



CHRI

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Weathering the Storm: The Commonwealth and Maldives

Approaching Storm, Meedhupparū, Maldives
Photo by: Simon Bradfield

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

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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 with which to work, they required a forum to promote human rights. It is from this idea that CHRI was born and continues to work.

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CONTENTS

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Editorial

Weathering the Storm: The Commonwealth and Maldives

R. Iniyan Ilango, Coordinator, Strategic Initiatives Programme, CHRI

Page 4

Commonwealth Charter

Richard Bourne, Senior Research Fellow, Institute of Commonwealth Studies

Page 6

Repression in the Gambia

Sanyu Diana Awori, Programme Officer, Strategic Initiatives Programme, CHRI

Page 8

Special Story

Democratic Policing: Progress or Roll-Back? An Analysis on Upcoming Changes to the Police Systems in England and Wales

Maggie Beirne, Freelance Consultant on Human Rights and Equality

Page 10

Country-Specific Resolutions Adopted by the UN Human Rights Council at its 19th Session - 27 February to 23 March, 2012

Rithika Nair, Research Assistant, Strategic Initiatives Programme, CHRI

Page 12

Feature

National Inquiries: The Latest Weapon in an NHRI's Arsenal

Jennifer Kishan, Research Officer, Strategic Initiatives Programme, CHRI

Page 17

A National Round Table to Assess the Working of Police Complaints Authorities

Aditi Diya Nag, Programme Officer, Police Reforms Programme, CHRI

Page 19

Sexual Orientation and Gender Identity at the UN Human Rights Council

Sanyu Diana Awori, Programme Officer, Strategic Initiatives Programme, CHRI

Page 22

Weathering the Storm: The Commonwealth and Maldives

R. Iniyan Ilango, Coordinator, Strategic Initiatives Programme, CHRI



Approaching Storm, Meedhupparu, Maldives
Photograph by: Simon Bradfield

The Commonwealth Ministerial Action Group (CMAG) is in the eye of a storm in Maldives. In its last meeting on 16 April it warned that it will consider “stronger measures” if the terms and reference and composition of the Maldivian National Commission of Inquiry is not “amended within four weeks in a manner that is generally acceptable and enhances its credibility”. “Stronger measures” is probably a hint at suspension from the Commonwealth. Weeks after that decision, there was talk in Maldives about withdrawing

the country’s membership from the Commonwealth. Eventually about a month later, Maldives conditionally agreed to CMAG’s demands and calls for withdrawing from the Commonwealth have dissipated.

How did all this come about? In the past few months, events in the Maldives caught headlines and raised eyebrows across the world. These months saw the country’s democratic transition plagued by serious uncertainty. The most sensational part of this turn of events

is mystery around the exit of former President Mohamed Nasheed. The National Commission of Inquiry was set up by the government to look into what transpired on the fateful day of 7 February 2012 when Vice President Mohamed Waheed Hussain took over following Mr Nasheed’s resignation – which the latter subsequently claimed was forced at gun point. The immediate backdrop for this is the military’s arrest of the Chief Judge of the Criminal Court on 16 January 2012 under Mr Nasheed’s orders –

a move that attracted international condemnation and regular protests in Maldives. Mr Nasheed claimed that the judge who was under investigation by the Judicial Services Commission represents a judiciary that is dysfunctional – while protests continued to rage and reports of a possible police mutiny began to emerge as 7 February unfolded.

Storm clouds have gathered over Maldives for long and the recent series of events are a culmination of what was brewing for a while. Following a drawn-out pro-democracy struggle in Maldives led by Naheed's Maldivian Democratic Party, the 2008 Presidential elections saw Mr Nasheed contested against the incumbent Mr Maumoon Abdul Gayoom and winning – albeit by a margin of about 8 per cent. The end of the 30-year regime of former President Gayoom was widely perceived as the beginning of full-fledged democracy in the Maldives. Since then, what began as a smooth ride eventually began to get bumpy. Rising prices, drug and crime issues, economic disparity, corruption allegations and concerns over the transparency of increasing foreign investments all began to cause unrest. Towards the end there were frequent public demonstrations and political standoffs. While stalemates between the Opposition-dominated Parliament and the Executive has been an issue, divisions also emerged between the

Executive and the Judiciary – most of the appointments in the latter were made during Gayoom's tenure and the Executive viewed this wing of state as being unreformed and loyal to the former regime.

The international community including the Commonwealth, eased out of their heightened scrutiny of Maldives following the 2008 Presidential elections. In the aftermath, the country's nascent democracy faced severe tribulations. Maldives is precariously located at the tip of South Asia, in the middle of strategic sea lanes making it important, economically and politically, both for the West and the two Asian giants – China and India. The crisis in the Maldives is an important bellwether of the edgy geopolitical climate in this region which has already found reflection in other countries of the region, such as Sri Lanka.

While a lot of the current focus is mired over opposing political views within Maldives, it is imperative to remember that the vagaries of politics inside and outside the country should not ultimately lead to the Maldivian people viewing the values of human rights and democracy with blighted hope. It is important that these values are upheld and the protections that they afford are ensured. An important step in doing this is to ensure that truth is both told and is seen to

be told, freely sans politicisation. In this context, it is essential that the National Commission of Inquiry is credible and is able to investigate and report freely and publicly. This call for credibility and impartiality is also aptly echoed and elaborated by several Maldivian NGOs coming together in a new civil society coalition called 'Thinvana Adu' or 'Third Voice'. Independent institutions in Maldives such as the Human Rights Commission of Maldives and the Police Integrity Commission should follow this lead and conduct their own parallel investigations and report publicly at the earliest.

Even though the Commonwealth should have made earlier and more transparent efforts to scrutinise the progress of democracy in Maldives, it is a good sign that after years of being dormant, CMAG has now taken the directions given to it in the 2011 Commonwealth Heads of Government Meeting seriously. It is also important that CMAG has recognised the need for a credible National Commission of Inquiry. If Maldives decides to leave the Commonwealth it will be the only other country after Zimbabwe to do so – a parallel that may be politically damaging for Maldives to equate itself with, at this time of crisis. ■

Commonwealth Charter

Richard Bourne, Senior Research Fellow, Institute of Commonwealth Studies



The great weakness of the modern Commonwealth is its preference for grand statements. While words matter, organisations, like individuals, are judged more by their actions – or inactions. The danger in the proposed “Charter of the Commonwealth”, promoted by the Eminent Persons Group (EPG) last year, is that it appears vacuous and a substitute for hard, serious progress on democracy, development and human rights.

The Commonwealth is a non-treaty body, and though it has many declarations, it does not have a charter like the United Nations. The UN charter sets out not only its aspirations but the structure to implement them. Last year, the EPG reform group, chaired by Abdullah Badawi, former Prime Minister of Malaysia, proposed a charter as its top priority. Mr Badawi had played a

large part in the creation of a charter for ASEAN and Judge Michael Kirby from Australia helped prepare a draft. The Australians wanted it to be adopted at the Perth summit.

Instead, the draft was deferred for consideration in all member countries – a nod towards consulting civil society. The Commonwealth Secretariat hoped that all countries would conclude this consultation, based on the EPG draft, by the end of March 2012; the aim is for governments to approve a revised draft at a Foreign Ministers’ meeting in New York in September. So far, only a small handful of countries have held any kind of consultation, although in Canada, the Senate Foreign Affairs Committee has held open hearings. This lack of follow-up can be interpreted in several ways: that governments don’t care, that governments don’t want to

consult any but themselves, that governments were happy with the EPG draft.

But what does the draft say? It starts its preamble with: “We the people of the Commonwealth of Nations”, which implies the informed consent of over 2,000 million citizens. In Paragraph 5 it states: “We believe in universal human rights and that they are applicable to all persons throughout the Commonwealth in accordance with international law.” In Paragraph 7.3: “We acknowledge that unjustifiable discrimination against individuals or groups impedes the attainment of the values of the Commonwealth and demands proper correction and redress.” In Paragraph 13: “We believe in the strengthening of civil society...” The draft also aspires to “an enlarged role” for the Commonwealth Secretary-

General, “an effective role” for the Commonwealth Ministerial Action Group and states in Paragraph 23: “In the face of serious or persistent violations of the values expressed in this Charter, silence on the part of the Commonwealth is not an option.”

Compared with the Trinidad and Tobago Affirmation of Commonwealth Values and Principles there are at least two important elements missing – an unequivocal commitment to freedom of expression and the

a shortlist of commitments which could be attractive to young people, helping them to differentiate the Commonwealth from other international bodies.

As it stands, it does neither of these. While recapitulating the aims expressed in the Trinidad and Tobago Affirmation it fails to set out the duties of the meetings of Commonwealth Heads, the Commonwealth Secretariat, the Commonwealth Ministerial Action Group, ministerial meetings and the Commonwealth Foundation.

people”, has all the hallmarks of an intergovernmental document. It is being pushed along at a speed which makes wider discussion unlikely. At a recent meeting in London at the Royal Commonwealth Society, the draft and process were strongly criticised, and there was no comparable meeting in Scotland, for example, by the end of March.

So what should civil society do? Is it worth worrying about this charter, and making the effort to persuade governments to give the process more time – so that a

Is it worth worrying about this charter, and making the effort to persuade governments to give the process more time – so that a more acceptable document might be agreed on at the 2013 summit? Or should there be two documents – one which sets out aspirations matched by duties, and a brief one-pager for young people and the uninitiated?

media, and a commitment to local democracy. In fact, only just over two years ago, at the Port of Spain summit, this Affirmation was touted as a summary of all Commonwealth commitments and many would ask why an aspirational charter is now needed. Notably too, the draft makes no reference to the EPG’s second priority recommendation, for a Commissioner for Democracy, the Rule of Law and Human Rights.

There are two main arguments advanced for the charter. One is that it explains what the Commonwealth is about, for people who know little about it. The other, more specifically, is that it provides

Nor does it provide a brief one-pager for young people. Interestingly, only a few years ago, the Foundation published a useful short guide for teenagers called “Common Ground”, which appears not to have influenced the EPG.

At Trinidad, the then Director of the Foundation, Dr Mark Collins, complained that governments should not have prepared the Affirmation on their own. He argued that it should have been built on the base of serious civil society consultations in all member countries. Currently, the language of the draft charter, apart from the preamble about “we the

more acceptable document might be agreed on at the 2013 summit? Or should there be two documents – one which sets out aspirations matched by duties, and a brief one-pager for young people and the uninitiated? My suspicion is that the positive opportunities in this exercise have already been lost. All that civil society can now do perhaps, is to ensure that the lamentable nature of the public consultations be put on record – in how few countries, with how few people. And to insist that “we the people” is replaced by, “we the governments”. ■

Repression in the Gambia

Sanyu Diana Awori, Programme Officer, Strategic Initiatives Programme, CHRI



Gambia, old map Photograph by: Pontus Edenberg

It is no secret that human rights are stifled in the Gambia. Ever since President Yahya Jammeh came to power in a coup in 1994, freedoms in the country have steadily shrunk. An alleged attempt to overthrow him in 2006 resulted in his tightening the reigns even further, actively pursuing and persecuting journalists, human rights defenders and government critics.

At the heart of this authoritarian government, are draconian laws that are used to silence dissent. Crimes, such as sedition, seditious intention, treason and false publication are employed to muzzle the press, suppress criticism of the government and keep the people in check. In

addition, the media is constantly harassed. In recent years, private radio stations, such as Taranga FM, Sud FM, Citizen FM and Radio 1 FM were visited by state agents and issued with arbitrary notices to shut down. This has resulted in the media self-censoring their reports.

Such offences fly in the face of the national Constitution that secures the right to free speech, and the human rights treaties the Gambia has ratified, such as the International Covenant on Civil and Political Rights and the African Charter of Human and Peoples Rights. But this does not appear to worry the government.

Instead, journalists, critics and activists are often arbitrarily detained and in some cases tortured at the state's hands. In 2010, the Economic Community of West African States (ECOWAS) Court found that a journalist was tortured while being illegally detained by state agents in 2006. The Court ordered the government to redress the violations, but it is yet to show any political will to compensate the victim and comply with the Court's judgement. This case is symptomatic of a government campaign to intimidate and silence. Detention centres such as the Mile Two prison are black holes for human rights abuses. With an accountability vacuum,

cases of ill-treatment, torture and enforced disappearances are not investigated and the litany of human rights violations continue unabated.

State apparatus, such as the National Intelligence Agency have gained notoriety for arbitrary arrest and detention of real or perceived government critics. State-endorsed incommunicado detention was even noted by the UN Human Rights Committee while reviewing the Gambia's human rights record in 2002. During the Gambia's Universal Periodic Review at the UN Human Rights Council in 2010, it was urged to amend its legislation to respect, protect

yet, human rights defenders in the Gambia are particularly at risk. In a stark example, four activists peacefully protesting by wearing and distributing t-shirts calling for an "end to dictatorship now" in June 2011 were recently sentenced. One of them, a former Minister of Information and Communication, was convicted of treason and sentenced to life imprisonment with hard labour. The other three were sentenced to three years with hard labour. The severity of their sentences, the compromised credibility of the judiciary and the excessively broad nature of these laws serve to reinforce the tight hold the government has over

decided against monitoring the presidential elections, stating: "Reports of the fact-finding mission and the Early Warning System paint a picture of intimidation, an unacceptable level of control of the electronic media by the party in power, the lack of neutrality of state and para-statal institutions, and an opposition and electorate cowed by repression and intimidation."

A day before the election results, it is reported that, rebuffing criticism Jammeh told the press: "They talk about rights, human rights, and freedom of the press, and (say that) this country is a hell for journalists. There are freedoms

During the Gambia's Universal Periodic Review at the UN Human Rights Council in 2010, it was urged to amend its legislation to respect, protect and fulfil the right to expression and to protect human rights defenders, including journalists. Such recommendations however were rejected by the government.

and fulfil the right to expression and to protect human rights defenders, including journalists. Such recommendations however were rejected by the government. The African Commission of Human and Peoples' Rights (ACHPR) has also repeatedly raised similar concerns about the government's disregard for its human rights obligations.

These calls go unheeded. Instead, when questioned about its responsibilities for human rights, the government refers to the fact that it hosted the ACHPR in Banjul as its get-out-of-jail-free card. And

fundamental freedoms and rights.

The Observatory for the Protection of Human Rights Defenders published a report in 2011, following a fact-finding mission to the Gambia in 2010. The report documents how judicial harassment as well as arbitrary arrests and detention are used to muffle activism and the work of human rights defenders.

After 17 years, Jammeh secured another term in power in November 2011. In an environment inimical to democracy, the elections were far from free and fair. ECOWAS

and responsibilities. The journalists are less than 1 per cent of the population, and if anybody expects me to allow less than 1 per cent of the population to destroy 99 per cent, you are in the wrong place." This pronouncement goes hand in hand with his threat in 2009 to kill human rights defenders. Such statements hardly inspire confidence in his regime or indicate a change in policy. Unless there is a radical change, Jammeh's current tenure in power cements another term of repression in the Gambia. ■

Democratic Policing: Progress or Roll-Back?

An Analysis of Upcoming Changes to the Police Systems in England and Wales

Maggie Beirne, Freelance Consultant on Human Rights and Equality



Police officers on patrol at
Buckingham palace
Photograph by: Oli Mohammad

Democratic societies governed by the rule of law aspire to ensure “policing by consent” because they understand that the police can effectively deploy their powers of control, and ultimately physical force, only if they have the support of the wider society. Society’s formal “consent” is normally enshrined in legislation setting out police powers and in mechanisms to hold the police to account when operationalising those powers. Both legal and democratic accountability are vital to healthy policing, but opinions vary as to how to ensure such accountability. The English and Welsh police system is about to be radically overhauled but will this strengthen

police accountability (as the government claims) or greatly weaken it? The main aim of the Police Reform and Social Responsibility Act, 2011 is to introduce elected Police and Crime Commissioners. From November 2012, a Commissioner will be directly elected in each of the 43 police districts, and this elected post-holder will have the authority to hire and fire the police chief of the district, to set priorities in the policing plan for the area and to determine budget levels. Currently, such functions are overseen by a policing authority which comprises around 17 members (nine are appointed from and by the local Council and eight are

independent members recruited by public advertising). The government, however, argues that these arrangements are insufficiently democratic: they cite surveys which show that 96 per cent of voters could not name the Chair of their policing authority, still less explain what these bodies do. As part of a supposed move to greater localism (with decisions being made closer to home, and in a more democratic and transparent manner), the government argues that the election of a single individual will ensure greater public interest in questions of policing. The argument runs that if people have to elect the Commissioner, they will monitor more closely what that person does, and that individual will feel a much greater need to truly represent the “voice of the people” in their negotiations with the police. The potential advantages of this measure are evident. Local people, galvanised by an electoral process, will hopefully engage more, reflect on who they want to represent their concerns, what kind of messages need to be conveyed to the police, etc. It is hoped that the election of a high-profile Commissioner will keep policing in the public spotlight beyond the election campaign and mobilise a steady level of public interest in policing, not merely when specific “scandals” arise. The police chief will have to engage

with, and render account to, one elected Commissioner rather than a policing authority which may hold competing political views and represent diverse interests. The Commissioner will be handsomely paid and will normally be expected to treat the function as a full-time role, whereas Policing Board members often hold other paid and voluntary functions. However, the disadvantages are equally evident. To get elected, the Commissioner is likely to be a

the police is accountable to the community in a way that recognises the needs of individuals or groups who are not politically popular/powerful. To cite Sir Robert Peel from 1829, it is the duty of police officers “to seek and preserve public favour, not by pandering to public opinion; but by constantly demonstrating absolutely impartial service to law, in complete independence of policy, and without regard to the justice or injustice of the substance of individual laws, by

Murdoch media hacking scandal). Kit Malthouse was asked why he challenged police leaders early on about the resources allocated to the phone hacking investigation (the implication being that he was politically interfering in ongoing police work). His response was one of surprise: surely he had a duty, flowing from a democratic mandate, to question the proper use of police resources! There is an inherent contradiction, but it is precisely in such situations (or in times of

The English and Welsh police system is about to be radically overhauled but will this strengthen police accountability, or greatly weaken it?

high-profile political figure, or local celebrity – their policing expertise may not be apparent, nor indeed the main criterion for securing their election. An individual will find it more difficult to represent the whole population than a committee drawn from different political parties and constituencies of interest. Nearly 10 per cent of the current membership of police authorities is drawn from minority ethnic communities, and a third of their membership is female; such (already limited) diversity is likely to diminish further in moving from over 730 authority members to 43 Commissioners. More importantly, rather than “representativeness”, is the fear that we are moving to greater politicisation in policing. In contradistinction to many other parts of the world, elected politicians in England and Wales cannot instruct the police operationally, and democratic accountability is guaranteed when

ready offering of individual service and friendship to all members of the public without regard to their wealth or social standing”. Critics of the new legislation fear that a popularly elected Commissioner may not be bound by similar constraints, and may – whether intentionally or not – politicise policing practice. The English tradition of policing (one not followed in the policing of its colonies or the constitutional legacy it left behind) sets limits to authoritarianism by assigning different functions to politicians and the police. Creating a democratically elected commissioner to supervise the work of the professional chief of police, risks merging two distinct functions. Arrangements in London are the nearest model we have for what is to be introduced across the country, and this week the Deputy Mayor of London with responsibility for policing was interrogated at the Leveson Inquiry (into the

public disorder, racial tensions or allegations of lethal force) that police accountability must be exercised – and seen to be exercised – in a politically non-partisan manner. International comparative research on policing carried out as part of a major policing reform programme some years ago in Northern Ireland (both by non-governmental organisations and the Patten Commission) assessed different models of democratic accountability. The comparison led to the conclusion that an efficient, effective, impartial policing service was best secured by a balanced triumvirate of authority: a chief police officer, an elected politician and a broadly representative civic oversight body. All three elements play distinct but complementary roles in ensuring “policing by consent”. It is of concern to many that the new English model seems to move away from, rather than towards, this ideal. ■

Country-Specific Resolutions Adopted by the UN Human Rights Council at its 19th session – 27 February to 23 March 2012

Rithika Nair, Research Assistant, Strategic Initiatives Programme, CHRI



Flags, UNOG

THE ESCALATING GRAVE HUMAN RIGHTS VIOLATIONS AND DETERIORATING HUMANITARIAN SITUATION IN THE SYRIAN ARAB REPUBLIC

The resolution condemned the violation of human rights by the Syrian authorities, such as the use of force against civilians, arbitrary detention and execution, enforced disappearances, sexual violence,

destruction of residential areas and the lack of access to medicine, food and fuel. It called upon the Syrian government to immediately cease all violence, end all impunity and allow free and unimpeded access by the United Nations and other humanitarian agencies.

The resolution was adopted with 37 voting in favour, 3 against, 3 abstentions and 4 absent. Voting among countries was as follows:

In favour: Austria, Bangladesh, Belgium, Benin, Botswana, Cameroon, Chile, Congo, Costa Rica, Czech Republic, Djibouti, Guatemala, Hungary, Indonesia, Italy, Jordan, Kuwait, Libya, Maldives, Malaysia, Mauritania, Mauritius, Mexico, Nigeria, Norway, Peru, Poland, Qatar, Republic of Moldova, Romania, Saudi Arabia, Senegal, Spain, Switzerland, Thailand, United States and Uruguay.

Against: China, Cuba, and Russia.

Abstention: Ecuador, India, and Philippines.

Absent: Angola, Burkina Faso, Kyrgyzstan and Uganda.

Bangladesh, while it voted in favor, noted that it felt that the present text of the resolution was inadequate and should have had a more balanced approach.

Australia, though not a member of the Council, called on the Syrian government and all parties to cease all violence and requested the authorities to permit the visit of Valerie Amos, the Under Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, and welcomed the appointment of Kofi Annan as the Special Envoy.

The United Kingdom, though not a member of the Council, strongly supported the General Assembly resolution on Syria, and promised to work with the Council to gather evidence of human rights violations and ensure that those responsible for the atrocities in Syria would be held to account.

ACTION ON RESOLUTION ON PROMOTING RECONCILIATION AND ACCOUNTABILITY IN SRI LANKA

The resolution stated that the report of the Lessons Learnt and Reconciliation Commission

(LLRC) did not adequately address the serious allegations of violations of international law. It called upon the government to implement constructive recommendations made in the LLRC report, and to present an action plan detailing the steps taken and those it would take to implement the recommendations made to address alleged violations of international law. The resolution urged Sri Lanka to work with the Office of the High Commissioner for Human Rights and draw on helpful expertise the Office could offer.

The resolution was adopted with 24 voting in favour, 15 against, and 8 abstentions. Voting among countries was as follows:

In favour: Austria, Belgium, Benin, Cameroon, Chile, Costa Rica, Czech Republic, Guatemala, Hungary, India, Italy, Libya, Mauritius, Mexico, Nigeria, Norway, Peru, Poland, Republic of Moldova, Romania, Spain, Switzerland, United States of America and Uruguay.

Against: Bangladesh, China, Congo, Cuba, Ecuador, Indonesia, Kuwait, Maldives, Mauritania, Philippines, Qatar, Russian Federation, Saudi Arabia, Thailand and Uganda.

Abstention: Angola, Botswana, Burkina Faso, Djibouti, Jordan, Kyrgyzstan, Malaysia and Senegal.

Sri Lanka, speaking as the concerned country, felt that it had

been selectively targeted by certain counterparts to undermine the resolution of 2009. It said that the resolution was misconceived, unwarranted and ill-timed, and that it would have adverse ramifications for Sri Lanka and other countries. Sri Lanka needed more time to further consolidate the progress that it had achieved in three years.

Nigeria said that its vote in favour was not to censure Sri Lanka, but to encourage the process of reconciliation in the country, and said that Nigeria was ready to assist the Sri Lankan government in its reconciliation process.

Uganda, in voting against the resolution, noted the speedy publication of the LLRC report, the progress made in implementing the report's recommendations and the Government's engagement with the international community and the Human Rights Council. Uganda felt that Sri Lanka, as a country emerging from war, had not been given enough time.

Maldives, in voting against the resolution, said that it understood the trauma inflicted by the conflict and that it would take time to rebuild and create a fair and equitable society. Maldives stated that the resolution was unnecessary at the current juncture.

Bangladesh, in voting against the resolution, said that it did not support country-specific resolutions

without the approval of the country concerned, since such resolutions would have limited impact. Bangladesh felt that Sri Lanka had provided significant leadership in countering international terrorism and required time and space to heal.

THE SITUATION OF HUMAN RIGHTS IN THE ISLAMIC REPUBLIC OF IRAN

The resolution extended the mandate of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran for another year. It requested the Government of Iran to cooperate with and provide access and information to the Special Rapporteur.

The resolution was adopted with 22 voting in favour, 5 against and 20 abstentions. Voting among countries was as follows:

In favour: Austria, Belgium, Benin, Botswana, Chile, Costa Rica, Czech Republic, Guatemala, Hungary, Italy, Maldives, Mauritania, Mexico, Norway, Peru, Poland, Republic of Moldova, Romania, Senegal, Spain, Switzerland and United States of America.

Against: Bangladesh, China, Cuba, Qatar and Russian Federation.

Abstention: Angola, Burkina Faso, Cameroon, Congo, Djibouti, Ecuador, India, Indonesia, Jordan, Kuwait, Kyrgyzstan, Libya, Malaysia,

Mauritius, Nigeria, Philippines, Saudi Arabia, Thailand, Uganda and Uruguay.

No comments were made by Commonwealth countries.

THE SITUATION OF HUMAN RIGHTS IN THE SYRIAN ARAB REPUBLIC

The resolution demanded that Syrian authorities immediately end all violence and human rights violations, release all prisoners and lift the blockade of all cities under siege, and stressed the need to conduct an international, transparent, independent and prompt investigation into the violations of human rights law. It decided to extend the mandate of the commission of inquiry and requested the commission to conduct and continuously update a mapping exercise of gross violations of human rights since March 2011.

The resolution was adopted with 40 voting in favour, 3 against, and 3 abstentions. Voting among countries was as follows:

In favour: Angola, Austria, Bangladesh, Belgium, Benin, Botswana, Burkina Faso, Cameroon, Chile, Congo, Costa Rica, Czech Republic, Djibouti, Guatemala, Hungary, Indonesia, Italy, Jordan, Kuwait, Kyrgyzstan, Libya, Malaysia, Maldives, Mauritania, Mauritius, Mexico, Nigeria, Norway, Peru, Poland,

Qatar, Republic of Moldova, Romania, Saudi Arabia, Senegal, Spain, Switzerland, Thailand, United States of America, and Uruguay.

Against: China, Cuba and Russia.

Abstention: India,¹ Uganda and Ecuador.

Absent: Philippines

THE SITUATION OF HUMAN RIGHTS IN THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA

The resolution expressed the Council's concern at the ongoing grave, widespread and systemic human rights violations in the Democratic People's Republic of Korea, and decided to extend the mandate of the Special Rapporteur for a period of one year.

The resolution was adopted without a vote.

No comments were made by Commonwealth countries.

THE SITUATION OF HUMAN RIGHTS IN MYANMAR

The resolution welcomed the recent positive developments in Myanmar, and urged the Government of

Myanmar to ensure that the by-elections of 1 April 2012 were free, fair and transparent and to continue to implement the recommendations of the Special Rapporteur, the Universal Periodic Review and the relevant Human Rights Council and General Assembly resolutions. The resolution also extended the mandate of the Special Rapporteur for one year.

The resolution was adopted without a vote.

India, speaking in a general comment, emphasised the need to expedite the reforms in Myanmar and make the process more inclusive and broad-based. India did not believe that the resolution was helpful and would therefore disassociate itself from it. India said that it would however continue to work with likeminded countries in supporting the initiatives of the Secretary-General on Myanmar.

THE NEGATIVE IMPACT OF THE NON- REPATRIATION OF FUNDS OF ILLICIT ORIGIN TO THE COUNTRIES OF ORIGIN ON THE ENJOYMENT OF HUMAN RIGHTS AND THE IMPORTANCE OF IMPROVING INTERNATIONAL COOPERATION

The resolution called upon all States that had not yet done so, to consider

acceding to the United Nations Convention against Corruption as a matter of priority, and asserted the urgent need to repatriate funds of illicit origin to the countries of their origin without any conditionalities.

The resolution was adopted with 35 voting favour, 1 against, and 11 abstentions. Voting among countries was as follows:

In favour: Angola, Bangladesh, Benin, Botswana, Burkina Faso, Cameroon, Chile, China, Congo, Costa Rica, Cuba, Djibouti, Ecuador, Guatemala, India, Indonesia, Jordan, Kuwait, Kyrgyzstan, Libya, Malaysia, Maldives, Mauritania, Mauritius, Mexico, Nigeria, Peru, Philippines, Qatar, Russian Federation, Saudi Arabia, Senegal, Thailand, Uganda and Uruguay.

Against: United States of America.

Abstention: Austria, Belgium, Czech Republic, Hungary, Italy, Norway, Poland, Republic of Moldova, Romania, Spain and Switzerland.

No comments were made by Commonwealth countries.

COMPOSITION OF STAFF OF THE OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS

The resolution requested the High Commissioner to ensure

the broadest geographic diversity of her staff by enhancing the implementation of measures to achieve a better representation of countries and regions that are unrepresented or under-represented, particularly from the developing world, while considering applying a zero-growth cap on the representation of countries and regions already over-represented.

The resolution was adopted with 33 voting favour, 12 against, and 3 abstentions. Voting among countries was as follows:

In favour: Bangladesh, Botswana, Cameroon, India, Malaysia, Maldives, Mauritius, Nigeria and Uganda.

Against: None

Abstention: None

No comments were made by Commonwealth countries.

HUMAN RIGHTS AND UNILATERAL COERCIVE MEASURES

The resolution called upon all States to stop adopting or implementing unilateral coercive measures not in accordance with international law, international humanitarian law, the Charter of the United Nations and the norms and principles governing peaceful relations among States.

The resolution was adopted with 35 voting in favour, 12 against and 0 abstentions. Voting among countries was as follows:

In favour: Angola, Bangladesh, Benin, Botswana, Burkina Faso, Cameroon, Chile, China, Congo, Costa Rica, Cuba, Djibouti, Ecuador, Guatemala, India, Indonesia, Jordan, Kuwait, Kyrgyzstan, Libya, Malaysia, Maldives, Mauritania, Mauritius, Mexico, Nigeria, Peru, Philippines, Qatar, Russian Federation, Saudi Arabia, Senegal, Thailand, Uganda and Uruguay.

Against: Austria, Belgium, Czech Republic, Hungary, Italy, Norway, Poland, Republic of Moldova, Romania, Spain, Switzerland and United States of America.

Abstention: None

No comments were made by Commonwealth countries.

RIGHT TO DEVELOPMENT

The resolution requested the Office of the High Commissioner to submit to the Council an annual report on its activities with regard to the promotion and realisation of the right to development. It also emphasised the need to mainstream multidimensional aspects of development into all areas of the UN system.

The resolution was adopted with 46 voting in favour, 0 against, and 1 abstention. Voting among countries was as follows:

In favour: Bangladesh, Botswana, Cameroon, India, Malaysia, Maldives, Mauritius, Nigeria and Uganda

Against: None

Abstention: None

No comments were made by Commonwealth countries.

HUMAN RIGHTS, DEMOCRACY AND THE RULE OF LAW

The resolution stressed that democracy includes respect for all human rights and fundamental freedoms. It requested the Office of the High Commissioner to organise a panel discussion on common challenges facing States in their efforts to secure democracy and the rule of law from a human rights perspective and draft a study on the same.

The resolution was adopted with 43 voting in favor, 0 against, and 2 abstentions. Voting among countries was as follows:

In favour: Angola, Austria, Bangladesh, Belgium, Benin, Botswana, Burkina Faso, Cameroon, Chile, Congo, Costa

Rica, Czech Republic, Djibouti, Ecuador, Guatemala, Hungary, India, Indonesia, Italy, Jordan, Kyrgyzstan, Libya, Malaysia, Maldives, Mauritania, Mauritius, Mexico, Nigeria, Norway, Peru, Philippines, Poland, Qatar, Republic of Moldova, Romania, Russian Federation, Senegal, Spain, Switzerland, Thailand, Uganda, United States of America and Uruguay.

Against: None

Abstention: China and Cuba.

Absent: Kuwait and Saudi Arabia.

No comments were made by Commonwealth countries. ■

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National Inquiries: The Latest Weapon in an NHRI's Arsenal

Jennifer Kishan, Research Officer, Strategic Initiatives Programme, CHRI



A national enquiry in progress Photograph by: SUHAKAM

The recent inquiry into the infringement of the native customary rights of indigenous populations in Malaysia illustrates the potential of a National Human Rights Institution (NHRI) to examine complex human rights violations. During the past two years, the Malaysian NHRI, SUHAKAM, has made inroads into rebuilding its public credibility with its newly appointed commissioners. One of its landmark moves includes that of holding a National Inquiry on the issue of Land Rights of Indigenous Peoples. Land grabbing, especially given native customary rights of indigenous populations, has become a chronic feature in the ever rising quest for development; leaving many as victims of corporate giants and state authorities. The inquiry, therefore, comes in response to a deluge of complaints received by SUHAKAM – over 2000 – on land infringement

issues, making it imperative for the NHRI to look into the matter. At present, the NHRI has just concluded one of its three inquiries. These were scheduled in Sarawak, Sabah and Peninsular Malaysia and are to be completed by the end of April, following which a report with recommendations will be presented to the government in July.

National inquiries are one of the most cost effective and efficient strategies for NHRIs to proactively respond to systemic and endemic human rights violations. NHRIs generally tend to be overwhelmed by a broad mandate and limited resources. However, mandates of most NHRIs give them powers to conduct inquiries with the opportunity to collect large-scale evidence and testimonies on patterns of human rights violations, making this an ideal strategy to

cover their board mandates in a cost effective manner.

The objectives of national inquiries are dual in nature. Firstly, they aim to conduct fact-finding missions that address large-scale human rights violations which also create community awareness and propel political pressure towards systemic changes. The other objective of a national inquiry is to educate the masses on the role and functions of an NHRI. Inquiries go beyond individual complaints and try to establish patterns of human rights violations that can be addressed more comprehensively.

At present, SUHAKAM's efforts have been winning results with participation from not just the media and the general public, but also the main stakeholders – the victims of human rights violations, corporations and state government representatives. One of the major achievements of the inquiry has been to highlight the UN Guiding Principles on Business and Human Rights to approach this issue. "The problem is that for decades there has been a misinterpretation of what Corporate Social Responsibility (CSR) means. This needs to be addressed," says James Nayagam, SUHAKAM's Commissioner engaged in conducting this inquiry. For the first time, the idea of CSR as more

than mere philanthropy is being put forth through this inquiry.

Alluding to the Guiding Principles on Business and Human Rights as a yardstick for understanding CSR, SUHAKAM highlighted the need to have a three-tier approach to the issue of land exchange, that involves protection, respect and remedy. It is imperative to respect communities and their rights, consult them and address the challenges they may face from the very start, even before one can begin to take action. Nayagam stressed on the need for companies to revisit their understanding of CSR in a more holistic sense which may include the impact this may have on society and human rights violations.

SUHAKAM aims to make systemic changes that can pave the way to a better informed, responsible and accountable exchange on land rights, a strategy based on the presumption that prevention is better than cure. Nayagam states that the solution is to address these challenges right from the start before they become obstacles for sustainable development in the future. SUHAKAM intends to change the paradigm through an increased understanding of community-centred approaches. National inquiries also provide a platform to use international human rights standards as benchmarks against which national legislation, policies and programmes may be assessed. “Introducing these standards and mediating are the main purposes of the inquiry,” says

Nayagam.

One of the major expected outcomes from this inquiry is that companies will now develop their own proactive guidelines stemming from international standards and further illustrate their commitment to human rights by implementing international best practices. These expectations come from the general understanding that CSR activities translate into the goodwill of consumers and even an increase in profits. SUHAKAM also intends to create best practice awards and a rating of standards-compliant companies by August, giving a greater incentive for change.

The effectiveness of national inquiries lies largely on the cooperation and assistance they receive from civil society, particularly civil society organisations. From being the eyes and ears of the NHRI in the field, to helping with documentation and assisting remote, isolated communities, as well as representing them during the inquiry, the role played by civil society organisations has significantly improved the outcomes of SUHAKAM’s inquiry.

SUHAKAM’s initiative is unprecedented in the history of the Malaysian NHRI as it is the first time it has conducted an inquiry on such a scale. Being relatively new in the area, the NHRI sought the expertise of the Asia Pacific Forum, the network of NHRIs in the Asia Pacific Region, and the Raoul Wallenberg Institute

to strengthen its capacity and provide it with technical support. Trainings with these experts were crucial for SUHAKAM to create a roadmap for the inquiry. Drawing on comparative studies from countries across the globe, these trainings helped set down the terms of reference on what to investigate, how to remain neutral and how to reign one’s expectations on the outcomes. Tailoring it then to the Malaysian context, they helped outline a strategy for the inquiry including its reporting and follow-up processes and its timeframe. Moving from theory to practice SUHAKAM initiated its nascent beginnings towards gaining public credibility while implementing international best practice for systemic human rights change.

Several positive outcomes are perceived from the current inquiry. SUHAKAM will not merely address these human rights violations, but also create a strong awareness of the responsibilities and duties that companies have towards communities. By allowing a platform for all major stakeholders to engage with each other, SUHAKAM’s efforts will also lead to strengthening its relationship with other institutions, including justice institutions, and help facilitate the amendment of laws and regulations regarding land issues. Overall, this commendable effort by the NHRI may lead to effective remedies with fewer delays. ■

A National Round Table to Assess the Working of Police Complaints Authorities

Aditi Diya Nag, Programme Officer, Police Reforms Programme, CHRI



National roundtable on the working of PCAs. Photograph: CHRI

Public unhappiness has been simmering for a long time over regular incidents of police officers literally getting away with murder. In this context, real police reforms could mean that bringing errant officers to book in the event of their wrong doing and criminality should be easy. However, trends in the implementation of such reforms indicate that the path ahead is extremely difficult, if not impossible in India. In the Prakash Singh judgement of 2006, the Supreme Court addressed several problems that plague policing and provided solutions in the form of

directives. One such directive, the creation of oversight mechanisms, was designed to protect the police from undue political interference, improve internal management systems and create a higher level of accountability.

The Court called for each state and union territory to set up police complaints authorities, headed by a retired High Court Judge and staffed with independent members. These bodies would look into serious police misconduct such as custodial death, custodial rape and grievous hurt. Armed with

the power to initiate a criminal case or a departmental inquiry, if provided with appropriate governmental support, these authorities could make significant progress in terms of increased police accountability.

As is the case with other countries in the region, several stakeholders in India do not recognise this new notion of external police oversight. Governments and police departments are still struggling to acknowledge the fact that the police cannot investigate themselves independently, and that there is a need for a public forum where complaints against the police can be easily lodged. There is a total reluctance to accept that internal inquiries are simply not adequate. On the other hand, the public is also largely unaware that this is possible, and it needs to be educated on how to go about this process.

While this article is not about the reasons why governments have been so lethargic in setting up these bodies, the fact is that only ten authorities exist in India today, six years after the Court first issued its judgement. Police complaints authorities can be found in Assam, Goa, Haryana, Kerala, Tripura and Uttarakhand; and the following union territories have also taken the

initiative to establish authorities: Chandigarh, Puducherry, Daman and Diu, and Dadra and Nagar Haveli. In all other states, these bodies exist only on paper.

CHRI has been monitoring the working of these authorities very closely over the past few years. From their very inception they have had to struggle – the composition of members who make up the authorities is incorrect, selection procedures are not followed in appointments, the powers of the authorities are diluted. From such disadvantaged positions these authorities have also had to face considerable resistance from the police. To add insult to injury, the executive has been unreasonable in terms of providing adequate funding and resources. However, without these police complaints authorities, police misconduct will continue as unbridled as it always has been.

For these bodies to thrive, the public needs to be more involved. Civil society monitoring is an important element that can ensure the success of oversight bodies. Without greater public knowledge and civil society engagement, these nascent forums for accountability will remain on paper or soon become dysfunctional. CHRI has spread awareness of the existence of these bodies, their mandates and the relief that can be sought from them. In addition, we have built the capacity of civil society to use these institutions as well as monitor their performance. As part of these

efforts, CHRI drafted Model Rules of Procedure for the authorities to provide a template to strengthen their inquiry processes and internal procedures.

The culmination of these efforts was a national round table hosted by CHRI in Delhi, to address some of the misgivings about the role of complaints authorities and identify ways to strengthen them. For the first time in India, the chairpersons and members of police complaints authorities, police officials, civil society organisations and academics from within India were brought together at one table for a two-day round table. CHRI also invited some international experts to provide suggestions on the international best practices that could be applied to the Indian context.

Bringing these stakeholders together brought about a realisation in all the involved parties that discussions based on external oversight of the police must be inclusive. Excluding police departments or civil society was not an option and would lead to more problems and barriers for the authorities to effectively realise their mandate. The main objective of holding such a round table was to elicit concrete actions and the steps that can be taken for procedural improvements and greater impact. CHRI presented draft Model Rules and sought feedback with the aim of agreeing on a uniform set of rules for all the authorities to use.

Considerable detailed discussion resulted from this round table.

Though these bodies are designated as civil courts, they must not reduce themselves or their space to “just another cumbersome procedure”. Rather, they should be easily accessible, transparent and efficient, and follow simple procedures and guidelines. It was agreed by all present that the ultimate outcome should be to provide justice to victims of police misconduct.

One element of concern was the power dynamics between the police and the complainant. The police officer has the entire department’s support (and often a specially appointed lawyer), whereas the complainant has to take care of all procedures him/herself, after having mustered the courage to register a complaint in the first place. It should be the duty and responsibility of the authority to ensure that the complainant gets a fair experience and is not overburdened. For example, procedural guidance must be given to complainants vis-à-vis the registration process; the authority must ensure that notices for subsequent hearings are received by the complainant in a timely manner and that the complainant is given regular updates of the case. And lastly, the authority’s final decision must be properly explained to the complainant and suggestions for further steps if necessary be given.

Much of the discussion revolved around the presence of lawyers at the hearings. Since it is not a punitive body, some argued that there should be no legal representation during

hearings, for either party. What is emerging as a practice is that the respondent police officers send their lawyers for hearings rather than attend themselves, whereas the complainant is unable to afford one and thus loses out in the process.

Civil society members present at the round table reminded authority Chairpersons that the complaints process is a preliminary step before the registration of a case in the court, and so should be simple, keeping the complainant in mind, first and foremost. The presence of lawyers makes the process burdensome and similar to a court. On the other hand, others argued that since these bodies are mandated to look into complaints of even serious offences such as torture, the respondent has a right to legal representation even at this preliminary stage. No consensus was reached on this issue. In fact, this has been identified as a grey area in the laws governing such bodies including the Supreme Court's directives and police laws.

Another question raised was whether complaints authorities should be permitted to have retired police officers on their staff. This emerged as a contentious issue. Several police officers argued that the presence of police officers is important to provide professional knowledge of policing and the nuances of how the system functions. But most civil society organisations, including CHRI, are of the opinion that the composition of such bodies must be completely independent. No body or department can investigate

themselves independently, and the police are no exception. Not only must the complaints authority be independent, it must also be seen to be independent by the public at large. Complaints authorities always have the option to consult any policing expert on complex issues, and the enquiry procedure also provides an opportunity for the police to make submissions.

Lastly, participants addressed the issue of the relationship between police complaints authorities and the National Human Rights Commission in India. The Protection of Human Rights Act, 1993 mandates the Commission to look into all cases of custodial torture and death suo moto. Authorities are also mandated to look into such complaints and have suo moto powers. Then, Section 176A of the Code of Criminal Procedure mandates a judicial enquiry into all deaths in police custody. It was debated whether or not it makes sense for complaints authorities to look into grievous crimes as well. The procedure for handling such complaints has to be elaborated in greater detail. In addition, complaints authorities and the Commission must coordinate and chalk out a plan to determine jurisdiction.

CHRI hopes that this round table is the first of many joint discussions on how the police in India can metamorphose from a dreaded force that the public is always wary of, to a service that the public has faith in to uphold the law. The

Court envisioned police complaints authorities to be specialist bodies which would provide a strong antidote to the unbridled power and lack of accountability that the Indian police enjoy. Over and above assessing individual complaints, the aim was for them to identify broad patterns of misconduct and issue annual reports on these. This, among many other things, is yet to take place.

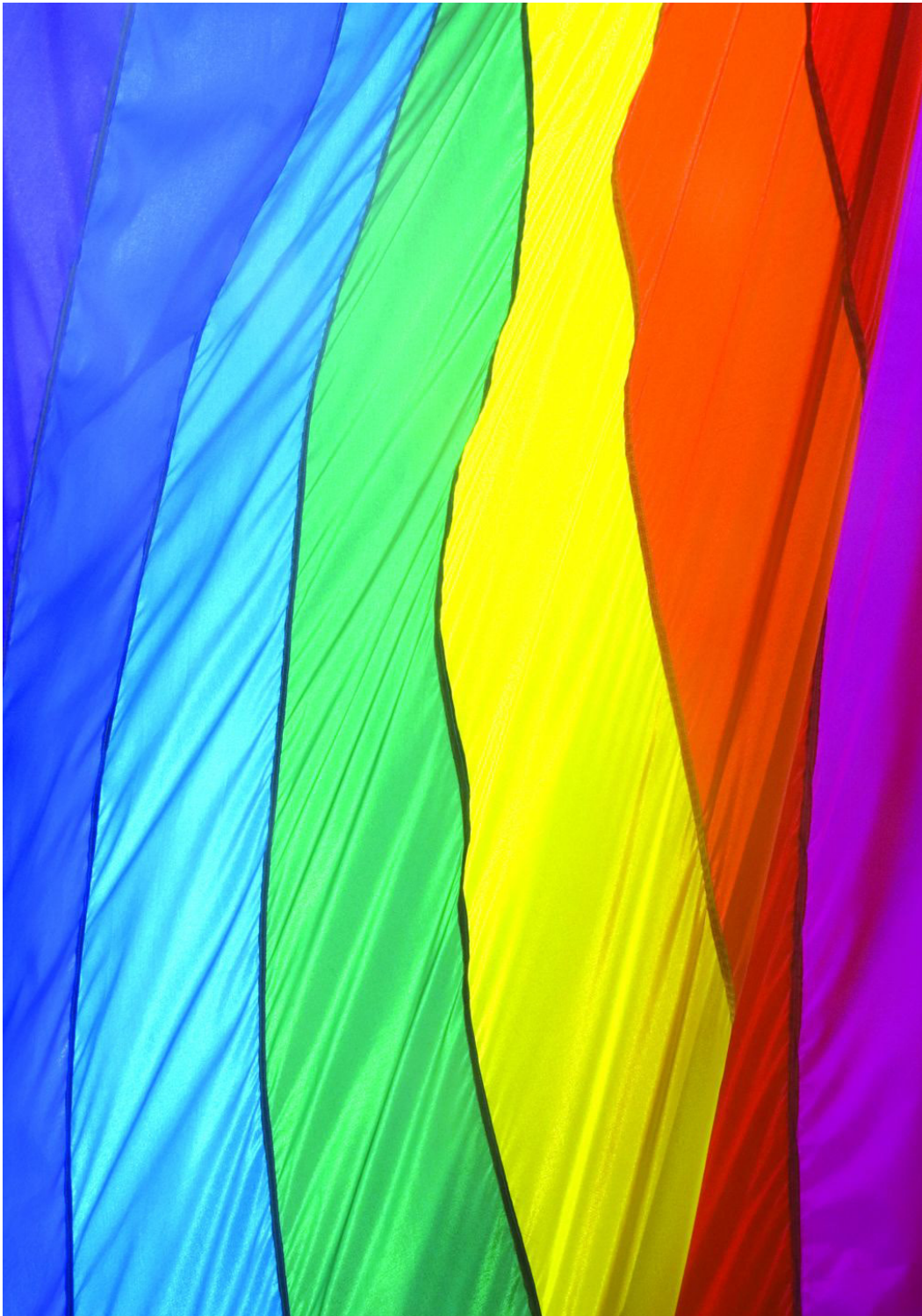
While CHRI will continue its work on this subject, it is urged that the readers of this article take necessary steps to provide support to these bodies where needed, by rallying with state governments to set up complaints authorities and to strengthen those already on the ground.

For further information on police complaints authorities in India, please do see our latest report on the operational authorities available at: http://www.humanrightsinitiative.org/publications/police/PoliceComplaintsAuthorities_ReformResisted.pdf ■



Sexual Orientation and Gender Identity at the UN Human Rights Council

Sanyu Diana Awori, Programme Officer, Strategic Initiatives Programme, CHRI



An unprecedented panel discussion on sexual orientation and gender identity was held at the 19th session of the UN Human Rights Council in early March. This was the first ever Council debate focused on the violence and discrimination faced by lesbians, gays, bisexual, transgender and intersex (LGBTI) persons.

The panel discussion was based on Council Resolution 17/19, adopted in June 2011 that directed the UN High Commissioner for Human Rights to document discriminatory laws, practices and violence, based on sexual orientation and gender identity. The resolution further directed that a panel discussion would be convened to discuss and debate the High Commissioner's findings.

The High Commissioner's report revealed a pattern of homophobic and transphobic violence, that constituted a form of gender-based violence. Often, the violence, abuse

and harassment, based on real or perceived sexual orientation and gender identity occurred within a context of impunity, with few structures in place to record and report such incidents. The report called for member states to repeal laws that criminalise same-sex sexual conduct – laws that exist in 76 countries, with 41 of these being Commonwealth countries. It also called on the Council to encourage Special Procedures to continue reporting violations based on sexual orientation and gender identity.

These findings were presented at the anticipated panel discussion, sponsored by South Africa and Brazil. Panellists included Hina Jilani (Pakistan), Irina Bacci (Brazil), Hans Ytterberg (Sweden) and Laurence Heffler (US); and the session was moderated by the South African Ambassador, Abdul Minty.

Opening the session, UN Secretary-General, Ban Ki Moon, delivered a video message which emphasised that such discrimination was “a monumental tragedy for those affected – and a stain on our collective conscience”.

Subsequently, High Commissioner Navi Pillay presented the report and stated: “No personal opinion, no religious belief, no matter how deeply held or widely shared, can ever justify depriving another human being of his or her basic rights. And that is what we are discussing here – depriving certain individuals of their human rights – taking away their right to life and security of

person, their rights to privacy, to freedom from arbitrary detention, torture and discrimination, to freedom of expression, association and peaceful assembly.”

The panel noted that violations based on sexual orientation and gender identity occur across the globe. It discussed a range of issues, including threats to human rights defenders who work on behalf of sexual minorities, and stressed the need for legislative reform to combat discrimination while emphasising that, to be effective, such reforms should be matched with the promotion of cultural change.

The panel discussion attracted criticism from some states. The Organisation of Islamic Cooperation (OIC) explicitly stated their opposition to any dialogue on sexual orientation and gender identity, and led by Pakistan, staged a walk out from the panel discussion. Some members of the Arab Group represented by Mauritania followed suit and also boycotted the session.

Despite this opposition, statements were delivered in support of the High Commissioner’s report and its affirmation of international human rights law and principles. For instance, a statement was delivered on behalf of national human rights institutions (NHRIs). Another by civil society actors, and CHRI was one of 284 NGOs that endorsed a joint NGO statement calling on states to end human rights violations based on sexual orientation and gender identity, as

they are duty-bound to fulfil their legal obligations.

A representative from the Coalition for African Lesbians, Kasha Jacqueline, further stated: “African LGBTI activists are not asking for any new or special rights. We are simply asking that our African governments live up to their obligations under international and regional instruments and their own national constitutions; all of which recognise equality and non-discrimination for all citizens.”

Echoing the recommendations made in the High Commissioner’s report, the panel advocated that dialogue on this issue should continue and that Special Procedure mandate holders should be supported by states as they work to give attention to violations based on sexual orientation and gender identity. The significance of this panel cannot be overstated, and it sends out a clear message that human rights violations based on sexual orientation and gender identity cannot be tolerated. ■

Read CHRI’s latest report: “Rapid Study of Information Commissions” in India

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