

# Commonwealth Human Rights Initiative



# Newsletter

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[www.commonwealthpolicewatch.org](http://www.commonwealthpolicewatch.org) for  
CHRI's Electronic Magazine,  
'Commonwealth Policewatch'.

## The UN Human Rights Council: Where Do We Go from Here?

- **Andrew Galea Debono**  
*Consultant, CHRI*

Last year, United Nations Secretary General Kofi Annan had a dream: to see a major overhaul of the main UN human rights mechanisms in order to make them more effective. His report, "In Larger Freedom", proposed a number of drastic and important changes, and was presented to the world leaders during the New York summit in September 2005. It was an important and timely document, but many politicians around the world were not so delighted by the prospect of changing a situation which was convenient for them: a new strong human rights body for the UN would step on too many governments' toes.

Despite this resistance, it was nevertheless obvious that the old and ineffective Human Rights Commission needed to be significantly changed. The resulting draft resolution proposed a new Human Rights Council, but one that was a watered-down version of what Annan had envisioned. On 15 March 2006, the General Assembly of the United Nations adopted the draft resolution that created the Human Rights Council in replacement of the Commission. While the new Council has been welcomed by many, other observers remain skeptical about the true effectiveness of these reforms.

The Commission had been frequently accused of being ineffective and not making a true difference in countries facing a major human rights crisis. In all fairness though, the Commission did contribute certain positive measures during its existence - such as giving the world the Universal Declaration of Human Rights and other instruments of international human rights law. It had also adopted international human rights law standards on thematic issues such as children, torture and minorities. On the other hand, the Commission had shamefully failed to act during the genocides in Rwanda, Burundi and the former Yugoslavia.

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A key advancement of the Council was meant to be the new election procedure for members. This procedure aimed at preventing the election of major human rights violators such as Zimbabwe, Libya or Sudan which had previously been members of the Commission and had created obstacles for its effectiveness. The 47 members of the Council were elected on 9 May 2006, directly and individually in the General Assembly by secret ballot. Candidates needed to win an absolute majority of at least 96 votes, which stood in contrast to Kofi Annan's proposal of a much safer two-thirds majority vote to better exclude major human rights violators.

Unfortunately, this hope received a bad blow when a number of countries with a worrying human rights track record were elected. While no country is perfect, certain countries have proven to be particularly serious and persistent violators. Countries such as China, Saudi Arabia, Cuba, Sri Lanka, Cameroon, Pakistan, Tunisia and Bangladesh all have very negative human rights records and have recently been harshly criticised by the international community. For example, until recently Pakistan was suspended from the Commonwealth for not abiding by the Harare Principles, which includes human rights. According to Freedom House's annual survey of political rights and civil liberties, together with the global press freedom index of Reporters Without Borders, 47% of the countries on the new Council failed to meet accepted democratic standards. Whilst this is an 8% improvement over the old Commission, it is still not a big enough improvement to put anyone's mind at rest. Another worrying fact is that more than half of the nations on the Council have voted at the UN to oppose resolutions protecting the victims of the Darfur atrocities. There is a fear that countries with a poor human rights record will hinder the work of the Council in an attempt to cover up their own wrongdoings.

Apart from those that are guilty of serious violations, we also find members of the Council with appalling records of submitting reports to international treaty-monitoring

bodies – an indication of poor commitment to the international human rights regime. Bangladesh, for instance, has not submitted a report to the Committee Against Torture since it ratified the torture treaty in 1998 and Cameroon has eleven reports pending, many overdue for years. Sadly, these are just a few of the examples. Members of the Council also include countries like Malaysia that have shown little regard for the international human rights system by ratifying so few of the core human rights treaties.

Of course it is useless to cry over split milk and limit ourselves to an expression of disappointment over the elections. It is now vital to look ahead and see what can be done now that the member countries of the Council have been determined. The Council can still be an important body for the protection of human rights and its new monitoring mechanisms can improve the human rights situation in even the most worrying of member countries. It is the role of civil society and the public to ensure that this occurs.

When putting forward their candidacy, each country made a pledge in which they declared their present and future commitments to human rights. These pledges can now be used by civil society to scrutinise their performance in the field of human rights. In this respect, it should also be remembered that the General Assembly can suspend any member country that commits gross and systematic violations of human rights – a possibility that should not be taken lightly since it would cause great humiliation for any country. Members of the Council have also committed themselves to cooperating with the Council and its various mechanisms, which includes granting unimpeded access to UN human rights investigators.

In addition, a new universal review procedure will scrutinise even the most powerful countries, which - as long as the process adopted and its enforcement is effective - may induce countries to act more diligently than before. Therefore, when the Council convenes its first session on 19 June, it is imperative that it develops a strong universal review procedure that will provide neutral,

objective scrutiny of human rights in all countries, and put forward appropriate conclusions and recommendations. It is also important that politics are not allowed to affect the work of the Council and its decisions and that civil society is given adequate space to function.

Other changes include that the Council is a subsidiary body of the General Assembly rather than of the Economic and Social Council, and has 47 members where the Commission had 53. The Council will meet for a longer period of time and more frequently – at least three times a year for ten weeks as opposed to the Commission’s single annual six-week meeting. With agreement of one-third of the Council, additional sessions can also be called. There is still concern, however, that the Council might not have enough time to thoroughly fulfil its duties,

particularly if all members’ human rights commitments are to be thoroughly and regularly scrutinised.

Despite all concerns, there is still hope that the new Council can work effectively and improve the lives of millions. Its performance must be scrutinised and its members carefully monitored. We have been given a chance to start again and must not let the Council evolve into another ineffective international body. It is now vital for civil society to grasp this opportunity and push for the building of a concrete and effective Council.

*Please also note CHRI’s press release “Fresh paint over the same old cracks: Empty promises as candidates line up for the Human Rights Council” is available in the ‘Whats New’ section on our website.*



## Countries Elected to Human Rights Council

The following is the complete list of the 47 newly elected members to the Council. In the future all members will serve for a three year period, but for the first term, membership will be for 1, 2 or 3 years, which was chosen at random:

**African States:** Algeria (1 year), Cameroon (3 years), Djibouti (3 years), Gabon (2 years), Ghana (2 years), Mali (2 years), Mauritius (3 years), Morocco (1 year), Nigeria (3 years), Senegal (3 years), South Africa (1 year), Tunisia (1 year) and Zambia (2 years)

**Asian States:** Bahrain (1 year), Bangladesh (3 years), China (3 years), India (1 year), Indonesia (1 year), Japan (2 years), Jordan (3 years), Malaysia (3 years), Pakistan (2 years), Philippines (1 year), Republic of Korea (2 years), Saudi Arabia (3 years) and Sri Lanka (2 years)

**Eastern European States:** Azerbaijan (3 years), Czech Republic (1 year), Poland (1 year), Romania (2 years), Russian Federation (3 years) and Ukraine (2 years)

**Latin American & Caribbean States:** Argentina (1 year), Brazil (2 years), Cuba (3 years), Ecuador (1 year), Guatemala (2 years), Mexico (3 years), Peru (2 years) and Uruguay (3 years)

**Western European & Other States:** Canada (3 years), Finland (1 year), France (2 years), Germany (3 years), Netherlands (1 year), Switzerland (3 years) and United Kingdom (2 years)

The **13 Commonwealth countries** elected to the Council are: Cameroon, Ghana, Mauritius, Nigeria, South Africa, Zambia, Bangladesh, India, Malaysia, Pakistan, Sri Lanka, Canada, and the United Kingdom.

# A Time for Change – The UN Decides to Reform Itself

**Andrew Galea Debono**

*Consultant, CHRI*

Changes to the United Nations Human Rights System can be positioned within broader reform. Reforms to make the UN more efficient and effective have been on the agenda for a long time. Secretary-General Kofi Annan had talked about his intention to bring about change during his acceptance speech when taking office in 1996. Since then, he has published several reports dealing with reform, which contain various proposals to be taken into consideration. The first report on this issue came out in 1997 and was aptly called ‘Renewing the UN: A Programme for Reform’. However, things only really started moving forward when, in September 2000, 147 Heads of State met at the Millennium Summit and developed the Millennium Development Goals, which are to be achieved by 2015.

The next major step came at the World Summit of September 2005, where Annan presented his latest report called ‘In Larger Freedom: Towards Development, Security and Human Rights for All’. This report led to a discussion on several reform proposals, as well as commitments to strengthen the General Assembly and the Security Council. The two main proposals were the replacement of the Commission on Human Rights with a new Human Rights Council and the establishment of a Peacebuilding Commission, as well as the establishment of an Ethics Office. Other changes to the UN with relevance to human rights include establishing the UN Democracy Fund in 2005.

So far, the General Assembly (GA) has not been targeted by any major reforms, except for the intention to strengthen the role and leadership of its President and to increase coordination between the GA and other principal organs of the UN. Unfortunately, Kofi Annan’s proposal that the GA’s engagement with civil society should be improved was not taken into consideration. The decision to double the budget for the Office of the High Commissioner for Human Rights (OHCHR) was a positive move that is expected to help the OHCHR be more effective in its work. This increase in budget, which has been proposed by the High Commissioner’s Plan of Action, is to take place

over the next 5 years and has received the commitment of the Heads of State at the last World Summit. The OHCHR has also proposed a unified standing treaty-monitoring body, which would incorporate all the seven existing treaty bodies. The idea behind this proposal is to ease the reporting burden of States and to overcome other problems such as the treaty bodies’ ability to ensure that countries do in fact hand in reports. So far nothing has come from these proposals since the main focus has been on creating the new Human Rights Council. Nevertheless, the High Commissioner is still gathering proposals on all treaty bodies currently in existence to see how they can be rendered more effective.

A proposal which is soon to become reality, and which will benefit the field of human rights, is the creation of an intergovernmental advisory body called the PC. It is expected to start functioning soon after both the Security Council and the GA adopt identical resolutions on its establishment. The PC has been mandated to advise and propose integrated strategies for post-conflict recovery, focusing attention on reconstruction, institution-building and sustainable development in countries emerging from conflict. The Commission will take advantage of the UN’s competence and experience in conflict prevention, mediation, peacekeeping, respect for human rights, the rule of law, humanitarian assistance, reconstruction and long-term development.

While many were hoping for more sweeping reforms, particularly with regards the Security Council and the General Assembly, the current reform process has brought about a handful of positive changes, as well as a number of interesting proposals which are being taken into consideration. Although the main positive developments have been the establishment of the Peacebuilding Commission and the Human Rights Council, other measures such as doubling the budget of the OHCHR and the proposal to improve the treaty bodies are also expected to reap benefits for human rights in the long run. During a time of change, it is possible to look ahead with optimism but it is also vital to work hard to ensure that the reforms taking place will be as effective and meaningful as possible. ■

# Parliamentarians for National Self-determination: British Group's Inaugural Conference Courts Controversy

**Katherine Phillips**

*Freelance Researcher*

**O**n 11 May 2006 the British Houses of Parliament saw the inaugural conference of a new cross-party group, Parliamentarians for National Self-determination (PNSD), which is chaired by the first British Muslim to be appointed to the House of Lords. Lord Nazir Ahmed of Rotherham, was born in Kashmir, grew up in the north of England and was appointed to the House of Lords as a Labour Peer in 1998.

Among PNSD's self-stated aims is 'to intervene on behalf of those peoples and individuals who are persecuted for advocating self-determination and defend their democratic rights, including that of free speech in pursuit of claims sanctioned by international law'. The inaugural conference was held in collaboration with the Unrepresented Nations and Peoples Organization (UNPO). The UNPO is based in The Hague and aims to provide a forum for those groups that lack representation at an international level and its General Secretary, Marino Busdachin, gave a keynote speech at the 11 May conference in London.

In addition to Lord Ahmed and the group's administrative secretary, Ranjit Singh Srail of the British Sikh Federation, representations were also made on behalf of as many other national causes as could be fitted into the short three-hour timeframe. Speeches became impassioned with so many requests to speak that Lord Desai had to introduce a strict time limit to enable as many speakers as possible to be heard, albeit very briefly.

Among the delegates were representatives of groups such as Sikhs, Kosovans, Nagas, Manipuris, Tamils, Kashmiris, Kurds and Assamese. Support from national causes closer to home came from Welsh and Scottish Parliaments, a Conservative Member of the European Parliament and the Chairman of the Liberal Democrats who reminded the conference of the importance of supporting causes to the limits of peace, saying that the group should not personalise nor localise the cause as no one nation state should be seen as the villain.

Those present voted on a draft resolution circulated by the conference organisers. This 10-point document was not carried unanimously with two votes against it. Amongst other things it noted the right to self-determination as a fundamental human right, that allowing the exercise of this right be seen as a means of conflict resolution, and called for unconditional talks to resolve outstanding national disputes. More controversially it also noted its disappointment at the election of India to the recently created Human Rights Council of the United Nations and urged the blocking of India's attempt to obtain a permanent seat on the Security Council. Stemming from this, some media sources have already claimed that PNSD exists solely for the purpose of targeting India, which has many unresolved separatist claims. It has also been argued that Lord Ahmed's Pakistani antecedents call into question the group's impartiality *vis-à-vis* India.

It would be a great shame were the organisation to lose credibility at this early stage. PNSD can effectively counter any suggestion that India has been singled out in this way by providing a platform for groups from all around the world. Its future strength will lie in highlighting the universality of human rights abuses and the common ground which exists between groups, however unique, seeking measures of self-determination in all parts of the world.

It is common for states to attempt to hide the conflicts raging within their borders from outside scrutiny on the grounds that to do otherwise would be bad for business. PNSD is working to convince such states that they have nothing to lose by acknowledging the claims of aspiring nations within their borders; claims with historical roots. Progress in the many outstanding national disputes will only be achieved if, like Santayana, we remember that those who cannot remember the past are condemned to repeat it. A forthcoming conference, again in collaboration with UNPO, is planned to continue the process. ■

# Contempt of the Constitution: Disregard for the Rule of Law and its Impact on the Ethnic Conflict in Sri Lanka

Kishali Pinto-Jayawardena

The 17th Amendment to Sri Lanka's Constitution was unanimously passed in Parliament in 2001 to stipulate independent supervision over important appointments in public service. Hailed domestically and regionally, this constitutional amendment mandated a process of appointments to several key commissions and offices through approval by a 10-member Constitutional Council (CC).

The intervening authority of the CC was an external check over what had earlier been unrestrained presidential fiat in the appointment process. Its composition envisaged a process of consensual decision making by the constituent political parties in Parliament.

Five members of high integrity and standing were jointly nominated (taking into account minority concerns) to the CC by the Prime Minister and the Leader of the Opposition. One member was nominated by the smaller parties in the House, which did not belong to either the party of the Prime Minister or the Leader of the Opposition. All these appointed members held office for three years and could only be removed on strictly mandated grounds. Any individual appointed to fill vacancies in the CC held office for the un-expired duration of that term. The President had the authority to appoint a person of his or her own choice and any person succeeding that particular vacancy held office for the full period of three years. The rest of the CC comprised of the Leader of the Opposition, the Prime Minister and the Speaker of the House *ex officio*.

The 17<sup>th</sup> Amendment was implemented to some extent only during three short years, namely 2002 to 2005. What Sri Lanka witnessed thereafter was its systematic downgrading and devaluing.

## The Breaking Down of the 17<sup>th</sup> Amendment

Early tussles between the CC and the Executive Presidency were witnessed by the then President, Chandrika Kumaratunge, refusing to appoint the Chairman to the Elections Commission (EC) who had been nominated by the CC.

The other new independent National Police Commission (NPC) was hampered at every turn by politicians who took umbrage at its efforts to prevent

political transfers of police officers prior to elections. Astonishingly, government politicians proposed in 2005 that the Inspector General of Police should form part of the NPC despite the fact that this would obviously negate its independent character. These were only precursors to a far more serious attack on the Constitution.

After the terms of the six appointed members to the first CC expired in March 2005, the vacancies were never filled. Chaos was created thereby. The term of office of the Public Service Commission (PSC) lapsed by late 2005 and five members of the seven member NPC relinquished their office due to expiry of their terms.

However, no new appointments were made as the CC itself had not been constituted. The Cabinet of Ministers therefore decided that the responsibilities of the NPC and PSC could be assumed by the Inspector General of Police and by the Secretaries of Ministries/ Heads of Departments respectively. Public uproar resulted on the basis that this was precisely the mischief that the 17<sup>th</sup> Amendment had set out to remedy.

Further controversy followed when, in early 2006, two senior judges of the Supreme Court (constituting the Judicial Service Commission along with the Chief Justice as the Chairman) resigned their position citing grounds of conscience. The widely held perception was that the resignations were due to differences with the Chief Justice whose disciplinary actions in regard to judges of the subordinate courts had been challenged as being arbitrary.

The National Human Rights Commission also lapsed in March 2006 and with that, the 17<sup>th</sup> Amendment became a virtual dead letter.

The failure to fill the vacancies in the CC was apparently due to one single factor: the deliberate delay on the part of the smaller political parties in Parliament, not belonging to the party of the Prime Minister or the Leader of the Opposition, to agree by majority vote on the one remaining member that would complete the CC.

However, on his own part, Chandrika Kumaratunge's successor, President Mahinda Rajapakse, also refrained

from making the appointments of the five nominations jointly sent to him by his own Prime Minister and the Leader of the Opposition. If the five nominations had been appointed, as indeed, the President is stipulated to do “forthwith” once he receives a written communication, (as he had received in this case), then the CC along with its *ex officio* members, could have commenced functioning. The quorum of the CC, as specified in Article 41E(3) of the 17<sup>th</sup> Amendment, is six members.

### **Committing Contempt of the Constitution**

Despite the absence of the CC, President Rajapakse recently made direct appointments to the NPC and PSC, thus effectively and unconstitutionally voiding the approval powers of the CC. Furthermore, the appointees were predominately supporters and close personal friends of President Rajapakse with only some exceptions.

Moreover, seven new appointments were made to the National Police Commission without the President being properly advised that there were still two serving members of that Commission. With his appointments, the NPC came to be constituted of nine members, two more than the constitutionally stipulated seven members. This caused great embarrassment to the Government.

Presently, the status of the NPC remains obscure with unconfirmed reports that the new appointments have been revoked. The appointments to the Public Service Commission have, however, gone ahead and apparently the Commissioners are now serving in their positions despite calls urging them to resign given the unconstitutional manner of the appointments.

Insofar as the other Commissions were concerned, the Judicial Service Commission also perilously balanced itself on the knife-edge of constitutional propriety by having two acting members appointed by the President. The 17<sup>th</sup> Amendment permits such acting appointments without the approval of the CC but only up to a period of fourteen days. The appointments are not valid beyond the fourteen-day period. Consequently, it is presumed that the acting appointments are being renewed every fourteen days, thus violating the spirit if not the letter of the Constitution.

Prior to its members going out of office, the National Human Rights Commission (NHRC) had delegated its powers of investigation to a committee. But no official recommendations or reports could be released as a result of the non-constitution of the primary body. This

effective crippling of its functioning had serious impact in the Northeast where the NHRC had safeguarded citizens caught in the cross fire between government forces and the Liberation Tigers of Tamil Eelam (LTTE).

On 19 May 2006, President Rajapakse, in line with his other appointments to the PSC and NPC, made direct appointments to the NHRC.

Ironically, two former members of the NHRC, both senior law academics, had declined re-appointment. In their stead, a former judge of the Supreme Court and a retired judge of the Court of Appeal accepted the appointments along with two others who were virtually unknown to the human rights community in Sri Lanka.

The fifth appointee to the NHRC, a senior lawyer, also declined his appointment after continuing protests by civil society organisations who called on all those who had been appointed to resign from their posts.

### **Conclusion**

Currently there are grave concerns that the Government might legitimise the bypassing of the 17<sup>th</sup> Amendment and embark on its own process of expedient constitutional reform. These fears were borne out recently by efforts of the Ministry of Constitutional Affairs to hold seminar discussions on a “new bill of rights for Sri Lanka” without addressing the primary problem of the non-implementation of the 17<sup>th</sup> Amendment. These questions also reflect negatively on Sri Lanka’s newly won seat in the United Nations Human Rights Council, disclosing as they do, basic doubts in regard to the genuine commitment of the Government towards constitutional democracy.

It does not require profound constitutional deliberations to acknowledge the lesson that this holds for the ethnic conflict in the Northeast. Where constitutional provisions regarding governance processes in the South are disregarded so easily by Sri Lanka’s politicians, what is to allay fears of the ethnic minorities that a similar fate may visit constitutional compromises of devolution or federalism as the case may be, at any moment that the Government may find it politically expedient to do so?

Truly, there is no simple answer to this devastatingly quixotic question. ■

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# Manusher Jonno: Spearheading the RTI Campaign in Bangladesh

Sanjida Sobhan

*Coordinator (Governance), Manusher Jonno*

Established in 2002, Manusher Jonno (MJ) now operates all over Bangladesh through its 112 partner organisations. For the last one year, MJ has been facilitating and coordinating with various civil society organisations to promote right to information (RTI) issues in Bangladesh. In 1999, the Commonwealth Human Rights Initiative (CHRI), with the help of Ain O Salish Kendro, a local human rights based organisation, arranged a three-day seminar in Dhaka to analyse the situation in South Asian countries with respect to access to information legislation. Since then, many NGOs, civil society members, media persons, lawyers, and academicians have been involved in promoting issues related to people's right to information but such initiatives have been very scattered and sporadic.

Based on its five broad thematic areas, MJ's partner's activities have been grouped into nine sub-thematic areas with right to information being one of the major sub-groupings. Currently, seven partner organisations are working directly on this topic. Based on its partnership and implementation experiences, MJ feels that access to information is one of the most important issues to address in order to affect change in the lives of people, especially in the disadvantaged and the marginalised sections of the community. MJ also recognises that non-availability of information has not only become a major impediment to implementing programmes undertaken by partner organisations to ameliorate the condition of disadvantaged groups in society, but that it also acts as a hurdle in ushering in democracy and development.

Furthermore, in a country like Bangladesh where violations are rampant and where ordinary citizens have become vulnerable to the failings of the state and the forces of vested interest groups, a legal safety

net is necessary to establish people's right to information, which impacts every aspect of people's life and liberty. MJ, along with its partner organisations, has taken the initiative to bring together all those working on RTI to create a joint force of all efforts that have so far been undertaken.

To get this process underway, MJ has undertaken several initiatives and one of these includes conducting a rapid analysis of the present situation of right to information in the country. The fundamental aim of the study was to understand how people perceive the concept of the right to information, as well as the

perceived barriers and critical areas relating to access to information. The report also looked into who were believed to

be the main actors in promoting access to information in Bangladesh.

The findings of the report revealed that the existing perception about RTI was much more related to freedom of information with respect to the media than right to information as a development tool.

A keynote paper to address the present situation was presented by MJ at a seminar on "situational analysis of right to information in Bangladesh: challenges and realities" on 5 September 2005, where members of diverse civil society groups were present to address the issue. Presiding as the chief guest of the seminar, the Minister for Law, Justice and Parliamentary Affairs agreed that an RTI law was needed and a working paper prepared by the Law Commission was being considered by the Government.

Subsequently, a dialogue session with the lawmakers was held in the month of October during which it was





agreed that a right to information law was the need of the hour for a vibrant democracy. This was followed by a two-day conference titled “Right to Information: National & Regional Perspectives” in December 2005 during which participants from all over South Asia came together to share local, regional and national experiences. The Prime Minister’s Principal Secretary, Dr. Kamal Uddin Siddiqui, who attended the seminar as the chief guest, pledged to do his best for the enactment of the Right to Information Act, which he considers is a must for poverty alleviation and bringing transparency and accountability to the Government.

What is presently most important in Bangladesh is to establish people’s right to information as a fundamental right by establishing a new law. In this context, MJ has developed a network with CHRI to carry on its campaign for an access law in Bangladesh. Together we have undertaken some measures in RTI related issues. For example, MJ will be translating CHRI’s 2003 CHOGM report “Open Sesame: Looking for the Right to Information in the Commonwealth” into Bengali to fit the context of Bangladesh. Also, an intern from MJ has spent ten days training at CHRI in March 2006, which provided MJ with insight on developing campaigns and advocacy strategies.

The current situation in Bangladesh requires that focus be placed on increasing the demand for information requests from the grassroots, as well as from organisations working at the community level. This will help people understand the need for such a law, and to know how and why this law will affect their lives. Most people in Bangladesh are still not aware of this fundamental right, and as such there is an urgent need to raise awareness on the subject. It is only then that one can truly embark on a national campaign for an access regime.

Secondly, the demand for this basic right and advocacy with the Government, decision makers, lawmakers and other stakeholders should go hand in hand. The deep-rooted culture of secrecy amongst government officials and the restrictive rules and regulations have to be removed to ensure open government.

Thirdly, enactment of the law should be done through a wide consultative process so that civil society and ordinary citizens can participate in the drafting process. In this connection, MJ took the initiative to form three core groups comprising academicians, researchers, lawyers, human rights activists, civil society and the media.

A core group for law will review the working paper prepared by the Law Commission and suggest necessary amendments based on the critique of the working paper and maximum disclosure principles furnished by CHRI. A core group for advocacy will plan the campaign targeting the policy makers and the political parties and the third core group will be involved in the mass mobilisation for awareness building, with a view to creating a demand for an access law.

### **Challenges**

In spite of all these efforts, formulating and enacting an RTI Act is not easy. Although it is encouraging that the Law Commission has drafted a working paper on “Right to Information Act 2002”, it is feared that the Act may be ambiguous since there has been no consultation with wider civil society networks and other stakeholders. Avoiding such consultation raises the concern that if other restrictive laws prevail then the Act will ultimately become less effective or rendered completely meaningless. Recently, a leading national daily “The Daily Star” had reported that the Minister for Information himself is unaware of the working paper being prepared by the Law Commission. On the other hand, the Minister for Law, Justice and Parliamentary Affairs said that based on the working paper, his Ministry has prepared a draft Right to Information Act and has sent it to the Information Ministry. It is a pity that the Government has not circulated the draft Act for comments, which only shows the Government’s unwillingness to process the draft into a Bill. However given this scenario, one must not lose hope as 2007 is the national election year for Bangladesh and political parties can advance RTI issues as their political agenda. ■

*Manusher Junno is non-profit, non-political organisation that provides funds and technical support to Human Rights and Good Governance initiatives in Bangladesh.*

### United Kingdom

A recent decision by a UK High Court deemed the exile of families from the Chagos islands in the 1960s and 70s to make way for a US Indian Ocean airbase as “outrageous, unlawful and a breach of accepted moral standards”. The Court ruled in their favour, saying they were illegally removed by the British government and paving the

way for their return to the islands. The Court declared that “the suggestion that a minister can, through the means of an order in council, exile a whole population from a British Overseas Territory and claim that he is doing so for the ‘peace, order and good government’ of the territory is to us repugnant” and that there was no known precedent “for the lawful use of prerogative powers to remove or exclude an entire population of British subjects from their homes and place of birth”<sup>1</sup>. The islanders must now overcome an appeal by the government, as well as UK and US residence vetoes. Lawyers for the islanders had argued that though they could not live on Diego Garcia, which houses the US airbase and is the largest of the 65 islands, they should be allowed to return to the other islands.

<sup>1</sup> [http://www.guardian.co.uk/international/story/0,,1772729,00.html#article\\_continue](http://www.guardian.co.uk/international/story/0,,1772729,00.html#article_continue)

### Australia

Proposed legislation in Australia would mean that all asylum seekers who make it to the Australian mainland will be transferred to remote and isolated offshore detention centres for assessment. This would almost certainly lead to a situation where these asylum seekers are denied legal assistance and the right to an independent appeals process. Immigration Minister, Senator Amanda Vanstone, stated that even people found to be refugees will stay offshore until they are resettled in a third country. Unauthorised boat arrivals and their asylum claims will be treated in the same way whether they land on offshore excise islands or on the mainland. The policy has been described as extreme, alarming and disappointing.

### Kenya

Just after 12.30 a.m. on a Thursday morning in early March 2, masked plain clothes police stormed the printing press of the Standard, a major East African daily newspaper in Kenya, disabling equipment, assaulting staff and lighting massive bonfires of the day’s edition in the streets outside. Moments before, another police squad raided the city headquarters of the paper, and a sister television network, KTN-TV, was breached and pulled off air. It is believed that these raids came as a result of a story carried in the previous weekend’s Saturday Standard regarding an alleged secret meeting between the Kenyan President, Mwai Kibaki, and Opposition Leader, Kalonzo Musyoka. Musyoka has previously been a Minister in Kibaki’s Government and the article reported that the meeting was held to discuss Musyoka rejoining the Government. On the following Tuesday, three Standard journalists involved in the article were arrested and detained in relation to the report. The raids were a further reaction to the report, and were carried out by a notorious police unit known as the Kanga Squad. The raids were a particular shock in a country that has enjoyed a relatively free press. The disturbing response of Kenya’s Internal Security Minister, John Michuki, to local and international condemnation of the raids was, “If you rattle a snake, you must be prepared to be bitten by it”. The raids also revealed a concerning level of political influence over the police, and the ease with which the Government was able to use the police as its own private security force.

### Maldives

Journalist Abdulla Saeed (known as Fahala) was recently sentenced to life imprisonment in another much-criticised verdict following the recent controversial conviction of human rights defender Jennifer Latheef. In the past, Fahala has been critical of the government in his articles. The sentence related to an accusation of “possessing, distributing, and trading in narcotic drugs banned in the Maldives,” under Law 17/77 on Narcotic Drugs and Psychotropic Substances - which carries a sentence of life imprisonment. Fahala claims that the police planted drugs on

him when he was called to a police station for questioning regarding an undisclosed case in October 2005. During his trial, Fahala was reportedly not permitted to present two witnesses who sought to speak in his defence or to take an oath that he had not brought the drugs to the police station himself. Fahala maintains that he is innocent and that the charges against him are manufactured. This incident adds to several other episodes where independent journalists have faced harassment, abuse, and detention in the country.

## Commonwealth

### Malaysia

Following two Royal Commissions into policing over the past two and a half years, the Prime Minister of Malaysia, Abdullah Ahmad Badawi, announced in January 2006 that an independent body to look into complaints against police would be set up “effective as soon as possible”. The body has failed to materialise, despite overwhelming popular support and intense lobbying from the legal and civil society sectors. Malaysia’s first Royal Commission into Policing was put together by the government in December 2003, just ahead of an election. The Commission produced a report setting out 125 recommendations. A key recommendation was an independent police complaints authority, including a draft Bill for immediate tabling in Parliament. The second Royal Commission into

Policing was set up in December 2005 following startling revelations that police had forced a suspect to squat repeatedly, naked, while in detention. The incident was recorded on a mobile phone by a police officer – without the victim’s knowledge – and made its way to the floor of Parliament, where it was aired by an opposition leader. As a result, the second Commission repeated the call for the establishment of an independent complaints commission.

Public anger and community pressure forced the Prime Minister to take action, and he announced the imminent creation of an Independent Police Complaints and Misconduct Commission (IPCMC). The news was received with dismay by many vocal members of the senior police hierarchy and to date no action has been taken to make the IPCMC a reality.

### Uganda

Civil society in Uganda are up-in-arms against the Non-Governmental Organisations (NGO) Registration Amendment Bill 2001, which they claim places undue restrictions on their functioning. The Bill requires NGOs and evangelical churches to renew their registration permits annually and contains a controversial clause that gives security bodies, the Internal Security Organization and External Security Organisation, representation on the NGO Board. The Bill gives the NGO Board powers to deny registry to NGOs opposed to government policy or whose activities are not in the ‘public interest.’ The Bill, which has recently been approved by Parliament, now awaits the President’s signature before it becomes law.

### St. Vincent and the Grenadines

On March 8, the US Bureau of Democracy, Human Rights and Labor released its Country Reports on Human Rights Practices for 2005. The Bureau found that while the St. Vincent and the Grenadines government generally respected the human rights of its citizens, the nation’s police were using excessive force with impunity, leading to widespread human rights violations in the community. An oversight committee monitors police activity and hears public complaints about the police, but is not independent of the government. A high percentage of convictions

in St Vincent and the Grenadines are secured on the basis of a confession. The St Vincent and the Grenadines Human Rights Association states that most confessions were the result of illegitimate police pressure, the use of physical force during detention, illegal search and seizure and the failure to inform an arrested person of their rights. The Human Rights Association goes on to say that the government fails to investigate allegations of these kinds of misconduct or punish the officers responsible.

### Amnesty International Report 2006

Every year, Amnesty International releases a report documenting human rights abuses around the globe. Its 2006 report has just been released and includes information related to 33 Commonwealth countries. The report “highlights the need for governments, the international community, armed groups and others in positions of power or influence to take responsibility. It also reflects the vitality of human rights activists globally, whether in local initiatives, international summits or mass demonstrations.” For more information, please visit their website: <http://web.amnesty.org/report2006/>

# The Dawn of Right to Information in Africa?

**Indra Jeet Mistry**

*Consultant, Access to Information Programme, CHRI*

This 25 May marked the annual celebration of Africa Day. With this year's focus on 'Working Together for Integration and Development', it was a day to reflect back on a year that was meant to mark a watershed for development in Africa. Six years since the proclamation of the Millennium Development Goals (MDGs), it was hoped that the African nations would have made some advances towards meeting the MDGs. However, progress has been, at best, inconsistent, and, at worst, has alarmingly regressed. In July last year, African countries were once more the subject of yet another appeal led by British Prime Minister Tony Blair for Western governments to reinvigorate their international donor commitments to the continent ahead of the G8 meeting of world leaders and at the subsequent UN World Summit in September 2005.



Launch of CHRI's Report on RTI, Open Sesame, in Nigeria, 2003

Yet, despite another year of Africa hitting the headlines for all the wrong reasons, a quiet revolution is taking place in countries across the continent that may at last lay the foundations for political and economic stability, good governance and prosperity. During the last year, officials and human rights activists in Kenya, Mozambique, Malawi, Ghana and even in recently war-torn Sierra Leone have been busy drafting national Freedom of Information Bills. Meanwhile, Uganda became only the fourth African country to entrench a Freedom of Information (FOI) law, when its Access to Information Act 2005 came into force on 20 April 2006.

Freedom of information has long been recognised as a foundational human right, ever since the UN General

Assembly declared in 1946 that "freedom of information is a fundamental human right and a touchstone of all freedoms to which the United Nations is consecrated." However, around the world, only around 60 countries have enacted FOI laws.

An FOI law can help sow the seeds of good governance by promoting government transparency and accountability and also facilitating greater public participation in government decision-making. Empowering citizens with the legal right to access information on government's activities can strengthen democracy by making government directly accountable to its citizens on a day-to-day basis rather than just at election time. Even at election time, an FOI law would ensure that voters have better access to information concerning the government's record in office, allowing them to make a more informed decision at the ballot box. Voters would then be less reliant on political propaganda and rumours and would be less inclined to fall back on their ethnic affiliations when casting their vote.

Freedom of information can also open up channels of communication between civil society and the state. Openness and information sharing can entrench national stability by establishing dialogues between different ethnic groups, as well as between citizens and the state, helping to promote popular trust in the political system. These channels of communication can combat feelings of alienation and reduce the risk of disillusioned sections of the public resorting to violence to promote their political ends. In this way, entrenching an effective FOI law can enable people to be part of the decision-making process and reduce public perceptions of exclusion of opportunity or unfair advantage of one group over another.

By promoting dialogue between citizens and their governments, freedom of information can help to ensure the effectiveness of development and poverty alleviation strategies and thereby bolster efforts to meet the MDGs. Much of the failure of development strategies to meet the MDG targets has been because

governments and donors have designed and implemented policies without the active input of the very people targeted by such policies. With an FOI law in place, governments would be obliged to share information on their poverty alleviation strategies with the public, who can then have a voice in determining how these strategies can more effectively improve their lives.

In recent years, throughout the African continent, governments have been liberalising their economies in order to accelerate growth and development. By implementing an FOI law and thereby demonstrating their commitment to transparency, African governments would be more successful in assuring investor confidence in the economy, encouraging long-term private and foreign investment and bolstering growth. Furthermore, freedom of information can ensure that domestic, small-scale stakeholders also have a voice in economic policies, which can help economic growth and development to take place in a more equitable, balanced and therefore stable manner.

Thus far, freedom of information has had a mixed history in Africa. South Africa has had a functional freedom of information law – known as the *Promotion of Access to Information Act* since 2000, which entrenches in practice people’s fundamental right to information as set out in the South African Constitution. The public have been able to use this law to hold the government accountable for actions done in their name. It has also helped to nurture the country’s still nascent democratic credentials by giving the public an opportunity to scrutinise and participate more actively in the everyday decision-making processes of government.

Meanwhile, over the last decade neighbouring Zimbabwe, which passed its *Access of Information and Protection of Privacy Act* in 2002, has been in a downward spiral economically and also in terms of the promotion and protection of the rights and freedoms of its citizens. Zimbabwe’s law may be called an access to information law, but its main purpose has in fact been to strengthen the government’s power to control and crack down on the independent media. As a result, the public’s ability to bring the government to account for its actions has been constrained, while the government has been able to tighten its monopoly on information and conceal its motivations and decision-making processes behind a wall of secrecy.

It is crucial for the new wave of countries in Africa that are pursuing access laws to ensure their laws incorporate certain key principles that will help to foster openness, transparency, and public participation. In the first instance, an effective FOI law requires the government to provide the public with information proactively and on request. It should also include an overriding principle that all government information should be disclosed, unless the harm caused by releasing the information would be greater than the public interest in disclosing the information. Best practice requires that an effective law will:

- Promote the principle of maximum disclosure, subject only to limited, tightly drafted exemptions;
- Ensure that access procedures are user-friendly, cheap, quick and simple;
- Require decisions regarding disclosure to be reviewable by an independent, impartial body, such as an Information Commissioner or Ombudsman;
- Permit penalties to be imposed on officials for non-compliance with the law; and
- Impose ongoing monitoring, training and public education duties on the government.

If implemented effectively, a FOI law can act as a powerful deterrent to corruption. Corruption has long been the scourge of development in Africa, and has been responsible for not only eating into state revenues but also civil society’s trust in the state, thus not only hindering economic development but also contributing to the collapse of the state in countries across the continent. Effective implementation of an FOI law can make it much more difficult for officials to cover up their corrupt practices and can also help to expose poor policymaking. Even at the local level, freedom of information can be used to expose agencies that fail to deliver basic services such as health and education and can thus empower people who had previously suffered in silence as a result of corrupt officialdom.

Even as we observe Africa Day 2006, the continent’s development is at a cross-road. Recent efforts across Africa to enact FOI laws represent a crucial opportunity for the continent to turn its back on decades of poor governance, brutal civil and regional conflicts, and abject poverty. However, African nations must ensure that their laws incorporate principles that premise people’s right to information above all to ensure their effectiveness and prevent abusive governments from snatching away the opportunity to build a future that promises stability, inclusive democracy and participatory development for all their citizens. ■

# The Police, the People, the Politics: CHRI Launches 5 reports on Policing in East Africa

**Daniel Woods**

*Consultant, Access to Justice Programme, CHRI*

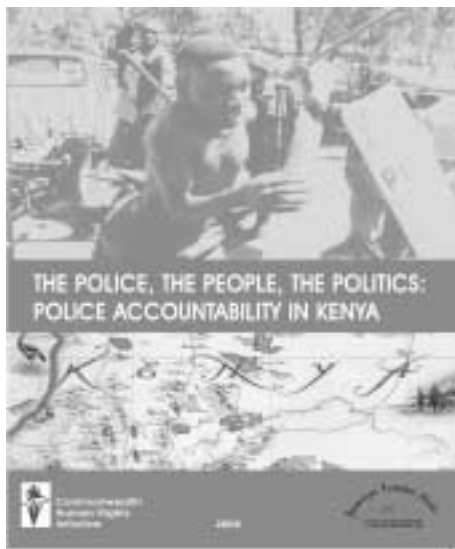
Over the last four years, CHRI has been involved in researching the police in three countries of East Africa – Kenya, Uganda and Tanzania. The research has focussed on two main issues. The first is the level of illegitimate political control that is wielded by governments in each of the countries and the impact that any such control has had on the community's experience of the police. The second is policing budgets in the region and the impact that budgets have had on police performance, crime management and community safety.

Kenya, Uganda and Tanzania share geographic borders and a common colonial history. Each of the countries experienced life as a British colony – in Kenya and Uganda, first as trading posts of the East Africa Trading Company and later as British colonies, and in Tanzania after the fall of the Germans on the mainland and the British role in the abolition of the slave trade in the islands of Zanzibar. The British left East Africa with a legacy of regime-style policing – police forces that were put in place to protect foreign settlers and keep the British firmly in power.

Kenya won independence in 1963, with democratic politics negotiated with the British and based on the British system. However, Kenya quickly became a one-party state, and the police were able to make full use of the lessons learned from regime policing under the British by supporting the government, suppressing dissent and focusing on the strict maintenance of law and order. In Uganda, independence in 1962 quickly led to decades of political instability, coups and violence. The army was a major player on the political stage and the police became more and more militarised as time went on. In Tanzania, independence of the mainland in 1961 and of Zanzibar in 1963 led to the creation of a political union and the building of a one-party agrarian socialist state. Again, the regime-style police left behind by the British was used to support

the ruling regime with little regard for democracy, accountability or transparency.

The community's experience of the police in Kenya, Uganda and Tanzania is also similar. In each country, the police are characterised by violence, torture, brutality, impunity, partiality, corruption and abuse of process. These are all hallmarks of the regime policing system handed down by the British and cultivated by the single party states.



*Kenya Police Accountability Report 2006*

Today, Kenya, Uganda and Tanzania all profess to adhere to basic human rights principles and the ideals of democracy. Each country is at a different stage in its democratic journey, with various levels of success. However, a common theme is that the police that are in place are the old style regime police forces, not the kind of democratic, accountable and community focused police service that will help support the development of democracy in each country and the region more generally.

Community, civil society and international calls for police reform in East Africa are growing, and CHRI is adding its voice with the release of five reports produced by its East Africa Project. The first three reports look at police accountability in each of the countries of East Africa, covering the history of the police, the community experience of policing and the police experience of policing, while setting out a reform agenda for each country. Two further reports analyse policing budgets in Kenya and Uganda. The reports will be launched in Arusha, Tanzania, on 12 June 2006, during a regional conference "The police, the people, the politics: Police accountability in East Africa" facilitated by CHRI and the East Africa Law Society. For a copy of any of the reports, further details regarding the East Africa Project or more information about the conference, contact Daniel Woods at CHRI headquarters ([daniel@humanrightsinitiative.org](mailto:daniel@humanrightsinitiative.org)). ■

# Police Council Returns to Ghana

**Edmund Amarkwei Foley & Daniel Woods**

*Project Coordinator, Police Accountability Project & Consultant, Access to Justice Programme, CHRI*

**G**hana took a step towards more democratic, accountable policing in March with the appointment of a Police Council. Ghana's Police Council is a constitutional body that advises the President on policy related to internal security, including the role of the police, police budgets, finance and administration and the promotion of senior officers. The police have been working without this body in place since the previous Council lapsed with the last Presidency in December 2004.

CHRI's Africa office, based in Accra, has been lobbying for the appointment of a Police Council since it began working on police accountability in West Africa in 2005. Ghana's President is required to appoint the Police Council when he or she takes office. When President Kufuor was elected to a second term, he failed to appoint the Council. Not only was this in direct contravention of his constitutional obligations, it also meant that in the absence of a major advisory and oversight body, the

police could not operate effectively accountably or efficiently. CHRI's efforts to get the Police Council reappointed ranged from calling on members of the Parliamentary Committee on Defence and Interior to raise the issue in Parliament, meeting with the Minister of the Interior, making statements to the President during the President's People's Assembly in February, writing to the President and talking about the Council on local radio.

CHRI's work paid off with the announcement on 10 March 2006 that the President had inaugurated a new Police Council, with Justice Scott Glenn Baddoo, a Supreme Court Judge, as the Chairperson. While CHRI has welcomed this crucial step towards a democratic, accountable police force, there is still a long way to go. For the Police Council, an important initial priority is a national police policy for Ghana. For the President, the appointment of the Council must be followed up with the appointment of Regional Police Committees, constitutional bodies that assist the Council with its work. ■

## Commonwealth People's Forum in Kampala, 2007

Dear Editor,

I am writing in response to the article titled 'Do Commonwealth People Matter? A Personal Perspective' by Daisy Cooper published in the last issue of this newsletter, which highlighted some of the logistical and organisational issues that arose during the 2005 Commonwealth Peoples' Forum (CPF) in Malta. The Commonwealth People's Forum is one of the most important activities in the Commonwealth calendar. As the institution charged with its facilitation, the Commonwealth Foundation is committed to continuously improving the planning and execution of the Forum. The Foundation has listened carefully to a range of CPF stakeholders (including its Civil Society Advisory Committee and Commonwealth Associations, such as the Commonwealth Human Rights Initiative) in drawing up its plans for the next CPF in Kampala. Some factors affecting the CPF are outside the Foundation's control, yet Malta 2005 saw a number of notable achievements: the increased involvement of civil society in running the CPF; a head of state formally addressed civil society at a special session; and the roundtable between civil society and Foreign Ministers. The Foundation recognises that these gains need to be enhanced and based on feedback, it has identified areas where there is room for improvement, for example: deeper engagement in the workshops; sharper focus on the main CHOGM theme; and clearer criteria for participation in drafting and special sessions.

Based on this analysis, the Foundation will be organising a CPF in Kampala that:

- Brings Commonwealth civil society together under one banner;
- Provides an opportunity for substantive discussion at high profile concurrent thematic workshops; and
- Adds a people's perspective to CHOGM deliberations.

Planning for Kampala starts now and the Foundation recognises that it can only realise its vision for CPF 2007 by working in conjunction with its civil society counterparts. Partnerships that draw on the strengths and capacities of the Foundation and civil society will be essential. We look forward to working with you as we prepare for Uganda.

**Vijay Krishnarayan**, *Deputy Director, Commonwealth Foundation*

# Challenging the Authoritarian Discourse on Criminal Justice Reform in India

Mandeep Tiwana

*Access to Justice Programme, CHRI*

With the collective conscience of the middle class in India being roused by the glaring failures of the police and the prosecution in the high profile Jessica Lall murder case, the debate on criminal justice reform in government is worryingly leaning towards authoritarianism. Given the continuing bad press of the inability of the system to secure higher conviction rates, key proponents of reform are toying with dangerous ideas. Such is the enthusiasm among certain sections of the police, the bureaucracy and indeed the judiciary, to boost the dismal conviction rates, that there is strong support for diluting well established citizen safeguards and constitutional fair trial guarantees. Some critical issues under debate, in the language of authoritarian discourse, are: whether “confessions” made to police officers should be made admissible as evidence in courts of law; should witnesses be compelled to sign statements made to the police in the course of an investigation; should the required standard of proof to convict a person be reduced; and should “previous bad character” of the accused be relevant in the trial. From a civil liberties perspective, the debate is putting forward support to erode the necessary safeguards and constitutional protections which currently underpin key legal procedures. This can seriously impact the guarantee of a fair trial.

Take for instance the issue of confessions. At present, confessions by the accused in India have to be recorded before a judicial magistrate. There are very good grounds to exclude confessions made to police officers from the ambit of the law – the use of torture by the police in the country is routine and widespread. As per the National Human Rights Commission’s records, in its 2002-2003 report there were 183 deaths in police custody during that period. The National and State Human Rights Commissions receive thousands of complaints of police torture every year, and these are just recorded statistics. In the Indian scenario, a police officer is a commanding figure and the possibility of being forced to record “confessions” to the police on the pain of torture is very real. Acceptance of the suggestion to make confessions made to police officers (of whatever rank) admissible as evidence may up the conviction rates for now, but can seriously harm justice delivery, leading to gross miscarriages of justice and grave human rights violations.

There is also great support – especially in police circles – to make it mandatory for witnesses and persons questioned to sign the statements made to police officers in the course of an investigation. Currently, these statements are not to be signed by anyone. The argument given is that once witnesses affix their signature, they will be forced to stand by the statement in court. However, this ignores the high possibility of witnesses being coerced to sign false statements – sometimes under torture – by the police, and then bearing the additional burden of sticking by them in court simply because their signatures have been affixed. A more appropriate way to tackle the problem of witnesses retracting their statements and thereby turning hostile would be to strictly invoke perjury and contempt of court provisions, which is rarely done by trial courts in India. Also the judiciary and the executive themselves must take responsibility to be more willing to make orders granting security to witnesses and to put in place a proper witness protection programme.

Additionally, there is talk of *reducing* the standard of proof for conviction by the court. The current standard, which requires a case to be proven ‘beyond reasonable doubt’ has a very strong basis as it minimises the possibility of subjectivity being exercised by a judge to convict an innocent accused. Reducing this standard would mean that judges would be empowered to hand out convictions if they are convinced the accused is guilty, irrespective of whether the prosecution has proven its case beyond reasonable doubt. This is a dangerous assumption and places a great amount of discretion in the hands of the judge, who after all, is human. The argument that an error of judgment by the trial court judge can be rectified at the appellate stage in the High Court or Supreme Court does not hold water, given the high backlog of cases and lengthy time taken to admit an appeal, let alone dispose it off.

The other provision being hotly debated is to make previous conduct of the accused admissible as evidence. At present, the law lays down that “previous bad character” is not relevant, except where the defence has brought evidence on record to show that the accused is of good character. On the face of it, acceptance of such a provision will vitiate the ‘presumption of innocence’ and reduce the scope for objectivity, which is integral to a fair trial. The argument being forwarded



in support of this provision is that it will make it easier to convict known criminals. However, what is being discounted is the real possibility of vagabonds and petty thieves with criminal records being framed when the actual culprit cannot be traced and there is pressure on the police to crack the case. The likelihood of this is reinforced by the fact that vagabonds and petty thieves with criminal records are routinely picked up – often without reason – by the police and charged under preventive sections of the criminal procedure code to show that the police have been pro-active in preventing crime. This particularly happens in the aftermath of a sensational crime incident or before a significant event like Independence or Republic Day.

The official discourse in criminal justice reform needs to look inward and not outward. Shoddy investigation; poor record keeping; callous disregard of procedures and corruption within the police are the major contributors to the low conviction rate. The remedy is enhanced police accountability and not clothing police officers with more powers. Similarly, if cases are not

being prosecuted properly, then the reasons why the best and the brightest in the legal fraternity are not attracted to becoming public prosecutors must be looked into. Rather than suggesting amalgamation of the police and prosecution in gross disregard of well established common law principles, proponents of reform should suggest a mechanism of checks and balances that makes prosecutors perform and function independently of extraneous considerations. The judiciary too needs to look inward, given the fact that judges with dubious integrity sometimes find themselves elevated to the higher courts in India. This coupled with the fact that judges in the country are overburdened and more need to be appointed by the government to reduce endemic delay (though it is equally true that the delay is caused by inefficient court processes and the excessive number of court holidays). The remedy therefore lies not in increasing discretion or in lowering the burden of proof, but in ensuring strict accountability and rigorous adherence to law and procedure by those who make up the criminal justice system. ■

## New CHRI Publications on Right to Information in India

**Aditi Datta**, *Media and Communications Officer, CHRI*

CHRI's Access to Information Programme came out with five publications in April-May 2006. The publications may prove beneficial to civil society, government officials, citizens and media concerning the implementation of the Right to Information Act 2005 enacted by the Indian Parliament in May 2005. The booklets are:

- The Right to Information and Panchayat Raj Institutions: Madhya Pradesh as a Case Study
- The Right to Information and Panchayat Raj Institutions: Chhattisgarh as a Case Study
- Guidance Series (Topic 1): Information Commissions: Roles and Responsibilities
- Guidance Series (Topic 2) Dealing With Third Parties: Applications & Appeals
- Your Guide to Using the Right to Information Act 2005

The first two booklets on the Panchayati Raj Institutions (PRIs)<sup>1</sup> focus on analysing and promoting the information disclosure provisions contained in the State Panchayat Raj Acts and related rules, as well as on the key features in the RTI Act. They also highlight that the right to information is a key tool for ensuring that PRIs more effectively meet their goal of promoting a participatory and accountable government.

*Information Commissions: Roles & Responsibilities* seeks to clarify the different rights, responsibilities and practical operations of the new Information Commissions that the Right to Information Act 2005 requires are set up at the central and state levels. This is done by drawing on best practice experiences in India and abroad.

*Dealing with Third Parties: Applications & Appeals* deals with the specific issue of the rights of third parties, who have been given the right to intervene when an application relates to information about them or which they have provided to public authorities. This note provides guidance on how to process an application and an appeal, which might involve a third party, under the RTI Act.

*Your Guide to Using the Right to Information Act 2005* aims to spread awareness among the citizens on what is covered by the Act; what information is available under the Act; how information can be accessed in practice; what options people have if they are not given the information they want and lastly how people can get involved and ensure the Act is implemented effectively to make the government more accountable, efficient and responsive. It explains some of the key provisions of the RTI Act in a simplified manner. For a copy of any of the reports, contact [aditi@humanrightsinitiative.org](mailto:aditi@humanrightsinitiative.org).

<sup>1</sup>Local governance bodies in India

# Election Round-up in the Pacific

**Daniel Woods & Aditi Datta**

*Consultant, Access to Justice Programme & Media & Communications Officer, CHRI*

**T**he year 2006 has been an important year for democracy in the Pacific region as elections have recently been held in Samoa (March 31), Solomon Islands (April 5) and in Fiji Islands (May 6-13) and a representative from a non-aristocratic background has been appointed Prime Minister in Tonga (March 30). Elections are also to be held in Nauru and Tuvalu later this year.

## **Samoa**

Parliamentary elections were held on March 31. Prime Minister Tuilaepa Sailele Malielegaoi of Human Rights Protection Party (HRPP) was returned to power again winning 30 seats out of 49 seats. He was the only candidate who was elected unopposed in his constituency. The HRPP has ruled Samoa since 1982 except for one term from 1985 - 1988.

## **Solomon Islands**

Serious violence swept the capital of the Solomon Islands, Honiara, following the elections held in early April. Despite a peaceful election period – the first since a regional force restored peace in 2003 – the election aftermath was brutal and violent. Thousands of protestors marched on Government House, threatening widespread destruction if the newly elected Prime Minister, Snyder Rini, did not resign. The protestors claimed the election was rigged. Snyder Rini had been associated with a previous government accused of corruption.

Australian and New Zealander police officers assisted the local force to help restore law and order as protestors tore through the city's Chinatown district (much of the violence was targeted at the minority Chinese community), looting and burning most shops and buildings. One of the biggest hotels in Honiara, the Pacific Casino, with a reputation as a meeting place for corrupt officials, was set on fire. Schools, shops, banks and offices all closed, while police imposed a dusk to dawn curfew. Snyder Rini resigned, faced with the prospect of a no confidence motion in Parliament, and Manasseh Sogavare was elected Prime Minister in his place. A Commonwealth Observer Group was present during the Solomon's elections and in its recently released report, it recommended the establishment of a permanent and independent

Electoral Commission, as well as a review of electoral legislation to enhance greater transparency.

## **Fiji Islands**

In Fiji, elections were held over eight days starting 6 May. The elections were fought on ethnic lines with indigenous Fijians voting in large numbers for Soqosoqo ni Duavata ni Lewenivanua (SDL) party led by Laisenia Qarase and Indo-Fijians rallying behind Fiji Labor Party (FLP) led by Mahendra Chaudhry, who was toppled in a coup in 2000. Following his narrow election win, Laisenia Qarase was sworn in as Prime Minister for a second term. The Prime Minister, as required by the existing constitution, invited the opposition to join the cabinet following which a multi-ethnic cabinet was sworn in. Elections were peaceful and largely free and fair although there were alleged administrative irregularities. Preliminary statements of the Commonwealth Observer Group were positive with the Chairperson, KD Knight, stating that elections were 'credible'. They also stated the need to reform the Election Office as there had been complaints against the managers of this electoral process. The group also stated that their report would make recommendations concerning the 'independence, powers and capacity of the Electoral Commission and the Office of the Supervisor of Elections; the voter registration process; voter education; the postal ballot; the electoral system; the results arrangements; and the financial rules'.

## **Tonga**

The Kingdom of Tonga is ruled by a hereditary monarch. However, in February, after months of protests to bring about political reform, Dr Fred Sevele was appointed the acting Prime Minister after the resignation of Prince Ulukalala Lavaka Ata. On 30 March, Sevele was officially appointed the Prime Minister of Tonga. The King has traditionally appointed the Prime Minister, based on their nobility, but in this case Dr. Fred Sevele is one of only a few politicians elected rather than appointed by the King. He is also the first non-aristocratic Tongan citizen to be appointed as the Prime Minister. His appointment heralds the beginning of a new era for democracy and political change in this tiny kingdom. ■

# Unconstitutional Means Replaces Democratic Processes in Chhattisgarh

**Dr. Doel Mukerjee**

*Project Coordinator, Police Reforms, India, CHRI*

A civil war like situation has engulfed the southern part of Chhattisgarh, a small state in Central India. A government sponsored anti-insurgency movement called “Salwa Judum”, or peace campaign, has been initiated since June 2005 to stop the Maoist (naxal) violence from spreading and overtaking the rest of the state. The right wing Bharatiya Janata Party government has for the first time connived with the Leader of the Opposition, Mahendra Karma (leader of Congress party), to take this campaign forward by making the indigenous people raise arms against the leftist forces who have left the villages out of fear. According to confirmed government reports, there are presently 50,000 people displaced by this movement who have been rehabilitated in 27 government-run camps. The government calls this a law and order problem where a civilian population has been used to cure its own internal strife.

Since the local media are gagged by a recently implemented draconian Act called the Chhattisgarh Special Public Security Act 2005, not much news was coming to the surface on how the government was treating a socio-economic problem as a law and order issue. This prompted an Independent Citizen’s Initiative of eminent academics and journalists – B.G. Verghese (Chairperson, Executive Committee, CHRI), Harivansh (Executive Member, CHRI), E.A.S. Sarma (retired bureaucrat), Farah Naqvi (writer and women’s activist), Nandini Sundar (professor of sociology of Delhi University) and Ramchandra Guha (historian and columnist) – to visit the Dantewada area of Southern Chhattisgarh from 17-22 May 2006.

The details of the interim report brought out by the team proves beyond doubt that the government has master-minded the raising of retaliatory forces of Salwa Judum activists and special police officers (SPOs). Under the Police Act of 1861<sup>1</sup> the qualifications of a special police officer remains ambiguous. The study team has found that the 3,200 SPOs appointed by the state government have no identification and no accountability to anyone. The SPOs are armed with .303 rifles and are accompanied

by Salwa Judum activists which the government says are people who have spontaneously joined the campaign to prevent the Maoists from taking over. The team found the “civil administration on the point of collapse and a situation frighteningly close to civil war” and that the “government has ‘outsourced’ law and order to an unaccountable, undisciplined and amorphous group”. The team found evidence of killings, burning of homes, and sexual assaults on women.

On the other hand, the attacks by the Maoists have regularly been on innocent indigenous people with apologies sent out after each incident where there was a “mistake”. The government has meticulously recorded the violence by the leftists but killings, lootings and acts of impunity carried out by the Salwa Judum or the SPOs have been ignored. Not much information is coming out and Nandini Sundar has pointed out that there is “a total blackout” as the press is sufficiently intimidated after the implementation of the draconian Act.

The team has met senior government officials and appealed for immediate suspension of the Salwa Judum so that the groups may be brought under control. It also recommended that those officials who are sensitive to the issues of the indigenous people may be appointed in the area so that they are accountable to protect the lives, security and dignity of the people. The government must facilitate the safe return of those staying in the state run camps and for this to take place a cease-fire is an absolute necessity from both sides. The team has also appealed to the Government of India and to the Government of Chhattisgarh, to institute a full and impartial enquiry into the incidents of violence by Maoists, as well as Salwa Judum in Dantewara in the last year. Also to dissolve the conflict, the only way possible according to E.A.S. Sarma is to initiate a truthful dialogue process, for if Nepal can do it, why can’t India? The team felt that the naxalite issue can only be solved through constitutional means and to treat the issue as a law and order problem by militarising the community and purchasing weapons is undemocratic. ■

<sup>1</sup> Presently the Indian police are governed by an ancient Police Act of 1861

# CHRI Calendar : February - May 2006

## CHRI Headquarters

### February 2006

- Organised a workshop for non-official visitors to prisons in Andhra Pradesh.
- Presented on democratic policing at a civil society programme organised by People's Watch, Tamil Nadu at Guwahati.

- Conducted a workshop on the RTI Act in Chhattisgarh.

- Made numerous presentations on the RTI Act to audiences including reporters, law students, and the core team of the Society for Participatory Research in Asia (PRIA).

### March 2006

- CHRI's Executive Committee meeting was held in Delhi.
- Presented on the RTI Act for the civil society networks of the DFID sponsored Poorest Areas Civil Society Programme in Jharkhand, Uttar Pradesh and Madhya Pradesh.

- Convened civil society consultations on priority areas for police reforms in Raipur and Mumbai.

### April 2006

- Held a national police reform meeting with Dalit groups in partnership with the National Campaign on Dalit Human Rights.
- Convened civil society consultations on priority areas for police reforms in Guwahati, New Delhi, Hyderabad, and Lucknow.

- Organised an awareness raising workshop on RTI for civil society organisations, lawyers and media in Madhya Pradesh.

- Presented at the Conference of the Council of Asian Liberals & Democrats on Public Accountability in Official Development Assistance in Cambodia.

### May 2006

- Presented at a national meeting on RTI in Hyderabad.

- Held a civil society consultation meeting on police reforms, in partnership with the National Coalition for Dalit Human Rights and the Centre for Dalit Rights.

## CHRI Africa Office

### February 2006

- Hosted a Right to Information Coalition meeting.

- Presented at a workshop on 'Mechanisms for Domestication of the Additional Protocol to the African Charter on the Human and Peoples Rights' organised by Women in Law and Development in Africa.

### March 2006

- Coordinated celebrations for Commonwealth Day 2006 in collaboration with the Ministry of Foreign Affairs and Commonwealth High Commission in Ghana.

- Hosted the Official Launch of Commonwealth Day 2006 at the British Council Hall in Accra.

- Participated in a roundtable discussion on

police reform at the Institute of Economic Affairs.

### April 2006

- Conducted a fact-finding mission to Digya Island in the Affram Plains to investigate human rights violations that occurred during the forced evictions.

### May 2006

- Was interviewed by CITI FM's breakfast show on the use of force by the police in the light of the recent shootings in Dansoman and Kotobabi in Accra.

## CHRI Trustee Committee Office (London)

### February 2006

- CHRI's Trustee Committee meeting was held with discussions focused on the future of the Trustee Committee Office, London.

### March 2006

- Attended a human rights conference at the London School of Economics where interdisciplinary approaches to promoting human rights were examined.

### April 2006

- Participated in an informal gathering of civil society groups at the invitation of the Commonwealth Foundation to discuss improvements in the Commonwealth People's Forum.

### May 2006

- Participated in a civil society consultation at the Commonwealth Secretariat.
- CHRI's Trustee Committee meeting held.

*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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