratic country, its post-independence history has been marred by authoritarian and military rule, with accompanying human rights abuses. The Commission was mandated to focus its investigation on human rights violations that took place between 1957 and 1993, particularly on the periods of military rule.

South Africa

Top judges unite against bid to control judiciary

South Africa's top judges have united in opposition to a government move to change the Constitution and do away with the judiciary's right to administer its own affairs.

A report in one of the leading news dailies *the Sunday Times* says the judges, including outgoing Chief Justice Arthur Chaskalson and his replacement, Judge Pius Langa, made their opposition known at a two-day meeting attended by Justice Minister Brigitte Mabandla and her deputy, Johnny de Lange, to discuss proposed new laws.

The amendment would pave the way

for the government to implement several controversial laws thereby allowing it to 'educate' and 'discipline' judges. It says that while the Chief Justice is the head of the 'judicial function', the Minister of Justice will exercise final administrative power over all courts.

"The government should take heed of the fact that judges arguing for independence were not white right-wingers but former anti-apartheid activists," said Judge Mohammed Navsa, Supreme Court of Appeal.

Kenya

The Law of Succession discriminates against women

The law of succession in Kenya has come under tremendous criticism from all quarters including the judiciary. "Most tribes do not recognise daughters and should a widow remarry, her interests in the late husband's property would cease," said Kenyan High Court Judge Vitalis Juma.

Any land under the Land Act that does not lie under a municipality is termed as agricultural land, in which case, ownership is decided under customary law. Customary law on inheritance of agricultural land and livestock can however be side stepped by writing a law.

International Day for the Elimination of All Forms of Racial Discrimination

On 21 March 2005, the International Day for the Elimination of All Forms of Racial Discrimination was marked with warnings that the virus of racism is on the march around the world and urgent calls for a global assault on the scourge, and with new proposals to strengthen human rights and panel sessions on overcoming hate crimes. Secretary-General Kofi Annan, noting the persistence of discrimination in our culture despite all the efforts to get rid of it, referred to his report submitted on the same day which proposed a new Human Rights Council and better means to combat genocide, ethnic cleansing and other such crimes against humanity. The High Commissioner for Human Rights, Louise Arbour said in her speech to the panel on effective practices to overcome hate crimes in Geneva that we must combat all forms of intolerance by celebrating diversity and differences.

Sierra Leone

Sierra Leone: "Draconian" Law Used To Muzzle Critics

In Sierra Leone, where journalists can be jailed for libeling public officials, the Public Order Act has become a convenient tool for silencing critics. Just ask Paul Kamara, Sydney Pratt and Dennis Jones. All three journalists have been imprisoned on charges of "seditious libel" after writing articles about alleged government corruption.

The move has provoked outrage from the International Press Institute (IPI), the Committee to Protect Journalists (CPJ) and Reporters Without Borders (Reporters sans frontières, RSF), who are urging authorities to

immediately release the journalists and drop the criminal charges against them. The IFEX members say press offences should be decriminalised and treated under civil law.

Pratt and Jones, who work for the weekly newspaper "Trumpet", were arrested in Freetown on 24 May 2005 after publishing an article headlined "Kabbah Mad over Carew Bribe Scandal." It cited an unnamed source who claimed that President Ahmad Tejan Kabbah was angered by earlier allegations that two senior cabinet ministers had accepted bribes.

White Paper on Commission for Equality and Human Rights

Justin Foxworthy
CHRI London Office

On 12 May 2005, the UK Government released its White Paper proposal for a Commission for Equality and Human Rights (CEHR). The release of the White Paper is an important first step towards developing greater institutional observance of human rights in the UK.

Francesca Klug, a member of the Joint Committee on Human Rights (JCHR) – set up to advise it on proposals for the Commission, welcomed the publication of the White Paper: “Until now Britain has stuck out like a sore thumb as one of a small minority of countries world-wide without any national human rights body. Today marks the beginning of the end of this distinction.”

Under provisions established by the 1998 Human Rights Act, individuals were free to pursue cases of human rights abuse through the courts but a statutory body to promote widespread understanding of, or compliance with, the principles established by these cases did not exist.

Expected to begin work in 2006, the CEHR will become the first legal body in Britain with a mandate to promote human rights and equality. The Commission is designed to work with other agencies in order to ensure that public institutions comply with existing equalities and human rights legislation and take a standardised approach to best practices.

The human rights powers proposed for the Commission outlined in the White Paper include:

- to promote human rights to all bodies, including private, voluntary and charitable organisations, which provide public services;
- to provide to individuals seeking advice on legal services through an integrated help desk;
- to provide an express power to intervene in human rights court cases to promote an understanding of human rights values and standards to the courts;

- to provide an express power to carry out statutory enquiries into any broad human rights issue;
- to provide public education on human rights standards and values;
- to promote working with schools on human rights aspects of the citizenship curriculum;
- to review the Human Rights Act and advise government and other policy makers on compliance with it.

The new Commission will have the remit to push human rights on the public agenda and to use court actions to advance issues it deems important. Under powers of ‘general enquiry’, the Commission will be able to help to tackle systemic or not well known cases of abuses including, the elderly in care homes, school bullying, harassment and discrimination against people with disabilities.

However, the JCHR has raised some questions regarding the precise nature of the duties to be placed upon the Commission in relation to the promotion and protection of human rights. The primary concerns of the JCHR include the power of the Commission to conduct ‘general inquiries’ into matters of equality and human rights, support individual court cases, create dispute resolution mechanisms.

It also looks at judicial reviews of public authorities under the Human Rights Act as well as institutional and funding arrangements of the new body. The JCHR expects to continue to work with the Government to address these remaining areas of difference before the passage of legislation establishing the Commission.

Despite these questions, the Commission should be able to provide significant assistance to individuals who experience discrimination and human rights abuses in their daily lives. The Commission is also expected to work closely with community groups at the local level. ■

Holding the Police to Account: Civilian Complaints Agencies in the Commonwealth

Swati Mehta

Senior Programme Assistant, Access to Justice, CHRI

Empowered to use force against ordinary people and mandated to perform a service for the good of the community with public money, the police is answerable not only to the state but also to the public for its conduct and performance. With the growing recognition that the police should not only be accountable to the internal police complaints and disciplinary system and the executive, but also to agencies that are independent of both, many kinds of independent civilian agencies have been established and experimented with.

The form of civilian oversight agencies across the Commonwealth falls into two broad categories - organisations dedicated exclusively to investigating, reviewing and monitoring police complaints, and agencies like Human Rights Commissions and Ombudsman which include issues of police conduct within a mandate often covering human rights issues, corruption.

Increasingly, governments and police organisations are realising the benefits of having an agency independent of the police, dedicated solely to deal with public complaints against the police. Its focus will not be diverted to other areas that are easier to tackle and it will have greater ability to analyse patterns of police conduct and performance.

There is no one model of a civilian complaints agency but there are four basic features that are common to most successful complaints agencies.

1. Independence

To realise public's faith in impartial investigation, it is important that the agency is independent of the control of the executive as well as the police. The independence

of civilian oversight bodies is mainly determined by its constitutional or statutory basis. If it is not established by a law but is based on, say, a Presidential decree (as is the case of the Human Rights Commission in Maldives) then it cannot be independent, as its mandate, powers and existence may be tampered with.

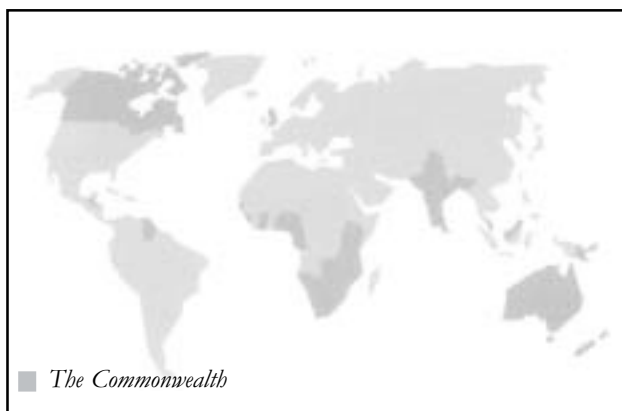
Independence often requires that the agency should be composed of non-police personnel, to limit possible bias towards the police. However, in many countries in the Commonwealth, few skilled civilian investigators would be readily available and in such cases police personnel may be recruited for investigations. In such

cases, it is preferable that these police investigators do not have any current links with the police organisation (are retired or not in active service).

2. Adequate Powers

There are broadly two kinds of powers that the complaints agencies can

exercise to hold the police to account – the investigatory, to respond to complaints; and monitoring, to review the systemic functioning of police agencies' complaints systems. Few oversight agencies in the Commonwealth, like the Police Complaints Authority of Trinidad and Tobago have no powers to undertake investigations and can only review police investigations into complaints and this affects their credibility. Most successful civilian oversight bodies, on the other hand, have the authority to independently investigate complaints and issue findings and some have wide supporting powers to subpoena witnesses and demand documents from the police. The Police Integrity Commission in New South Wales (Australia) has wide powers to be issued with search warrants, to compel the production of documents, require the attendance of witnesses, and to ensure witness protection.



Source: CHRI

As well as conducting independent investigations, civilian oversight agencies can also be an important source of information on police practice, and some like the ones in South Africa, England and Wales, Northern Ireland and New South Wales analyse the data culled from the public complaints to recommend systemic changes in police organisations.

3. Sufficient resources

While the appropriate powers are critical to making oversight agencies effective, they are not enough without the right resources. The success of an oversight body depends not only upon receiving adequate funding, but also on having an appropriately skilled staff.

Irrespective of the number of staff an oversight agency has, it is never going to be able to conduct investigations into all complaints against the police. Indeed, some agencies such as the Police Complaints Authorities in Jamaica and Guyana, and the National Police Commission in Sri Lanka delegate all cases of complaints investigation to the police. While it is undesirable for oversight agencies to hand over all investigations to the police, pressure of work means that nearly all oversight agencies rely to some extent on the police to conduct investigations.

This is not necessarily a bad thing – not the least because police discipline is primarily a police responsibility – but it needs to be managed carefully if public confidence in the complaints system is to be retained.

Most agencies, including the ones in New South Wales have a system for categorising complaints, and retain powers to investigate those that are either serious in nature (those involving deaths, torture, or racial bias) or involve public interest. Even with respect to the cases that are delegated to the police, these Authorities tend to closely supervise investigations by the police, so as to ensure impartiality of police investigations.

4. Follow up on recommendations

Characteristically, the complaints agencies make recommendations to police chiefs/executive, who are

responsible for ensuring discipline within the police organisation. Best practice shows that some powers to monitor police implementation of recommendations are necessary for the success of an independent civilian oversight agency. Public reports that have to be responded to publicly, either by the police chiefs or the concerned Minister in Parliament, ensure that the police and government do not simply ignore the recommendations of the independent agency! Sadly, most of the police complaints agencies in the Commonwealth lack such powers to follow up and the police may thus choose to disregard their recommendations.

Successful agencies like the Police Integrity Commission in New South Wales are empowered to seek a report about action taken by the police in response to its recommendations on systemic change, or about complaints matters investigated by the police.

Where the police have failed to comply with the Commission's directions, the Commissioner must explain why. This approach has been successful in delivering results: of the 56 recommendations made by the Commission in 6 different reports prior to the 2002-2003, 52 recommendations (92.3%) were supported by the New South Wales Police and 44 of these had already been implemented.

Civilian agencies that are solely dedicated to dealing with complaints against the police have been the most successful in holding the police to account. However, where resources do not permit the establishment of a dedicated agency to focus only on the police, bodies such as human rights commissions and ombudsman with wider human rights or good governance mandates can play a valuable role in improving overall police accountability.

Experts argue that creating a division within these multifaceted bodies, which is solely dedicated to dealing with the police (and has all the four features described above), would be most effective. In either case, political will and strong leadership of both the police and the independent bodies is essential to develop an accountable and responsive policing system. ■

Legalising Corporal Punishment in Botswana

Dr. Murali Karnam

Consultant, CHRI

The Government of Botswana introduced the Customary Courts Amendment Bill in December 2004 to revise the existing Penal Code. The Bill proposed among other things corporal punishment to male convicts under 40 years of age. It provides for corporal punishment to those who fail to pay court fines and is seen as an alternative to imprisonment. The Bill empowers the Chiefs of the Customary Courts to administer public flogging on offenders committing minor infractions.

Interestingly, the support for corporal punishment was so large that voices against the Bill were barely heard. Between the introduction of the Bill in December 2004 and its approval in April 2005, the whole debate in Botswana revolved around the exclusion of women from the purview of the Bill; expansion of age limit of the convicts from 40 to 50 years and the number of strokes the offenders can be subjected to. The result now is that offenders up to the age of 50, including women, can be sentenced to flogging ranging from 4 to 6 strokes.

This piece of legislation reflects a complete disregard by the Botswana government to the provisions of its own Constitution, one which guarantees its citizens the right not to be subjected to inhuman treatment or torture under Article 7 in Chapter 2. This amendment is also in contravention of Article 5 of the Universal Declaration of Human Rights (UDHR) and Article 7 of International Covenant on Economic, Social and Cultural Rights (ICCPR), to which the Republic of Botswana is a signatory, both of which prohibit torture, cruel, inhuman or degrading treatment or punishment.

Traditionally, Botswana has supported corporal punishment as a way of meting out justice to the

offenders. Defenders of the amendment have claimed that the legislation is an attempt to revive traditions. They also claim that corporal punishment, as an alternative to imprisonment, will reduce overcrowding in prisons, which is at a whopping rate of 160 percent.

They also argue that the punishment is a good deterrent as public flogging is embarrassing and humiliating to the recipient. Another argument posed is that forced confinement is no less torturous than infliction of direct pain.



Corporal Punishment

Botswana, which signed and ratified the Convention against Torture on 8 September 2000, should (have according to Article 2 of the Convention), legislated against the traditional forms of corporal punishment. The Convention does not allow the state to justify torture even in the context of state of war and internal political instability.

The physical and psychological torture that public flogging subjects the offender to, can scar him/her permanently and estrange him/her from the society. Sufficient research has gone into the negative implications of brutal forms of punishment on the public. The state as the protector of law and order in the society cannot impose cruel and inhuman punishments and demean offenders who are after all still a part of the society.

Many Commonwealth countries unfortunately continue to use the excuse of tradition and culture to lend legitimacy to authoritarian regimes and practices. Flogging and such corporal punishments receiving public sanction and state approval is dangerous. The remedy has become more lethal than the disease. ■

Justice Still Elusive: The Grenada 17 Case Study

Allan Scott

Human Rights Activist

As twenty two years pass on, human rights organisations across the Commonwealth are calling on the Government of Grenada to redress the injustice of the unfair trial inflicted on 17 political prisoners known as the Grenada 17. Amnesty International in their new report entitled *The Grenada 17: Last of the cold war prisoners?* concluded that the trial was fatally flawed and failed to meet the required international standards. “The Grenada 17 cannot continue to be incarcerated on the grounds of a conviction that was obtained via a process that was a gross violation of international standards governing the fairness of trials,” stated the report.

Background

In October 1983, a violent confrontation involving high-ranking members of the ruling New Jewel Movement, army officers and others, led to the killing of the Grenadian Prime Minister Maurice Bishop and some of his supporters. Six days later, the United States of America led an invasion of Grenada, citing concerns around the safety of its citizens on the islands among other reasons. Numerous people were detained by the invading forces in connection with the October killings.

The Grenada 17 trial took place in an atmosphere of hostility and resulted in 14 being sentenced to death and 3 to long terms of imprisonment. The death sentences were commuted a few years later.

Areas of concern

Putting the spotlight on the trial again, has raised grim concerns about the purpose and the damning conclusion of the incident.

1. The prisoners have time and again voiced complaints on being tortured repeatedly by the detaining forces after they had been imprisoned in Richmond Hill. On questioning, the authorities have kept silent on the issue raising comments that the Grenada 17 is a precursor to the Guantanamo Bay abuses.
2. The selection of the jury was fraught with irregularities that contravened accepted legal protections and the laws of Grenada. The court removed the long standing Registrar and dismissed his jury pool, and replaced him with Ms Denise Campbell who was a member of the prosecution team. The jury was picked without any probe for prejudice and no defendant or defence counsel was present during the selection process. Prior to selection, the prospective jurors had made hostile remarks about the defendants and their legal representatives raising doubts on their impartiality.
3. The 17 were denied access to numerous documents that had been seized by US forces that were essential to their defence. When the US refused to return them, no action was taken by the trial judge to secure their production. The judge went on to rule that the documents were not strictly necessary for the defence. Some of the defendants also had legal documents they were preparing in their cells removed by the prison authorities in violation of their right to prepare a defence in confidence.
4. The prosecution case depended heavily on the questionable testimony of one witness, Cletus St Paul. In the May-June 1989 session of the appeal hearing, Clarence Hughes QC told the court that he had information that some or all of the three statements that St Paul had given to the police

contradicted his evidence at the trial and at the preliminary hearing. Although the prosecution was under a legal duty to disclose these statements to the defence, at the trial the defendants were never advised that these statements existed.

5. The trial court was deemed unconstitutional, and as a result, the 17 withdrew from the trial in protest against an unconstitutional court.

The case as it stands now

The Grenada 17 appealed on the points raised above and also on the basis of the Amnesty International's findings, however, the appeal court was content to confirm the original trial verdict which would have resulted in many of the 17 being executed. How did the court of appeal justify the gross violation of international standards governing the fairness of trials?

Nobody knows, as the judgement has never been made available. There is certainly no clue available in the oral verdict of the Court, which was described by Ramsey Clark, a former US Attorney General, as "wholly political in context and tone, including no consideration of the facts and law that made the entire proceedings illegal. False in it's finding of fact and a corruption of justice."

There is a reference in a report to Washington dated December 1989 to a discussion between Sir Frederick and the US Embassy in Bridgetown, and in January 1981 the reason for the postponement of the appeal decision is explained. The US political officer was told that the postponement was necessary so that the written decision of the Appeal Court would be available at the same time as the oral announcement of the decision.

The Appeal Court had planned to announce its decision prior to the distribution of the written decision. However, the dismissal of an appeal decision from another Commonwealth country (Malaysia) was brought to the attention of the court. The Malaysian appeal court had delivered an oral decision in a separate sitting from the presentation of the written decision, and a higher court had dismissed the decision and ordered a re-hearing of the appeal.

What is equally disturbing is that one of the released documents indicates that all of the documents taken by the US following the invasion were subsequently microfilmed and the originals returned to the Government of Grenada prior to August 1985. It is stated that the Commissioner of Police, Cosmus Raymond, confirmed that the Royal Grenada Police Force has custody of the documents at police headquarters.



Grenada Islands

Source: Google Images

This shows that the documents needed by the 17 for their defence were actually in Grenada well before their trial ended, yet they were never made available to the defence either at the trial hearing or for their appeal. If there is any grain of truth in the statements of the political officer then there has been blatant political interference in the judicial process.

Requests sent to the Grenadian Prime Minister Dr. Mitchell, to set up an independent judicial review have fallen on deaf ears. If the government is unwilling to hold a fresh trial under the circumstances the only alternative is to release the prisoners. Civil society demands no less! ■

UN Special Rapporteurs to Give Fillip to Struggle for Dalit Rights

Rahul Kumar

Deputy Director, One World South Asia

The recent announcement by the annual United Nations Commission on Human Rights (CHR) to appoint a Special Rapporteur to tackle the entrenched problem of caste-based discrimination is a shot in the arm for activists fighting for the rights of the Dalits, the oppressed classes, in India. The two rapporteurs, will undertake a three-year study to draft a set of principles and guidelines to eliminate this form of discrimination.

The Convener of the National Conference of Dalit Organisations (NACDOR) Ashok Bharti applauded the development, saying that, “For the first time the world community has accepted caste discrimination in India as a relevant issue. It clearly shows that the UN realises that discrimination exists in South Asia and is an important issue to be dealt with.”

It has been a long and torturous road for Dalit activists who have been reaching out to the international community, particularly the UN, for decades. It was taken up in the early 80s when Dr. Lakshmi Narain Berwa gave a testimony before the UN: on behalf of the Dalits – Knocking for Human Rights: Persecution of Untouchables is no Internal Problem of India.

The World Conference On Racism (WCOR) in South Africa in 2001, better known as the Durban Conference, put a global spotlight on casteism in India.

The National Campaign on Dalit Human Rights (NCDHR) raised the issue of caste-based discrimination at the Durban Conference and found that the Indian government had tried to brush away casteism as an internal matter. It also sought to underplay the existence of caste-based discrimination and tried to hide behind various constitutional provisions that uphold the rights of the oppressed people in India.

“The Vienna Declaration of 1993 declares that any violation of human rights in any part of the world is an international issue. It was then that we realised that such a discrimination exists not only in India but also in many other parts of the world, including Japan, Brazil and even African countries,” said Dr. Umakant, Advocacy Secretary, NCDHR.

The appointment of the Rapporteurs could not have come at a more opportune time because globalisation and economic reforms have hit the poor hard. These people are at a disadvantage, they lack opportunities and they have been left behind even as other sections have benefited from these economic changes.

The Rapporteurs need to take the time to evolve a common statement by all civil society and political stakeholders and formulate a strategy in a participatory way. This strategy should look at providing access to education, skills and employment. These are politically loaded issues which means that neutrality and impartiality is vital.

With the expectations of organisations and activists rather high, the two Special Rapporteurs - Prof. Yozo Yokota from Japan and Prof. Chin Sung Chung from South Korea – have quite a job cut out for them. Since 2000 the UN has undertaken at least three studies on discrimination and then decided to conduct a full fledged study in August 2004 and to prepare a guideline in eliminating discrimination. The Sub-Commission on Promotion and Protection of Human Rights, which is headed by eminent Indian lawyer and former Attorney General Soli Sorabjee, recommended the setting up of two special rapporteurs to the Commission on Human Rights. A positive step forward has been taken, what remains to be seen is whether this will culminate positively as well and make a difference to the lives of Dalits. ■

Moral Policing or Moral Terrorism

Duhita Das

Former Consultant, World Health Organisation

April has been a busy month for the self-proclaimed moral watchdogs of Indian society to reinforce restrictions on basic freedom and rights guaranteed by the Constitution of India.

On 31 March 2005, the state government of Maharashtra ordered the immediate closure of dance bars all over the state, barring Mumbai. There are reportedly 75,000¹ women working in the dance bars of Maharashtra, where customers are served alcohol while the women dance to film music. The Government requires these dance bars to obtain an entertainment licence before they start operating.

While the Maharashtra Government has defended its action purely on legal grounds, saying that a lot of these bars don't have licences, it is well known that the bars have been closed as they are seen as morally corrupting the fabric of society. What has conspicuously been overlooked is the human rights of the women who join these bars to earn not only a living for themselves but also for their families.

There has been no directive placed on the rehabilitation of the employed women in the bars. These women come from all over India, Bangladesh and Nepal and have little or no formal education. They are either tricked into the profession or coerced due to economic reasons. Those willingly employed don't see it as a permanent career path but a means to earn quick money.²

Moral policing has been on the rise in India. Sections of the civil society have demanded explanations from the government on this latest move, some even organising rehabilitation measures. The greater challenge however, is to counter the society's stigmatised attitude towards the women. What is horrifying is that these attitudes have fertile breeding grounds in the minds of high profile members of the

government who have been democratically elected. The Indian Express, a leading national daily, reported Maharashtra Home Minister Mr. R.R. Patil making comments to the effect that women employed at these bars were a *security threat* to the state and to the country as a whole.

The 'security threat' looming over the country as specified by the leaders of the country has also extended itself to sex work. Like sex workers, the profession of the women employed at bars is not legalised leaving them highly vulnerable. They therefore have no support from law-enforcing authorities and receive no health or other benefits in case they come to harm of any kind. From time to time, there have been reports of "rescue operations" conducted by the state. This may be termed as good intention if only one assumes that the sex workers see it as being rescued. Methods used as rescue operations are also questionable with little or no follow up on the women who have been rescued.

The Sonagachi project in the eastern part of Calcutta, West Bengal, India is often cited as a successful model case for health workers who counsel/train sex workers battling sexually transmitted diseases among sex workers. The organisers explain: "From the very beginning there was no attempt to 'rescue' or 'rehabilitate' sex workers. Their capabilities as human beings and workers were recognised and respected. The basic approach of the Sonagachi Project can be summed up as the three 'R's': Respect, Reliance and Recognition.

Women who are working in dance bars being declared a security threat. Sex workers being counted as beggars by the Indian census because their profession is not legalised. It is time we determine, who is more out of line – the law maker or the law breaker. ■

¹ <http://news.indiainfo.com/2005/04/30/3004women-bars.html>

² Rediff news.com

Between International Justice and Domestic Peace

Ejoyi M.C. Xavier

Visiting Fellow, International Centre for Transitional Justice

Northern Uganda has been embroiled in a civil war between the rebel group Lord's Resistance Army (LRA) and the Uganda People's Defence Forces (UPDF) since 1986. Needless to say the level of humanitarian catastrophe has been alarming in the nineteen years of war. The war has ravaged villages, spawned child soldiers, made widows and orphans.

An estimated one and a half million displaced people live in squalid conditions in innumerable camps. Varied approaches have been implemented to bring about stability to the region ranging from peace negotiations, establishment of a national Amnesty Commission and an enduring military campaign.

The peace process has been largely pioneered by Betty Bigombe, former Minister for pacification of Northern Uganda. She first established contact with the LRA leadership in 1994 however, her efforts to negotiate a ceasefire were short-lived owing to reciprocal suspicion from the belligerents. In 1998, the Protestant, Catholic and Islamic leaders in the conflict zone formed the Acholi Religious Leaders Peace Initiative (ARLPI) to campaign for a peaceful resolution of the conflict.

At the risk of being labeled rebel collaborators and government spies the clergymen have been instrumental in establishing contact with the LRA leadership and have successfully lobbied for the enactment of the Amnesty Act in 2000.

Under the Amnesty Law, rebels who denounce violence and report to the authorities are pardoned. Ordinarily, International Human Rights Law cannot be constrained by a national amnesty which amounts to the failure of the State to honor its international commitments. However, given that the rebellion thrives on the use of abducted children made to fight against their will, the amnesty in principle is a plausible undertaking although there are serious flaws in its implementation.

The Law had a time span of six months, but this has been since extended twice. With an ongoing war, a perpetual amnesty policy is not sustainable and may exacerbate the conflict, especially if the rebels are aware that no matter how vile their methods, an amnesty awaits them.

The Government has continued to pursue a military strategy of defeating the rebellion, an approach that compromises the spirit and rationale of the amnesty process. Any workable amnesty in Northern Uganda should be grounded in a comprehensive peace agreement rather than be administered in a piecemeal fashion. Amnesty in this case is a futile exercise as it is susceptible to abuse by both parties - the LRA for perpetuating the conflict and the Government for using it as a political tool.

In December 2003, President Yoweri Museveni decided to refer the situation in Northern Uganda to the International Criminal Court (ICC) for possible investigation of war crimes and crimes against humanity. Created in 2002 by the Rome Statute enacted by the member states, the ICC is a global resolve against human rights violations and mass atrocity in conflict. Seeking to end the era of impunity, the Court has jurisdiction over criminal prosecution of war crimes, genocide and crimes against humanity.

Uganda is among 98 States party to the Rome Statute and has used this opportunity to refer the conflict to the ICC. The government of Uganda was to provide a ground breaking entry point for the ICC to assert its influence on the world stage. Given the scale and magnitude of atrocities committed by the LRA on innocent civilians, the necessity of the ICC prosecution seemed a foregone conclusion. No one in their sound mind would ever deny that the perpetrators of such heinous crimes deserve accountability and punishment for their actions, not just a ritual fair trial. It is not only fair for the victims to demand justice due to them in

court, but is also important so as to restore the sanctity of human rights.

The invitation of the ICC to Northern Uganda has been received with mixed feelings. Many relief and civil society organisations working in Northern Uganda have questioned the rationale of the ICC's intervention in an ongoing war. Such criticism is justified but a rejection of the role of the ICC in entirety is shortsighted. Judicial minimum of a fair trial and due process which include witness protection will be undermined should the trials be undertaken in an environment of fear and suspicion.

Secondly, considering the nature of combatants in the war, what remains unanswered is who will appear in the dock. The conflict has largely been a children's war. It is estimated that 20,000 children have been abducted and forced into the LRA ranks and made to commit atrocities defying their age and free will. In this regard, the children are not only perpetrators but also victims of the war. The Rome Statute exempts minors from prosecution. In fact, a pun in Uganda says that the ICC should now stand for International Children's Court.

However, the exemption of children on moral grounds will not stop us from asking questions. What justice is this to the victims of the child soldiers? Are the victims not entitled to justice, be it redress or prosecution? Here it is also generously assumed that childhood is a permanent attribute. The same individuals who joined the rebellion as children maybe some fifteen-twenty years ago maybe now serve in commanding positions. What decision does the ICC hold for such perpetrators?

Since the precedent of prosecuting perpetrators of war crimes and genocide was set in Nuremberg sixty years ago, international tribunals have been limited to prosecution of the most responsible individuals. The principle of who is at the top has served as a guide to determine the responsibility for crimes against humanity.

This model will most certainly be adopted for Northern Uganda more for convenience and practical considerations than to serve the interest of justice.

The notion that justice ends with the prosecution of a handful of commanders is particularly flawed, pointing to the limitations of the trials. Faced with a hostile public opinion in Uganda, the ICC seems to have rescinded its initial euphoria of wanting to commence investigations of the LRA. The chief prosecutor has been pushed hard to concede that it is not in the interest of justice to investigate war crimes amidst the war. Following a visit to the Hague by a delegation of local, traditional and religious leaders from Northern Uganda, he has suspended the investigations pending the peace process.

Finally, it is perhaps the ambivalence of the ICC on the scope of accused that is poised to undermine its independence in Northern Uganda. The barbarity and crimes committed by the LRA speaks for itself. But there are two parties to the conflict in Northern Uganda. The UPDF has been accused by rights groups of orchestrating violence against innocent civilians; an accusation state officials have vehemently denied.

The UPDF qualifies to be investigated by the ICC on two grounds; first for failing to protect civilians from rebels and worst of all for committing acts of rape, torture and forced recruitment of former rebels as alleged by Human Rights Watch. Whether the ICC will assert its mandate and investigate these allegations in a free and fair way remains to be seen.

The dilemma facing the ICC in Northern Uganda is the one that illustrates the tension that exists between the national peace processes and an international criminal process. Each of the approaches has its own shortcomings, but yet are mutually reinforcing. The scale of the atrocity and humanitarian disaster calls for prosecution of the perpetrators of such crimes.

Yet we also know from history and experience elsewhere that even with the world's resources at disposal, trials in situations of mass atrocity still remain inadequate. Other approaches, traditional and non-judicial, should be explored to complement the work of the ICC in Northern Uganda. A proper sequencing of these approaches may actually hold the key to resolving the apparent tension between international justice and domestic peace processes. ■

CHRI Calendar

CHRI Headquarters

March 2005

Participated in a workshop on a Commonwealth Human Rights Curriculum organised by the Commonwealth Secretariat at Nasik, India.

Resource person attended the national seminar on the RTI Bill and citizens' experience of using RTI laws, organised by the Department of Political Science, Mohanlal Sukhadia University in Udaipur, India.

Resource person attended national symposium on the Right to Information: Towards Access and Participation, organised by the Kenya Human Rights Commission, Nairobi, Kenya.

Organised a two-day Media and Police workshop in collaboration with the Press Institute of India, New Delhi, India.

Organised a workshop on Prison Reforms, Hyderabad, India.

Organised a workshop on Police Reforms in collaboration with Barkatullah University, Bhopal, India.

April 2005

Presented to a regional conference on the South Asian Treaty Bodies

Programme organised by Law and Society Trust, Colombo, Sri Lanka.

CHRI participated in a workshop organised by the Commonwealth Parliamentary Association, in collaboration with the UNDP, for national Solomon Islands MPs, Honiara, Solomon Islands.

May 2005

Participated in consultation of Forensic Experts on basic Human Rights issues organised by Asian Human Rights Commission, Hong Kong.

CHRI with YASHADA (Yashwant Rao Chavan Academy of Development Administration organised a workshop on "The Right to Information and the Media: Past Experiences and Future Possibilities at YASHADA, Pune, India.

Organised a conference on "Effective Implementation: Preparing to Implement the new India Right to Information Law", New Delhi, India.

CHRI London Office

May 2005

CHRI Trustee Committee met in London to further CHRI's networking and programme strategies.

CHRI Africa Office

March 2005

Collaborated with TV3 broadcasting network in celebrating the Commonwealth Day, Ghana.

Invited as a Special Guest to speak on 'The role of the Church in upholding Human Rights', by the Living Faith Ministries International, Accra, Ghana.

Presented on the Right to Information Bill at a discussion organised by the Center for Environmental Law and Development at the KAMA conference center in Accra, Ghana.

Attended the official launch of Commonwealth Magistrates & Judges Association (CMJA 2005) held at the Supreme Court, Accra, Ghana.

April 2005

Spoke on "The Right To Know: The Role of The Media and Freedom of Information" at the Pan African Forum on the Commonwealth (Latimer House) Principles on Accountability of and the Relationship between the Three Branches of Government, held in Nairobi, Kenya.

Presented two papers at a seminar organised by International Center for Enterprise and Sustainable Development, on "Good Governance and The Rule of Law."

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 **Design :** Anshu Tejpal, CHRI

Acknowledgement : Many thanks to all contributors.

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

Members : Ms. Anu Aga, Mr. K.S. Dhillon, Mr. 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.**

Printed by _____