

# Commonwealth Human Rights Initiative

# Newsletter

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### The Progressive Development of Human Rights Standards at CHOGM

- Alison Duxbury

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It is now one year since the Commonwealth's main decision-making body, the Commonwealth Heads of Government Meeting (CHOGM), met in Nigeria and it is the same period of time again until it will meet in Malta. Over the years, the communiqués issued at the conclusion of each CHOGM have demonstrated discussion of a diverse range of subjects, such as Southern Africa, the environment, AIDS, economic cooperation, small states, and light weapons. In addition, the Heads of Government have progressively elaborated upon the standards that they believe that member states should uphold. The outcomes of the last meeting, including the human rights issues raised in the governmental statements and the action taken against Zimbabwe, were discussed in the Spring 2004 edition of CHRI News. This article will take a step back and review the way in which the adoption of human rights principles has evolved at CHOGMs since 1971. While this article concentrates on the standards adopted at CHOGM, this is not meant to underestimate the importance of statements made in other official Commonwealth meetings, or indeed the work of the Commonwealth Secretariat and non-governmental organisations. But when it comes to giving a public face to the expression of Commonwealth values, it is to the statements of the biennial meetings that we turn.

The Singapore Declaration of 1971 is regarded as the first articulation of a Commonwealth human rights policy by the Heads of Government. But when reading the Singapore Declaration it is important to recall the limitations within which the Commonwealth must act, set down only six years previously

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in the Agreed Memorandum on the Commonwealth Secretariat. Thus, the Agreed Memorandum states that the Commonwealth “does not encroach on the sovereignty of the individual members”, nor does it require members to reach collective decisions. These limitations have provided a brake (albeit a progressively less significant one) on the development of a human rights programme by the organisation.

The Singapore Declaration refers to a wide range of standards, but concentrates on two fundamental principles: first, freedom from discrimination, and secondly, the importance of democratic political processes and representative institutions. In language uncharacteristically passionate for a document adopted by states in an international forum, the Heads of Government in Singapore declared that “racial prejudice” was a “dangerous sickness” and racial discrimination, “an unmitigated evil of society”. In the 1970s and 1980s the Commonwealth was chiefly known for its stance against such discrimination in the face of apartheid South Africa, as is emphasised by documents such as the Commonwealth Statement on Apartheid in Sport, and the Lusaka Declaration of the Commonwealth on Racism and Racial Prejudice issued at the 1979 CHOGM. The title of this later Declaration reflects a concentration on racial prejudice, but it would be a mistake to regard it as solely concerned with that form of discrimination. Thus, it emphasises the need to eliminate distinctions based on “race, colour, sex, descent, or national or ethnic origin”. Furthermore, the Lusaka Declaration also recognises the place of remedies in human rights law by stating that “everyone has the right to effective remedies and protection against any form of discrimination”. This assertion is particularly significant given that the realisation of rights requires that standards not only be promoted, but also protected, by effective processes.

Many discussions of the articulation of human rights principles at Heads of Government Meetings tend to leap from the Singapore Declaration to the Harare Declaration of 1991. While it is true that these are the

most significant statements of Commonwealth rights, a number of other CHOGMs in the intervening 20 years elaborated upon the organisation’s approach beyond the prohibition of racial discrimination. The Heads of Government have pledged their commitment to the principle of self-determination (Singapore), referred to economic, social and cultural rights (London 1977), and recognised the inter-relationship of all rights (Kuala Lumpur, 1989). These statements are important given their explicit acknowledgement of the existence of human rights standards beyond the traditional sphere of civil and political rights. As CHRI stated in its 2001 Report, “we live in a poor Commonwealth”,<sup>1</sup> and in this context the recognition and implementation of economic, social and cultural rights must be achieved.

On one level the Harare Declaration of 1991 was merely a reaffirmation of principles that had already been stated elsewhere, rather than a declaration of new Commonwealth values. However, arguably it was not until the meeting in Harare that the Heads of Government began to emphasise the second aspect of the Singapore Declaration – democratic government and representative institutions, or the ‘fundamental political values of the Commonwealth’. Paragraph 9 of the Harare Declaration pledges the Commonwealth to work with “renewed vigour” on (among other things) “fundamental human rights” and “democracy, democratic processes and institutions which reflect national circumstances, the rule of law and the independence of the judiciary”. Subsequently, at Edinburgh (1997), Durban (1999), Coolum (2002), and Abuja (2003) the Heads of Government “reaffirmed” or “renewed” their commitment to the fundamental political values of the Commonwealth.

The “renewed vigour” highlighted in the Harare Declaration was certainly in evidence two years later at the Auckland CHOGM, when the Commonwealth for the first time instituted strategies for the enforcement of its fundamental values. The Millbrook Commonwealth Action Programme is a more radical document than the Harare Declaration in that it outlines measures that the Commonwealth may take in the event of the unconstitutional overthrow of a government.

<sup>1</sup> CHRI, *Human Rights and Poverty Eradication* (2001) 4.

Although not explicitly phrased as a document for the enforcement of human rights, it enables different parts of the organisation to take actions ranging from a public expression by the Secretary-General “of the Commonwealth’s collective disapproval”, to suspension from participation in Commonwealth meetings. The significance of these measures is that the organisation has certainly moved some way from the principles set down in the Agreed Memorandum. This is particularly apparent when considering the role of the Commonwealth Ministerial Action Group (CMAG) and the subsequent suspension of Nigeria, Pakistan and Fiji (now all reinstated to full membership) and also the withdrawal of Zimbabwe as a result of Commonwealth enforcement action.

In the past I expressed the view that prior to 1991, CHOGMs demonstrated “a consistently haphazard approach to human rights”.<sup>2</sup> Despite the many advances that have been made since that date, to some extent the comment still holds true in two respects. First, the reluctance to use CMAG for the full range of human rights standards articulated internationally, despite the broadening of its remit by the High Level Review in 2001 (adopted at the 2002 CHOGM) to include serious or persistent violations of the Harare Commonwealth Principles. Additionally, the Heads of Government have not consistently used the terminology of rights when discussing economic and social values. For example, although the Fancourt Declaration on Globalisation and People-Centred Development (1999) is a forceful statement of the issues that are most significant to member countries, such as the elimination of poverty, good governance and development, it does not take an explicitly rights approach.<sup>3</sup> To some extent this has been rectified in the Aso Rock Declaration (2003), whereby the Heads of Government committed themselves to both development and democracy as well as a specific list of objectives, including an independent judiciary, a well-trained public service, and machinery to protect human rights. This last goal highlights that a complete human rights system at the international level, as well as in the domestic sphere, not only requires the articulation of standards but also measures for the implementation and enforcement of rights.<sup>4</sup>

In dealing with human rights principles, CHOGMs have been progressive in both senses of the word: first, over the years the Heads of Government have progressively developed the standards that members should uphold. Secondly, the establishment of CMAG and the Commonwealth’s stance towards the violation of its fundamental values have been innovative when compared to the practice of other international organisations. CHOGMs have achieved much but there is work to be done in both the articulation of rights and the protection of those standards, in order for the Commonwealth to have a complete system for the protection of rights. ■

*Alison Duxbury is the newest Commissioner to join CHRI in our Advisory Commission (AC). The AC is an international group of eminent Commonwealth citizens who give policy directions to CHRI. They are appointed for a period of 3 to 5 years and meet at least once annually.*

*Alison joined the Law School, University of Melbourne, Australia as a Senior Lecturer in the year 2001. She holds a Bachelors degree in Arts and Laws from the University of Melbourne, and a Master in Law from the University of Cambridge, where she was a Pegasus Cambridge Commonwealth Scholar. Prior to her appointment at Melbourne, Alison was a lecturer at Monash University.*

*Alison has been actively involved in a number of professional and community bodies, including the Australian Red Cross International Humanitarian Law Advisory Committee (Victorian Division). Alison is also a Red Cross Community Speaker and speaks on subjects of international humanitarian law and the enforcement of international criminal law.*

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<sup>2</sup> A Duxbury ‘Rejuvenating the Commonwealth – The Human Rights Remedy’ (1997) 46 *International and Comparative Law Quarterly* 344, 360.

<sup>3</sup> For further discussion see A Duxbury, ‘Reviewing the Commonwealth’s Rights Record: From Recognition to Realisation’ (2003) 19 *South African Journal on Human Rights* 636.

<sup>4</sup> See K. Vasak ‘The Distinguishing Criteria of Institutions’, in K Vasak (ed) *The International Dimensions of Human Rights* (1982) Vol I, 218-20.

# National Convention Celebrates a Decade of Right To Information in India

Renu Vinod

*Intern, Access to Information Programme, CHRI*

It was on the 8<sup>th</sup> of October 2004 that the National Capital of India, New Delhi, was witness to a special Jan Sunwai (public hearing). This Jan Sunwai was special because it heralded a national level three-day celebration commemorating a decade of the Right To Information movement in India. It was also special because barely literate and poor citizens voiced their grievances in front of a thousand strong audience demanding government accountability related to the Public Distribution System.

The public hearing was organised by Parivartan - a leading Delhi-based citizen's group working on RTI that has been instrumental in exposing the nexus between corrupt government officials and Public Distribution Outlet's owners. The National RTI Convention had residents of the slum settlements of Ekta Vihar rubbing shoulders with well-known activists of RTI in India, including Aruna Roy (Mazdoor Kisan Shakti Sangathan), Arvind Kejriwal (Parivartan), Prabhush Joshi (also Supreme Court Advocate), Kuldip Nayar (former Member of Parliament) and Ajit Bhattacharjee (former Director, Press Institute of India).

At the hearing, presided over by eminent personalities and attended by civil society groups, and concerned individuals, records of Public Distribution Shops in the area obtained by Parivartan volunteers using the *Delhi Right to Information Act*, were scrutinised. They found that these below poverty line ration cardholders had been denied their rations (quota of food) for a substantial period stretching from six months to two

years. The records however revealed fictitious entries showing that food articles and kerosene had been sold regularly to the beneficiaries of this scheme.

The high point of the Jan Sunwai was when communities bravely narrated their stories, clearly exposing the high levels of corruption that exists in the Public Distribution System in India. The Jan Sunwai also gave a chance to the owners of the Public Distribution Shops charged with corruption to present their cases. Predictably they denied all charges.



*Jan Sunwai in New Delhi*

Flashback to 1997, when a group of concerned professionals, human rights and social activists, including the Commonwealth Human Rights Initiative, the Mazdoor Kisan Shakti Sangathan (a workers and farmers solidarity group based in Rajasthan), and Parivartan got together to form the National Campaign for People's

Right to Information (NCPRI) to foster collective action to ensure an effective national *Right to Information Act*. Following their formation, the first National Convention on the RTI was held in Beawar, Rajasthan in April 2001. The second Convention on a national scale occurred in October 2004 in Delhi, beginning with this very Jan Sunwai, to mark the success of the RTI movement in India.

It was a decade ago in India's desert state of Rajasthan that the grassroots Right to Information movement in the country began. Volunteers from MKSS began their campaign for a social audit of the money the village

*Photo by Laxman Anand, Civil Society*



government had spent on public works. They were the first to use slogans like “*The Right to Know is the Right to Live*”, and “*Our Money, Our Accounts*”, forcing the government to take notice and ultimately opening themselves up for public scrutiny. “*Our Money Our Accounts*”, was then adopted as the slogan of the National Convention.

When the RTI movement first began in India, the focus was mainly on misappropriation of public money being spent on development work meant for the public, and chasing after corrupt Public Distribution outlet’s owners who cheated citizens who were below the poverty line of their rightful entitlement to food rations. RTI activists are now trying to extend its practical use beyond the Public Distribution System. This was evident at the National Convention where participants were informed of the wide range of issues in which RTI could be favourably used to procure information, such as on: genetically modified food, industrial pollution, communalism, disability and missing persons.

In some areas like nuclear issues, economic globalisation and project displacement, India lacks the expertise in RTI. These workshops were seen as an opportunity by the NCPRI to explore methods by which the public’s right to information can be used in these areas to make government and other agencies more accountable. Experts in these fields bringing out the RTI component explored about thirty such new areas.

With participants from over 20 states and 200 organisations, the Convention was also a good opportunity for people from different parts of the country to come together and gaze how effectively RTI functions in states that have adopted it. Case studies in Rajasthan were analysed by participants giving them the opportunity to learn the nuances of the movement and its growth in different parts of the country. The representation from several states and organizations was an apt demonstration of how relevant the Act is for the welfare of people.

The need for RTI was bought to life at the Convention by personal stories. Ram Sagar, for instance, from the state of Uttar Pradesh, which does not have a RTI Act in place yet, suspected foul play in the distribution of money meant for public health in their village. When

the villagers from the state were denied information they went on a *Dharna* (strike) for several days making the local government officials nervous enough to respond. Villagers now use this method to elicit other public information also. Right to Information legislation in the hands of people like Ram Sagar would certainly be a potent weapon to extract information from government authorities especially in a state like Uttar Pradesh where corruption is rampant.

Yet another interesting aspect of this Convention was the urgency felt in making the Central Act “people friendly and any information relevant to ordinary citizens... not be deemed an official secret”. The outcome of this urgency was reflected in the Delhi Declaration. Even though the Freedom of Information Act was passed by Parliament in 2002 it hasn’t been made operational till date. It is likely that the draft amendments to the 2002 Bill will be tabled in this year’s winter session of the Parliament.

The need of the hour is for everyone to stand united and ensure that the Right to Information Act is effectively utilised for citizens’ welfare. The National Convention on Right to Information symbolises this united struggle by concerned citizens to fight an apathetic government and bring in a strong RTI Act.

### ***CHRI National Workshop on Media and the Right to Information.***

*A day preceding the National Convention on Right To Information, CHRI conducted a national workshop on the importance of media networks in using the Right To Information.*

*The objectives of the workshop were to appraise participants about the possibilities of using RTI provisions to secure information related to their work areas by showcasing examples from abroad; and to create a nation-wide network of media persons who will work on RTI issues.*

*Twenty-five media persons working with the print and electronic media at the national and regional level attended the daylong workshop. Topics discussed and debated were: RTI in India: Constitutional and Legal Developments; RTI – Citizens and Groups in Action; Media’s Use of RTI Laws to Access Information and the Value of Right to Information to the Media.*

# Right to Information Legislation

## The Key to Reducing Corruption and Enhancing Economic Growth

**Charmaine Rodrigues & Peter Slough**

*Access to Information Programme, CHRI*

“Corruption distorts the efficient allocation of resources and impacts negatively on sustainable economical growth, income equality and poverty reduction,” remarked Michael Potts, the Australian High Commissioner to Papua New Guinea (PNG). While PNG strives to move development forward and to stabilise its fragile democratic institutions, it is a sad but a widely known fact that corruption is diverting much-needed public funds away from important development initiatives.

PNG should commit to entrenching the right to access information from government, and private bodies in certain situations, as a key anti-corruption strategy. For a relatively small cost and investment of time at the outset, entrenchment of an effective access to information regime will immediately show returns.

Currently, corruption is allowed to flourish because politicians and bureaucrats alike are aware that their actions and decisions are not open to public scrutiny. Money is allegedly spent on economic and developmental growth activities, but the public has no way of checking what is actually being done. Are roads really being properly built and maintained? Is sufficient money really being spent on schools and health services?

The right to information gives the public a practical tool, which can be used to oversee government decision-making and expenditure. It opens up the government to the public, thereby increasing transparency and reducing corruption. Would government officials be as willing - or even as able - to regularly act against the public interest, and in their own interest, if they knew that their decisions could be examined by citizens and publicised? It is by no coincidence that countries perceived to have the most corrupt governments also have the lowest

levels of development or that countries with access to information laws are also perceived to be the least corrupt. In 2003, of the ten countries scoring best on Transparency International's Annual Corruption Perceptions Index, no fewer than nine had effective legislation enabling the public to access government information. Of the ten countries perceived to be the worst in terms of corruption, not even one had a functioning *Access to Information* regime.

Providing people with a simple legal right to demand information from the government will also empower them to meaningfully engage in their own development. The right to information is necessary to ensure development activities are appropriate and sustainable, thus giving them the best chance for success.

As Kofi Annan, the Secretary-General of the United Nations, has observed: “The great democratising power of information has given us all the chance to effect change and alleviate poverty in ways we cannot even imagine...With information on our side, with knowledge a potential for all, the path to poverty can be reversed.”

Entrenching the right to information is also good for the economy – open governance, with its associated anti-corruption focus, makes countries more attractive to foreign investors. At the high policy end, parliamentarians and the public can exercise their right to access information to obtain documents on trade and economic policy. Investors can also rely on the continual availability of timely and accurate information about government policies, the operation of regulatory authorities and financial institutions and the criteria used to award tenders, provide licences and give credit. At the other end of the spectrum, people

can use their right to access information regarding, for example, taxation, wages and government spending.

Though PNG does not yet have freedom of information legislation, Article 51 of the Constitution explicitly recognises the right of reasonable access to official documents, subject only to the need for such secrecy as is reasonably justifiable in a democratic society.

A constitutional provision is however not enough. People cannot be expected to undertake litigation in the courts every time they require a simple piece of information from their government. Instead, legislation should be put in place, which clearly sets out the rights of the public to access information and the duties on officials to give information.

It is disappointing that the Government has not yet provided the public with access to the huge amounts of valuable information that it produces as part of the routine discharge of its duties. Information does not belong to officials, to be controlled and hoarded. Government information belongs to the public - it is created with public money by public servants paid by the public treasury. It is a national resource.

Any right to information regime that is developed in PNG should be based on the international best practice principle of maximum disclosure. In this era of outsourcing of public services to private companies, even documents held by private bodies should be included under law, where information affects the right of citizens. Release of documents should be the norm with the exception made for matters that go against the public interest. Public interest should be narrowly defined though - to protect things like national security or personal privacy. This simply cannot be used to protect government from embarrassment or to hide corruption.

Corruption will continue to undermine economic and social development if it is not identified as a matter of priority. The Government has repeatedly stated its commitment to pursuing anti-corruption strategies - the right to information provides one very tangible

mechanism which the Government can implement for relevant little cost but major benefits. At the very least, this will have long-term governance, development and economic benefits. ■

*The Corruption Perceptions Index is a poll reflecting the perceptions of business people and country analysts, both resident and non-resident. This year's Corruption Perceptions Index draws on 18 surveys provided to Transparency International between 2002 and 2004, conducted by 12 independent institutions. The range is between one and ten, with a score less than two perceived to be rampant corruption, and ten being open and transparent government.*

*PNG achieved a score of 2.6 in the Index and were ranked 102 out of 150 countries. The entrenchment of an effective, comprehensive RTI regime would enable their government to become more open and transparent and thus strike out corruption. Supporting this statement is the fact that in the top ten perceived countries in the index, nine have effective RTI laws.'*

### **Transparency International Corruption Perceptions Index 2004**

#### **The Top ranked countries**

<b>Country Rank</b>	<b>Country</b>	<b>CPI Score 2004</b>
1.	Finland	9.7
2.	New Zealand	9.6
3. + 4.	Denmark + Iceland	9.5
5.	Singapore	9.3
6.	Sweden	9.2
7.	Switzerland	9.1
8.	Norway	8.9
9.	Australia	8.8
10.	Netherlands	8.7

#### **The Bottom ranked countries**

<b>Country Rank</b>	<b>Country</b>	<b>CPI Score 2004</b>
140. + 141.	Azerbaijan + Paraguay	1.9
142. + 143.	Chad + Myanmar	1.7
144.	Nigeria	1.6
145. + 146.	Bangladesh + Haiti	1.5

# Anwar, Sodomy and Freedom

Edmund Bon

*Advocate and Solicitor, High Court in Malaysia*

**I**t is a fallacy to interpret the recent acquittals of Dato' Seri Anwar Bin Ibrahim ("Anwar") and Sukma Darmawan Sasmitaat Madja ("Sukma") by the Federal Court on sodomy charges as a return to independence of the judiciary in Malaysia. In fact, it would be dangerous to do so.

Anwar was charged for sodomising Azizan Bin Abu Bakar ("Azizan") on one night between the months of January and March 1993 at Tivoli Villa. Sukma was charged with two offences for abetting Anwar's act with Azizan, and for sodomising Azizan on that same night. Anwar and Sukma were tried jointly. They were convicted by the High Court ("the sodomy trial"). Anwar was sentenced to 9 years' imprisonment, to run consecutively after the expiry of his sentence of 6 years' imprisonment for corrupt practices ("the corruption trial"). Sukma was sentenced to 6 years' imprisonment and 2 strokes of the whip for each of the 2 charges. However, his sentences of imprisonment were to run concurrently. The Court of Appeal subsequently affirmed this decision.

The Federal Court on 2 September 2004 decided, by a majority of 2-1, to set aside the convictions arrived at, in the sodomy trial. Abdul Hamid Bin Haji Mohamad FCJ and Tengku Baharudin Shah Tengku Mahmud JCA formed the majority judgment. Rahmah Bt Hussain FCJ was in the minority. The majority observed that this case was "*different from any other case that we know of*". They also commented that there seemed "*to be so many unusual things that happened*

*regarding the arrest and the confession*" of Sukma.

Since 7 June 1999, when the sodomy trial began, many ordinary Malaysians voiced the opinion that the case was unusual and were disturbed by the decision to convict Anwar and Sukma.

Some of the disturbing features of the case are as follows:

## ***Azizan's evidence***

1. In the sodomy trial, Azizan repeatedly contradicted himself. For example, in respect to the date of the alleged incident, the prosecution amended the charges twice in attempts to "fit" the facts to Azizan's testimony. The original charge had the date put down as "one night in the month of May 1994". It was then amended to "one night in the month of May 1992" and subsequently to "between the months of January and March 1993".
2. Azizan further contradicted his statements. In the corruption trial, Azizan said that Anwar did not sodomise him after May 1992. In the sodomy trial, he backtracked his statement.
3. Azizan did not lodge any police report of the alleged incident although he said that he had been sodomised some 10 to 15 times at various places. He never once complained about it until 1997. He did not resign from his job with Anwar subsequent to his assault. In fact, after he left his job, he went back to



*Dato' Seri Anwar Bin Ibrahim,  
Former leader of Opposition*



work for Anwar's wife.

4. When Azizan saw Anwar on the date of the alleged incident at Tivoli Villa, he did not leave immediately or resist; rather, he entered the apartment.
5. The trial judge at the sodomy trial observed that Azizan was very evasive and appeared not to answer simple questions put to him.
6. ASP Zull Aznam, a police officer, testified that Azizan had told him that it was on the promise of the payment of money that he made those allegations against Anwar.
7. Azizan was not sent for a medical examination to corroborate his allegations. There was no credible and independent medical evidence of Azizan being sodomised. It is explicit that medical evidence is crucial and essential as corroborative evidence in sexual offences.

### ***Sukma's confession***

8. Sukma was abused, cruelly treated and tortured into making a confession to a Magistrate. He agreed to make a confession on the 12<sup>th</sup> day of his detention upon being told that he would be released after making a confession. He confessed to, among other things, committing acts of sodomy with Anwar and Azizan. This confession was accepted by the High Court and used as part of the grounds to convict both Anwar and Sukma. The Federal Court however found as a fact that the confession was not voluntarily given and was therefore inadmissible<sup>1</sup>.
9. Sukma was remanded for 14 days at a stretch by way of a Court order. It is not a common practice to grant such an order. Moreover, the order was not made by a Magistrate at

the Magistrates' Court, as is usually the case. Sukma was brought before a particular officer at the High Court, one Tuan Mat Zaraai, who gave the order.

10. Sukma was not accorded a lawyer of his choice. A lawyer by the name of Mohd Noor Don ("Don") was apparently appointed by the police (through SAC-1 Musa ("Musa"), the Chief Investigating Officer) for Sukma. Musa informed Sukma that if he used the lawyer picked by Musa, he would be charged for a less serious offence and sentenced to 3 months' imprisonment only, whereas if he appointed his own lawyer, he would be charged for a more serious offence.
11. The lawyer appointed by Sukma's sister, Ganesan a/l Karupanan, attempted to meet Sukma during his detention on numerous occasions but was not allowed to do so.
12. Don thereafter tendered Sukma's confession "in mitigation of sentence" in respect of a charge of gross indecency where he pleaded guilty. He was sentenced to 6 months' imprisonment on 19 September 1998. According to Sukma, his plea of guilty was not voluntary and was induced by the authorities.

Even leaving aside the substantive defences of alibi, political motivation, character assassination and conspiracy to fabricate evidence against Anwar and Sukma, any reasonable, apolitical observer of the sodomy trial would have concluded that there was reasonable doubt raised against Azizan's allegations. The unusual circumstances surrounding Sukma's earlier charge of gross indecency and his confession lends further suspicion to the authenticity of the allegations against Anwar and Sukma at the sodomy trial.

Anwar was a real threat to the establishment. This

<sup>1</sup> Worrying details of Sukma's treatment are set out and analysed in the Federal Court judgment. By international law standards, such treatment would amount to a gross and wholesale violation of Sukma's rights under the International Covenant of Civil and Political Rights. It is highly arguable that he would be entitled to compensation for assault, intimidation, false imprisonment, abuse of power, and unlawful arrest and detention.

## Canada

Racial discrimination in the police force has been rampant in Canada with the police forces refusing to file cases of missing persons of indigenous races. Amnesty International terms this as a gross violation of human rights and has chronicled cases where the police failed to file cases even after the mandatory 48 hours of the person going missing. In most of these cases parents put out posters without any help from the local authorities.

Says a family member of 16-year-old Felicia Solomon who went missing in early 2003, "When something happens to someone else's child, whether they are white or from any other kind of race or culture, the police do everything. It's completely different when an Indian person goes missing."

## New Zealand

Instances of child trafficking in New Zealand in the form of sex trade has increased over the past one year admit the police. The Human Rights Commission has received a number of telephone calls from health personnel reporting incidents of Thai girls, less than 18 years of age, seeking medical attention, who had been subjected to sexual violence. However, by the time the Police have become involved it has been discovered that the addresses given are false or the girls have been moved to a new location.

The Police say it is difficult to protect witnesses who are returned to their own country. Current policy in New Zealand is to return the trafficked person to his or her own country as soon as possible. As a result, many victims will not agree to provide evidence, for fear of the repercussions from the traffickers that they, or their family, will experience when they return home.

## Fiji

Pregnant women in Fiji are being tested for HIV/AIDS and other sexually transmitted diseases without their consent. A number of officials from within the Health Ministry admitted to the news website 'Village News' that women are being tested for HIV/AIDS without consent, but refused to divulge further information.

One woman, pleading anonymity, said she was outraged to discover that tests were conducted without her being informed. She has threatened to take the matter up with the Fiji Human Rights Commission.

Meanwhile Human Rights activists across the country have termed the incident as a violation of basic human rights to conduct tests without consent.

## Jamaica

Over 1,000 people have been murdered in Jamaica since 1 January 2004. At least nine police officers have been charged with murder. In 2003 members of the Jamaica Constabulary Force killed at least 113 people.

Human Rights activists remain concerned at the frequent reports of killings by members of the security forces, many of which appear to constitute extra-judicial executions, and by very high reported rates of violent crime.

The Chief of Staff of the Jamaican Defense Force in a statement to Amnesty International assured the international community that human rights abuses by his soldiers would not be tolerated and that all allegations of abuses would be thoroughly investigated.

## Maldives

Even though the government of the Maldives has released 62 people who were arrested after mass pro-democracy demonstrations, human rights activists expressed grave concerns on the plight of the 8 demonstrators who are still under detention. All are detained without charge or access to lawyers, and their family visits are severely restricted.

The government has persistently alleged that the prisoners were involved in criminal activity during the demonstrations, but has not produced any credible evidence to support this.



## Nigeria

State security agents have raided the offices of two independent publications confiscating equipment and arresting editorial staff. The publications in question are the "Global Star" and the "Insider Weekly" who have been accused by the state of "attacking, disparaging and humiliating" the Nigerian President Olusegun Obasanjo and other "notable people in the government."

According to a report by Human Rights Watch, human rights activists and journalists have borne the brunt of the government's crackdown, including harassment by the police, physical assaults and attempts at censorship on several occasions.

## South Asia

The South Asian Free Media Association (SAFMA), a platform of journalists of the region, plans to organise a hunger strike at the time of the next South Asian Association for Regional Cooperation (SAARC) summit to be held in Dhaka demanding that the 'right to information' be included on the agenda at the meeting.

"The right to know should be an agenda at the SAARC meeting to be held in January next. We have already prepared the draft proposal and made representations to different governments. We may go for a hunger strike if our demand is not met," said Mr. Imtiaz Alam, SAFMA Secretary General.

## Zimbabwe

Amnesty International is calling for a full and independent inquiry into the deaths of at least ten people since 2nd September 2004 at Porta Farm, an informal settlement on the outskirts of Harare.

Riot police, "war veterans" and members of the youth "militia" reportedly went to Porta Farm to forcibly evict some 10,000 people, many of whom have been living there since 1991. The police were acting in defiance of a court order prohibiting the eviction. According to eyewitness testimony, the police fired tear gas directly into the homes of the Porta Farm residents. Firing tear gas into a confined space is completely contrary to international human rights standards on the use of force by law enforcement officials because of the danger posed to those exposed.

## Sri Lanka

Sri Lankan Tamil separatists LITE allegedly gunned down reporter Iyer Balanadarajah, of the Tamil weekly *Thinamurasu*. The newspaper had reportedly been harassed by the LITE. This is the second assassination of a journalist in Sri Lanka in the year 2004.

## Tonga

The court in Tonga ruled that the Media Operators Act 2003 and the Newspapers Act 2003 would be void. This landmark ruling is being hailed as a victory to the freedom of the press in the Kingdom affirming that a basic human right such as freedom of expression cannot be legislated against in a free society.

"The historic ruling now clears the way for newspapers and periodicals that have been banned by these legislations to be distributed again in the kingdom to give the public more access to information and to comment freely," said Faumuina Lance Polu, President, Pacific Islands News Association (PINA).

explains the improper motivation for the charges made against him. Ask any taxi-driver or man-on-the-street in Malaysia and few will deny that the charges were politically motivated. To lend a semblance of credibility, a stranger to politics had to be sacrificed and Sukma the lamb.

The sodomy chronicles from the High Court to the Federal Court illustrate that the law and legal principles, however sound, can be politically manipulated.

The prosecutors are not free from blame either. Anwar's complaint of political persecution and conspiracy to frame him with trumped-up charges is to a large extent vindicated by the strong general statements of the Federal Court.

*"The manner he conducted the proceedings, in particular the interrogation of the appellant and the speedy finding of guilt without even allowing the appellant to call any witness, gave the picture that he was behaving as though he was acting as counsel for the two prosecutors in the motion."*

These statements have to date not been refuted or expunged from the records. The Federal Court went on to hold that the evidence filed by Anwar that the prosecutors had attempted to fabricate and obtain false evidence disclosed a *prima facie* case justifying the application to disqualify them. This case also illustrates how the High Court took it upon itself to shackle Anwar and his defence team from advancing the best possible defence available to Anwar.

The appearance of complicity between the judiciary, police, prosecutors and a lawyer (Don) shows how the legal process can be abused to produce unfair trials and convictions. It is precisely for this reason that the International Bar Association's Minimum Standards of Judicial Independence (1982) defines substantive independence of the judiciary, to mean

that when discharging his/her judicial functions, a judge should be subject to nothing but the law and the commands of his/her conscience<sup>2</sup> while discharging his/her judicial functions.

Prosecutors also have the vital duty to uphold the dignity of their office<sup>3</sup>. They are not to initiate or continue prosecution when an impartial investigation shows the charge to be unfounded. They are to refuse to use evidence obtained through unlawful methods that constitute a grave violation of the suspect's human rights, especially methods involving torture or cruel, inhuman or degrading treatment or punishment. They should be able to take the necessary steps to ensure that those responsible for using such methods be brought to justice. Sukma's confession is a case in point.

Anwar and Sukma did not have a fair trial in accordance with international human rights standards. The standpoint of the accused is relevant in deciding this. The test is set out in the case of *Incal v. Turkey* [1998] ECHR 48 (9 June 1998):

*"In deciding whether there is a legitimate reason to fear that a particular court lacks independence or impartiality, the standpoint of the accused is important without being decisive. What is decisive is whether his doubts can be held to be objectively justified."*

The Federal Court's decision to acquit was correct. But it is arguable that the underlying motivation for the decision is purely "legal". The judiciary was sadly torn apart in 1988. Contrary to popular belief<sup>4</sup>, the Federal Court's decision does not mark the rebirth or rejuvenation of the judiciary. The decision freeing Anwar was merely a decision that should have been given by the High Court some five years ago.

Anwar and Sukma are free at last. There is doubt however whether the institutions and other actors who played a vital part in the sodomy chronicles will ever be truly free of unfair politicisation. ■

<sup>2</sup> Article 1(c). The essence of this conscience requirement is repeated in the Bangalore Principles of Judicial Conduct 2002 (Value 1 Independence, Application 1.1).

<sup>3</sup> See Guidelines of the Role of Prosecutors, adopted by the 8<sup>th</sup> United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 1990.

<sup>4</sup> See, for example, Malaysian Bar Council's press statement dated 2 September 2004 "*Anwar's Successful Appeal*".



# Bangladesh Burns

**Zafar Sobhan**

*Assistant Editor, The Daily Star, Bangladesh*

**H**uman rights news from Bangladesh continues to be discouraging. On the 29<sup>th</sup> of October 2004, a 1000-man mob armed with axes, machetes, sticks, and clubs, and led by Imams of two local mosques, stormed the Ahmadiyya mosque in the provincial town of Brahmanbaria, beating up worshippers and all but demolishing the bamboo and tin structure.

The mob then went on a rampage, robbing and vandalising houses of the community and injuring a dozen or so, including women. Of the injured, Shabju Mia, 52, president of Ahmadiyya Muslim Jamat Bhadughar chapter and Imam of the mosque, is in a critical condition. During the attack, hundreds of orthodox fanatics were standing around the mosque chanting anti – Ahmadiyya slogans.

The Ahmadiyyas, who number 100,000 in Bangladesh, do not believe Mohammed was necessarily the last prophet. Some 25,000 of them live in the eastern district of Brahmanbaria, where Ahmadiyat was first preached in 1912, before any other place in Bangladesh.

This is merely the latest in a long line of incidents that have made the lives of the Ahmadiyyas in Bangladesh increasingly insecure. The government and civil society organisations had successfully thwarted a planned attack on an Ahmadiyya mosque in Dhaka in September 2004, which goes to show that when it makes the effort, the government can protect the community.

However, police inaction in Brahmanbaria seems to indicate that the government's efforts to safeguard the community's freedom of religion are not very extensive. Witnesses said local leader of the ruling party Bangladesh National Party (BNP) and former ward commissioner Abdul Quddus led the raiders who dispersed the Ahmadiyya men guarding the entrance hitting them with clubs and sticks.

Police arrived at the spot one hour after the incident but did not record any case. But they sat in discussion with the local elite, the influential and the leaders of anti-Ahmadiyya groups and asked them to stop recurrence of such violence.

Ex-President Dr. Badruddoza Chowdhury and ex-Foreign Minister Dr. Kamal Hossain have initiated a '*listening tour*' of the country in furtherance of putting together a "people's manifesto for change." However, the tour has been dogged by ruling party goons who have broken up the last two of the town hall meetings held in the cities of Rangpur and Mymensingh.

The Rapid Action Battalion continues to extra-judicially execute alleged criminals and gangsters in "encounter shootings." The number of those killed either in custody or crossfire in the past few months has now exceeded three dozen, with no let up in sight.

Recently, on 28 October 2004, a protest against intruders in the female hostel at Rajshahi University was violently put down by the police and members of the student wing of the ruling alliance. The incident left over 200 injured.

It appears that the government in most cases is the principal abuser of human rights, either through its student wings or the Rapid Action Battalion. Simple government edicts such as the mass arrest of September which saw several thousand people arbitrarily arrested and thrown behind bars in what the government claimed to be a normal anti-crime drive, but which most saw as an attempt to pre-empt the threatened grand rally of opposition parties called for 3 October 2004 is such a case.

More distressingly, the abuses catalogued above have met with widespread indifference among the media and the general population, who appear resigned to such abuses. This certainly doesn't augur well for the future of human rights in Bangladesh. ■

# Justice Delayed is Justice Denied

## – The Janice Allen Case

**Dr. Carolyn Gomes**

*Executive Director, Jamaicans for Justice*

**I**n April 2000, a 13-year-old girl, Janice Allen, was killed by a bullet from a policeman's gun. In March 2004, a jury was instructed to return a formal verdict of 'Not Guilty' against the policeman charged with her murder.

The policeman was charged in 2001 and a Preliminary Inquiry was held that lasted a year and a half. The Magistrate ruled that a 'prima facie' case had been established and the case was sent to the Supreme Court for trial. After almost four years of delays, during which police and civilians threatened Janice's family and eyewitnesses, the actual trial (including the time for the empanelling of the jury) lasted less than one hour.

At the trial the Prosecutor said that three crucial pieces of evidence linking the policeman to the gun, which fired the fatal shot, were not available. The firearms register recording the issuing of the gun was reportedly burnt in a fire at Denham Town Police Station. The Bureau of Special Investigations (BSI) officer who took the policeman's statement, in which he admitted firing the gun, had left the jurisdiction and was unavailable to testify. The eyewitness identification of the policeman took place not in an identification parade, but in the witness box of the Preliminary Inquiry and was therefore invalid. The prosecutor told the court that therefore he could offer no evidence. The judge then instructed the jury to return a not guilty verdict.

Subsequently, the Commissioner of Police said publicly that the court had been misled when it was told that the investigating officer would not be returning to Jamaica, as in fact he had returned and was on duty. The Commissioner promised to investigate the circumstances surrounding the misleading of the court. The Director of Public Prosecutions (DPP) also issued

a statement saying that the prosecutor in the case had acted improperly in proceeding with the case.

The issues in this case highlight glaring faults in Jamaica's investigative and prosecutorial processes that allow impunity for killings by the police - the failure to safeguard vital evidence, the failure to hold ID parades when police are involved, the long delays in the inquiry and trial process.

Janice's mother is seeking judicial review of the acquittal of the accused. Her lawyers are asking the court to issue a writ of Certiorari<sup>1</sup> quashing the acquittal, and to issue a declaration that the trial was a nullity. The court is asked to rule that the acquittal was obtained by means of a fraud upon the Office of the DPP and upon the court. The lawyers are claiming that the administration of Justice was perverted.

The devastation that Janice's death has caused to her family and to the fabric of the nation is irreversible. The balm of justice has been denied to the society because of incompetent investigation and unconscionable delays and mistakes in the prosecution of this case. ■

*Jamaicans for Justice is a non-profit, non-partisan non-violent, volunteer citizens' rights action group, founded in 1999. It advocates for fundamental change in all spheres of Jamaican life - judicial, economic, social and political - in order to improve the lives of Jamaican citizens.*

*JFJ believes that justice is the bedrock of any civilised and progressive society, and all Jamaicans must have equal access to fair, correct and impartial treatment.*

*Jamaicans for Justice is part of the Commonwealth Human Rights Network.*

<sup>1</sup> Certiorari is an order that a superior court issues so that it can review the decisions and procedures in a lower court and determine whether there has been any irregularities committed by the lower court.

# Uganda at the Crossroads of Constitutional Democracy

Ejoyi M.C. Xavier

*Senior Research Assistant, East Africa Project, Police Reforms*

The East African country of Uganda is best known around the world for nurturing the brutal dictatorship of Iddi Amin, numerous civil wars and more recently for its remarkable progress in the fight against HIV/AIDS. Under the National Resistance Movement (NRM) of Yoweri Museveni, Uganda has made significant progress in democracy in the last eighteen years.

Today, Uganda faces a critical moment of constitutional review that could strengthen good governance or revert the little gains achieved over those years. The 1995 Constitution is the most comprehensive and participatory in comparison to the constitution drawn up in 1962 at the point of independence and the 1967 hastily drawn constitution.

Ugandans rallied around from all walks of life to register their views in drafting the 1995 Constitution. The particular attention given to marginalised groups: women, youth and the disabled - were unprecedented in Uganda's political history. The countrywide consultative meetings, workshops and seminars educated ordinary citizens on the issues at stake.

Several institutions of political accountability were established by the Constitution, notably among them were the office of the Government Ombudsman and the Uganda Human Rights Commission. The local government system and the decentralised service delivery is the most explicit representation of democracy in the history of Uganda. For many Ugandans whose aspirations were dented by three decades of misrule and civil war, there was renewed hope.

However, all isn't going right for the new Constitution. Owing to the controversies that arose regarding certain issues in the Constituent Assembly, the Constitution adopted transitional provisions that were to be

reviewed through referenda or amendments. These transitional provisions as contained in Chapter 19 of the Constitution have merely aggravated the problems rather than solving them. The most notable of these provisions is Article 269, which proves the monopolistic attitude of the ruling. It states:

*"On commencement of this Constitution and until Parliament makes laws regulating the activities of political organisations in accordance with Article 73 of this Constitution, political activities may continue except-*

- *Opening and operating branches*
- *Holding delegates conferences*
- *Holding public rallies*
- *Sponsoring or offering a plat form to or in way campaigning for or against a candidate for any public elections.*
- *Carrying on any activity that may interfere with the Movement political system for the time being in force."*

The opposition political parties and observers also regard Article 269 that bans all party activities as a 'satanic verse' in the Constitution and as an infringement on their fundamental rights and freedoms. The NRM abused its majority in the Constituent Assembly to retain the much-contested clause.

Ideologues of NRM have always maintained that political party activities have divided Ugandans in the recent past along tribal and religious lines. As an alternative, the Movement system of Government was adopted in which Ugandans would run for political offices on 'individual merit' than on party affiliations.

The truth is that Museveni's NRM is a one party state which has been masquerading as an all-inclusive government for the last eighteen years. In the absence

of any organised opposition, Museveni and his wartime cronies have joined hands to strip Uganda bare of its resources, and squandered the hard earned revenues with impunity. Although the Constitution has broadened the definition of citizenship, it outlawed dual citizenship. And despite a strong emphasis on human rights, it still enforces death penalty.

These controversies have resulted in a genuine demand by politicians, lawyers and civil society to review the Constitution. The Constitution Review Commission (CRC) was subsequently appointed by the President in 2001 to undertake this task. After two years of review, the CRC has made several recommendations that almost amounts to writing a new Constitution.

Many of the proposed amendments are not clearly based on constitutional issues, raising serious concerns on the credibility of the Commission. For example, the recommendation to hold Presidential, Parliamentary and Local Council elections on the same day is no doubt a positive suggestion as it will save Uganda a lot of money, but an issue like this doesn't fall within the parameters of a Constitutional review.

This issue can be rightly addressed by Parliament by amending the electoral statute. Similarly, recommendations like the one to adopt dual citizenship give Ugandans more freedom to exercise their fundamental rights and the proposal to reduce the pre-trial detention period of capital offences from 360 to 180 are proposals worth reviewing, however it is not the business of a Constitution Review Commission to comment on such issues.

The proposal to lift the Presidential term limits (dubbed Kisanja) is raising a fair share of controversy and threatening the gains of democracy Uganda has achieved so far. The Constituent Assembly in its wisdom had fixed Presidential term limits at 2 five-year terms.

It is now increasingly becoming clear that the Government is scheming to remove the term limits, creating an opportunity for Museveni to be President for life. Museveni, who at the end of his current term would have served, as President for twenty years -first as a transitional President and then for his two

constitutional terms - is Uganda's longest serving President ever. There is also a proposal to give the President powers to dissolve Parliament whenever there is a disagreement in 'matters of confidence'.

The ceiling on Presidential tenure is contained in Article 205 (1-2) of the Constitution stating that:

"A person elected President under this Constitution shall subject clause three of this article hold office for a term of five years. And a person shall not be elected under this Constitution to hold office as president for more than two terms as prescribed by this article."

The Constitutional Review Commission recommended that this matter be referred to a national referendum. However, the Cabinet produced a white paper rejecting this position and giving the Parliament power to decide on this issue. Although this sounds a better alternative, the Government is already shelling out millions to buy the vote of 'loyal' Members of Parliament. It is pitiful that a Government that has proclaimed democracy and the rule of law has abused its authority in such a blatant manner.

If reports are to be believed, 2.5 billion Uganda shillings (a million pounds) have been used to bribe legislators. It is particularly repugnant that such huge amounts are being spent by the government on personal gains rather than for welfare activities directed at rural Ugandans. If Parliament endorses this amendment, there will be absolutism of power, contrary to the principles of democracy.

Museveni is no doubt a charismatic leader who has led the country out of the ravages of civil war to relative peace, a fact even conceded by his critics. His tiring efforts to reform the economy, education and infrastructure deserve recognition. A look at the recommendations of the CRC and the Government white paper points in two directions - to increased democracy and rule of law but also to increased authoritarianism. At the crossroads of constitutional democracy, Parliament has an uphill task to amend the clauses that support democratic gains and shun all temptation to entrench absolutism that undermines the rule of law. The question is: which road will the Parliament take? ■



# Commonwealth Legal Minds Flood London

Clare Doube

*Coordinator, Strategic Planning and Programmes, CHRI*

October heralded an influx of legal minds from around the Commonwealth at the Commonwealth Secretariat in London: from October 18<sup>th</sup> to 20<sup>th</sup> the Secretariat hosted the Meeting of the Senior Officials of Commonwealth Law Ministries, followed by the Meeting of Law Ministers and Attorneys General of Small Commonwealth Jurisdictions from the 21<sup>st</sup> to 22<sup>nd</sup>. As well as the Delegates and their staff, organisations that partner with the Commonwealth Secretariat's Legal and Constitutional Affairs Division, including the Commonwealth Human Rights Initiative (CHRI), were invited as Observers.

Topics covered in the Law Ministers Meeting were varied, although many naturally focused on issues specific to small states in the Commonwealth, such as the Barbados Plan of Action for the Sustainable Development of Small Island Developing States; and the UN Convention on the Law of the Sea, as many of the Commonwealth's small states are also islands

Of particular interest to human rights were the discussions around: a) broadcasting legislation and regulation b) terrorism and, of course, c) the specific discussion on human rights and development. A paper on the rights-based approach to development, prepared by the Human Rights Unit of the Secretariat, was presented to the Law Ministers.

The final communiqué of the Meeting reflects the discussion that took place: that while Ministers expressed a commitment to human rights, they also noted reservations on the role of some human rights organisations. The increasing value placed on the contribution of civil society groups in the Commonwealth, as seen through increased involvement in Ministerial Meetings among other areas, has been positively noted by groups such as CHRI and it is hoped that the reservations expressed at this meeting regarding human rights NGOs will not lead to any restrictions on collaborative efforts between the official and unofficial Commonwealth.

CHRI and other NGOs look forward to engaging in the forum to be developed by the Secretariat to further discuss human rights issues, as well as involvement in future Law Ministers Meetings, such as the Law Ministers Meeting to be held in Ghana in October 2005 and the next for Ministers of Small States, to be held in London in 2006.

Below is an extract from the communiqué:

*"30. Ministers emphasised their commitment to the protection of fundamental human rights, 'universal legal guarantees protecting all individuals and groups, simply by virtue of being human, against actions and omissions that interfere with fundamental freedoms and human dignity'. Their discussion reflected strongly-held concerns over some aspects of current human rights rhetoric. There was anxiety in particular over the assertion of new human rights, which emerged not from considered action by all states but from organisations with no democratic mandate. Although the international conventions on social and economic rights accepted that progressive realisation of those rights must take account of the available resources, there was concern that ideals and aspirations could be too readily translated into justiciable guarantees requiring sovereign states to commit themselves to particular patterns of expenditure.*

*31. Ministers discussed the role of human rights courts in the interpretation of the scope of human rights. They recognised that State power had to be subjected to scrutiny as part of the system of checks and balances between the branches of government, but were concerned at the undue global influence of some regional human rights courts, as they reflected an activist approach to the interpretation of treaty obligations and were not subject to appeal to any global body.*

*32. The role of some human rights organisations was seen as problematic. Their work could be seen as an expression of global citizenship, but activism by unrepresentative organisations, operating in parts of the world distant from the states whose actions they sought to constrain, could create harmful disillusionment with the whole human rights movement, the overall results of which had been so beneficial.*

*The full communiqué can be downloaded from the "Commonwealth and Human Rights" section of CHRI's website.* ■

# Public Accountability and Multilateral Governance : Access to Information in Africa

Compiled by Vaishali Mishra  
*Media Officer, CHRI*

Over the past ten years, around forty countries have passed Right to Information (RTI) laws. The great majority has been in Eastern and Central Europe and Asia. Africa sadly lags behind: besides Zimbabwe's repressive Access to Information and Privacy Act, only South Africa has an ATI law. However, there are signs of activity on the African continent: there are draft ATI bills in a number of places including Nigeria, Ghana, Ethiopia, Tanzania and Mozambique.

This article seeks to provide an update on some of this work.

*Update on draft civil society access to information laws in the region*

## Ghana

Ghana's 1992 Constitution is one of the few Constitutions in the world that guarantees both freedom of expression and separately, right to information. In line with Ghana's commitment to international human rights covenants and conventions such as the Universal Declaration of Human Rights, the right to information is part of the general fundamental freedoms and human rights contained in the Chapter 5 of the Constitution.

A "Freedom of Information Bill" was drafted in 2002, and has since been approved by the Ghanaian Cabinet. The draft Bill states, "Every person has a right of access to information or part of information in the custody or under the control of a government agency unless the information or that part of the information falls within any of the exemptions specified in Part II." The Bill also outlines responsibilities and procedures for responding to applications for information, requiring that authorities respond to requests within 30 days. The Bill also provides for access to information held by private bodies if the information is required for the protection of "fundamental human rights or freedoms, preservation of public safety or protection of public interest".

Critiques of the Bill state that the Bill contains too many exemptions to the right to information and could therefore potentially be open to abuse, including an exemption if "the disclosure of the information could reasonably be expected to damage the financial interest of Government," as well as exemptions for "Frivolous or vexatious application".

The Bill doesn't contain any penalty provisions in case a public official unreasonably refuses to provide information. There is also no monitoring body present to supervise operation of the law. The challenge that Ghana faces is the lack of advocacy for integrating the right to information in all governance processes in the continent. There is a need for RTI organisations to take an interest in the APRM process to facilitate its accuracy and success.

## Mozambique

At present, Mozambique has no right to information law, although the Mozambique's Constitution specifically recognizes the right to information as a fundamental constitutional right. Article 74 (1) of the Constitution explicitly recognises that every citizen has the right to inform oneself and be informed about the relevant facts and opinions, at the national and international level, as well as to disseminate information, opinions and ideas through the press.

In the internal law of Mozambique, there is no specific regulation related to access of information sources. This gap needs to be filled especially when it comes to information related to the well being of all citizens.

So, despite the Constitutional protection afforded to the right, little has been done to operationalise it in practice. This is a major failing because it is well accepted that even where there is a specific constitutional guarantee for the right to information, legislation is needed to detail the content and extent of the right. Recent analyses by the Commonwealth Human Rights Initiative, Article 19 and

ODAC South Africa have pointed out several faults. Most significant among these, are the failure of the Bill to contain a clear statement entrenching a “Right to Information.” More generally the draft is brief, with the result that it fails to include a number of important provisions such as permitting requests to private bodies and protection of whistleblowers. Also the procedures for necessary information need to be better thought through.

## Namibia

The current Namibian government’s approach to access to information is coloured by its long-standing reluctance to address questions and disclose information related to the struggle for independence.

It has now entered the process of formulating Freedom of Information legislation, more as a result of pressure from external factors rather than a demand from internal forces. Currently the process is hampered by a lack of popular demand for Freedom of Information (FOI) legislation. Both civil society and the media, by all indications, seem not to see the need for such an Act. On its part, the media has been silent in its support for such legal reform – a process in which it certainly has a vested interest.

The Namibian Constitution does not make any specific reference to the protection of the right to information. There is also no additional legislation, which provides for this right. The constitution merely protects the right to freedom of speech and expression, which is said to include freedom of the press and other media outlets. However, a Cabinet directive was issued in 1999, tasking the office of the Prime Minister with formulating draft FOI legislation. Since then, no substantial development has been recorded in this regard.

## Nigeria

The House of Representatives last week passed perhaps the most important bill in the fight against corruption and the enthronement of transparency and accountability in government when it overwhelmingly passed the Freedom of Access to Information Bill.

For the first time it will be a criminal offence for any public official to hoard information. It remains for the Senate to pass its own version of the bill and for the President to

append his signature for Nigeria to join the league of open democratic societies.

Henceforth, public service will cease to be attractive to those who in the past have considered public office as a method of self-enrichment; they will give way increasingly to people who have genuine interest in social and economic development of the country. Political appointments, which have assumed the status of life and death contests, will also change their character.

But, the bill should be regarded as a means not as an end in itself. Government must demonstrate the will to enforce its provisions; otherwise it would not be worth the paper on which it is written. In addition to that, the citizens of this country, especially the media, must now vigorously but responsibly make use of the power that the bill has given them; not for blackmail or self-enrichment but in the public interest.

Finally, it is fortunate that this bill has been passed three years before the next election and before new candidates start presenting themselves for election to various offices. The 2007 elections will present the country and the media the first real test of the efficacy or otherwise of this bill. Those who would want to use ill-gotten wealth to secure elective office must be prepared to face media scrutiny such as this country has never witnessed before.

## Conclusion

The enactment of a FOI law is therefore just the beginning. Governments need to radically change their internal cultures and be more receptive to demands of public accountability. Transparency and a meaningful articulation of the Access to Information Bills should be a core value and a central operating principle for governments to enable citizens and civil society organisations to participate in their policy-making and in their institutional evolution, and to thereby give them legitimacy.

*This article has been compiled on the basis of the papers produced by Nana Oye Lithur, Kaitira Kandjii the ATI Programme Director for the Media Institute of Southern Africa and Osaro Odenwingie, presented in the Conference on Public Accountability and Multilateral Governance arranged by Open Democracy Advice Centre on the 29 September 2004 in Pretoria, South Africa. ■*

# CHRI Calendar

## CHRI Headquarters

### September 2004

Presented a paper at Workshop organised by Citizens Constitutional Forum and University of South Pacific School of Journalism to launch civil society Freedom of Information Bill in Fiji.

Presented a paper on Right to a delegation of Fiji MPs.

### October 2004

Organised the National Workshop on Media and the Right to Information, New Delhi.

Member of NGO delegation (under the auspices of the Global Transparency Initiative) lobbying the Asian Development Bank regarding their draft of the Public Communications Policy.

Working group on the Commonwealth and Human Rights at the 4<sup>th</sup> International Human Rights Colloquium, Brazil.

Observer at the Meeting of Law Ministers and Attorney General of Small Commonwealth Jurisdictions.

### November 2004

Organised a workshop on Police Public Interface: Making it Happen,

with the Ministry of Home Affairs, the State Govt. of Maharashtra.

Facilitated the Madras High Court in hosting a Judicial Exchange for district and sessions in Chennai, in collaboration with INTERIGHTS.

Organised national workshop on United Nations Human Rights Mechanisms Targeting NGO Advocacy, New Delhi.

## CHRI London Office

### September 2004

Released report on the March 2004 seminar on Zimbabwe and the Commonwealth.

### November 2004

Presented a paper on CHRI and its role in the Commonwealth, for the Commonwealth Parliamentary Associations Follow-up to the Commonwealth Day Seminar.

Presented on the Commonwealth at a British Council Workshop on National Human Rights Institutes and NGO's, Sri Lanka.

## CHRI Africa Office

### September 2004

Presented a paper on the "challenges for the Africa Region, the right to know and APRM =Ghana perspective", South Africa.

### October 2004

Launched a Human Rights Lecture series with British Council, and organised the first national lecture on "Enforcing voting rights of people living with disabilities in Ghana".

CHRI's co-ordinator was the guest speaker for a two day workshop, on the 12<sup>th</sup> to 13<sup>th</sup> Nov, organised by the electoral commission on the theme "Towards improved participation of women in December 04 general election". The co-ordinator was a resource person on advocacy issues relating to women and elections.

CHRI on the 10<sup>th</sup> of Nov. presented a paper on "Gender based violence, Human rights and the health sector at the joint 20<sup>th</sup> Triennial consultation/ conference of the commonwealth medical association and 40<sup>th</sup> annual general conference of the Ghana medical association in Elmina – Ghana.

*The Commonwealth Human Rights Initiative was founded in 1987 and is currently constituted by the Commonwealth Journalists Association, Commonwealth Trade Union Council, 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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