

# Commonwealth Human Rights Initiative



# Newsletter

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

## A Message from the Commonwealth Secretary-General

- Rt Hon Don McKinnon  
*Commonwealth Secretary-General*

The focal point of our vision for better Commonwealth societies must be the welfare and wellbeing of Commonwealth individuals.

For the Commonwealth, this people-centred vision began to take shape 35-odd years ago. The Singapore Declaration of 1971 and the Harare Declaration two decades later helped us collectively to define and articulate our guiding principles and values. Respect for fundamental human rights is enshrined in those two Declarations.

But principles also require action to give them effect. Words alone do not protect and promote fundamental human rights. The Commonwealth has duly not only placed its marker in the ground in those two core Declarations; it has also taken affirmative action.

In 1995, the Commonwealth Ministerial Action Group (CMAG) was established to provide a mechanism by which serious or persistent violators of the principles of the Harare Declaration could be held to account. At that time, The Gambia, Nigeria and the Sierra Leone were discussed by CMAG. Firm and concrete political action by CMAG contributed to a resolution of the different situations by which those three countries found themselves out of synchronisation with the Harare Declaration and the rest of the Commonwealth. The CMAG, as a mechanism of international politics and diplomacy, remains unparalleled in the global architecture.

Promoting and protecting human rights in tangible ways has accelerated in other ways. A dedicated Human Rights Unit in the Commonwealth Secretariat is now in its fourth year and has helped enormously. It has given us our own committed team of experts, and given them the space to consider how best to put into practice the four focal points of our human rights work, those being:

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- To strengthen democracy by advancing human rights in common law;
- To mainstream human rights issues in all aspects of Commonwealth work;
- To strengthen national and international human rights institutions; and finally
- To drive home a strong and bold message that fundamental human rights are just that - fundamental and indivisible, not something that can be salami-sliced. Creating public awareness and giving leadership in public policy is crucial.

There is ample evidence to show that our approach is achieving results. Our Human Rights Unit, for instance, is bringing a human rights dimension to police training institutions in Commonwealth countries. This fits in very well with the valuable work which CHRI has been doing recently on police accountability.

Our own particular work at the Secretariat has involved collaboration with police chiefs and trainers from five Commonwealth West African countries to build human rights into the police training curricula. What began as a pilot project has resulted in a Commonwealth training manual to be launched next month to mark International Human Rights Day. The police training project is also to be trialled in the Pacific as well as other parts of the Commonwealth.

This year, the Commonwealth Secretariat was also asked by the United Nations High Commissioner for Human Rights to translate into Chinese our 2001 publication, 'National Human Rights Institutions: Best Practice'. This is a great endorsement of the good work of the Commonwealth in this area and the role we have to play on a global scale.

The Commonwealth must keep 'raising the bar' in these sorts of ways. Every time we raise the minimum acceptable standard in the area of human rights, we protect and promote better the interests of the woman and man and child in the Commonwealth's streets. We also continue to hold out examples that often the rest of the world moves to emulate.

This year's CHOGM theme, "Networking the Commonwealth for Development", recognises the need to reach further than our national borders. It also raises questions and challenges for the human rights community about a rights-based approach to development. This is an area where energetic debate and discussion is ongoing. What is important to me is the result – that genuine, tangible development opportunities are forthcoming, especially for the world's poorest and most vulnerable. Furthermore, development should not be simply seen in terms of GDP at the macro level or the amount in an individual's pocket at the micro level. Development is also about social and cultural growth and enrichment.

The Commonwealth already has a myriad of overlapping formal and informal networks in place, which are well placed to deliver development dividends by tapping into a deep pool of knowledge and expertise. Civil society organisations, in particular, have a vital role to play in modern democratic societies and the contribution of the Commonwealth Human Rights Initiative has continued laudably to add tremendous value.

The Commonwealth is made up of 1.8 billion people, nearly half of whom are young people. We need to get the message through to them, as our future citizens and leaders, that fundamental human rights are to be defended, cherished, and upheld. They are an elementary part of the way we strive to lead our everyday lives now, and our determination is to see that advanced further in the years ahead for the benefit of all. ■

Every two years, prior to the Commonwealth Heads of Government Meeting, CHRI produces a report on a key human rights issue across the Commonwealth. This year's report, titled *Police Accountability: Too Important to Neglect, Too Urgent to Delay*, will be launched for the Commonwealth by the Secretary-General Rt Hon Donald C McKinnon on 22 November in Malta. It is hoped the Report will complement the work already being done by the Commonwealth Secretariat to promote democratic, human rights-based policing in the Commonwealth.

# Networking the Commonwealth for Development: Right to Information and ICTs

Mandakini Devasher

Project Assistant, Right to Information Programme, CHRI

*“We are going through a historic transformation in the way we live, work, communicate and do business. We must do so not passively but as makers of our own destiny. Technology has produced the information age. Now it is up to all of us to build an Information Society.”<sup>1</sup>*

## Building an Information Society: Information Communication Technologies (ICTs) A Key Tool

This November, Tunisia will host the second phase of the World Summit on Information Society (WSIS). At the first phase of WSIS in 2003, 175 countries adopted a Declaration of Principles and Plan of Action affirming their commitment to building “a people centred, inclusive and development – oriented Information Society, where everyone can create, access, utilize and share information and knowledge.”

Close on the heels of the second WSIS, Commonwealth Heads of Government will meet in Malta to discuss “Networking the Commonwealth for Development”. The Commonwealth Secretary-General, Donald McKinnon, has stated “*The theme of ‘Networking the Commonwealth for Development’ will enable leaders not only to discuss the important issue of bridging the digital divide, but also to identify ways of enhancing cooperation for prosperity, development and democracy, using Commonwealth networks to achieve these goals.*”<sup>2</sup> The meeting will discuss tools such as ICTs that can be used to bridge the digital divide between individuals and communities, citizens and their governments.

WSIS 2005 and CHOGM 2005 are part of a growing global trend toward using information management systems and technology to improve society. ICTs - in particular, by facilitating e-governance - are increasingly being recognised as supporting participatory democracy and sustainable development. More specifically, some countries are using ICTs to enable more efficient access

to government information by the public, in a simple and time bound manner. This allows individuals and communities to participate in the decisions and processes that affect their lives, promoting inclusiveness and participatory democracy.

## Right to Information: Touchstone of Information Society

ICTs are the building blocks of an information society – and the Right to Information (RTI) is its foundation. The value of this right was recognised by the United Nations General Assembly in 1946, when it declared, “*Freedom of Information is a fundamental human right and the touchstone for all freedoms to which the United Nations is consecrated*”. Soon after, the Right to Information was enshrined in Article 19 of the International Covenant on Civil and Political Rights. Over time, RTI has been reflected in regional African, American and European human rights instruments, placing the right to access information firmly within the body of universal human rights law.

RTI is premised on the right of all citizens to access government held information. This right promotes good governance and participatory development by opening up channels of communication between governments and their citizens. RTI empowers citizens to scrutinise government decisions and processes, stem corruption by holding representatives accountable, participate in the political, social and developmental processes that affect their lives - above all, it fosters the development of an environment that is pro-transparency, pro-

<sup>1</sup> UN Secretary General, Kofi Annan, *Message to WSIS Tunisia 2005*. <http://www.itu.int/wsis/messages/annan.html>

<sup>2</sup> Commonwealth Secretary - General, Donald McKinnon, *Message on CHOGM 2005*. <http://www.chogm2005.mt/page.aspx?site=CHGM&page=chogm2005>

democracy and ultimately pro-people. In practice, the right to information entails a duty on the government to provide such information proactively and on request.

At CHOGM 2003, the Commonwealth Heads of Governments formally committed themselves to promoting RTI. To date, 12 countries (Canada, Australia, UK, South Africa, Jamaica, Belize, New Zealand, Pakistan, Trinidad and Tobago, India, Uganda, and Antigua and Barbuda) have enacted right to information laws.<sup>3</sup> Countries in the process of drafting laws include Ghana, Nigeria, Fiji, Guyana and Kenya. This is positive but more Commonwealth countries need to initiate steps towards entrenching the right to information as a legal right for their citizens.

### Right to Information: Law Making Principles

As a first step towards building an Information Society, governments must consider developing and implementing effective RTI laws. When lobbying for and/or developing legislation, governments and civil society must consider key minimum principles that all right to information laws should reflect:

- **Maximum Disclosure:** Legislation must begin with a clear statement that establishes the rule of maximum disclosure. At a minimum, the law should widely cover all public bodies and all arms of government, private bodies and NGOs that carry out public functions or where their activities affect people's rights. The definition of "information" should be wide and inclusive.

The law should impose an obligation on government to routinely and proactively disseminate information including details and updates about the structures, norms and functioning of public bodies, the documents they hold, their finances, activities and any opportunities for consultation.

- **Minimum Exemptions:** Limits on information that cannot be disclosed need to be tightly and narrowly defined. Any denial of information must be based on proving that disclosure would cause serious harm and that denial is in the overall public interest. Exemptions should be subject to content-specific case-by-case review.

- **Simple, Cheap Access:** A key test of a law's effectiveness is the ease, inexpensiveness and promptness with which people seeking information are able to obtain it. This means uncomplicated procedures that ensure quick responses for all, at affordable cost.
- **Independent Appeals:** Powerful independent and impartial bodies must be given a comprehensive mandate to review where access has been denied and to compel its release and impose sanctions for non-compliance, if necessary. They should have full investigatory powers and their decisions should be binding.
- **Strong Penalties:** The law should impose sanctions on those who willfully obstruct access to information through unreasonable delay, falsification or destruction of documents. Penalties must be large enough to be a deterrent and be imposed on individual officers, including heads of department, rather than just the organisation.
- **Effective Monitoring & Implementation:** A body should be given specific responsibility to monitor and promote the Act. The law should obligate government to actively undertake training and public education programmes.

### RTI and ICTs: Road to Good Governance and Participatory Development

As heads of governments, civil society leaders and ICT specialists head towards WSIS and CHOGM 2005, they must consider the value of not only ICTs towards promoting development and democracy, but more fundamentally, the right to information. ICTs are already starting to be used to develop systems, guidelines and infrastructures that allow for the smooth collection, processing, archiving and dissemination of information to citizens in a simple, cheap and hassle free manner. If implemented keeping in mind the broader objectives of promoting good governance, RTI and ICTs together promise to revolutionise democratic governance and participatory development. With RTI on their side and the tools with which to effectively exercise this right, citizens and governments will not have to wait long to see the dawn of a new Information Society. ■

<sup>3</sup> See CHRI Comparative Chart on Commonwealth RTI Legislation, RTI pages of CHRI website: [www.humanrightsinitiative.org](http://www.humanrightsinitiative.org)



# The Maldives: Trouble in Paradise

Clare Doube

*Co-ordinator, Strategic Planning & Programmes, CHRI*

In response to strong public protests, President Gayoom of the Maldives has committed his government to bring about constitutional reform. However, despite the promises, there are serious concerns about the pace and substance of reforms and, particularly, that international human rights and democratic norms continue to be regularly breached in the Maldives. CHRI's is one of the increasing number of voices highlighting these concerns – most recently in a media release on October 24<sup>th</sup> and letters to the Maldivian government and the Commonwealth Secretary-General.

The Maldives is plagued by human rights violations and disregard for principles of participatory democratic governance and the rule of law. The free press faces harassment - particularly when the government's actions are criticised - and civil society faces restrictions through delays in registering NGOs. Concerns have been raised that the recent Human Rights Commission Act does not conform to the international standards of the Paris Principles and may in effect diminish its authority and credibility. The positive step of registering political parties has been undermined by arrests that effectively target the opposition.

Of particular concern are issues of access to justice and fair trial standards. The criminal justice system has been indicted for “systematically failing to do justice and regularly doing injustice.” Recent studies, including by top British barristers headed by Sir Ivan Lawrence QC, have voiced serious concern about the lack of separation of powers and that the President is in control of everything, including the judiciary.

A recent, highly disturbing case is that of Jennifer Latheef. On 18<sup>th</sup> October Ms. Latheef was given a 10-year sentence on charges of “terrorism” – a clear indication of the serious problems with the judicial system. Ms. Latheef, 32, is an outspoken critic of the President's 27-year rule and the human rights coordinator of the opposition Maldivian Democratic Party. She has been termed by Amnesty International a “prisoner of conscience”.

Ms. Latheef's charge arose in connection with a September 2003 demonstration protesting the custodial deaths of four prisoners. Three others involved in the demonstration have already been sentenced. Charges include “the assault of a number of police officers, plus the torching of government buildings and an election office”. Ms. Latheef denies all charges.

The trial itself has been mired in controversy. Six out of seven prosecution witnesses against Ms. Latheef were police officers whose statements were not always consistent. However, the judge ruled that Ms. Latheef was guilty of terrorism, and has sentenced her to 10 years in prison. Ms. Latheef is unwell and although she has been allowed to see a doctor while in prison, she has reportedly been denied access to medication that she urgently requires.

While the promised reforms in the Maldives are an important step in the right direction, these are undermined by the lack of demonstrable progress, as well as lack of due process or adherence to standards of fair trial. If positive action is not taken soon, citizens in the Maldives and observers across the world will lose faith in the government's promises of goodwill. There is also increasing frustration with international governments and agencies for their reluctance to make public statements condemning negative events in the Maldives. Continued silence implies acceptance of violations of human rights. Within the Commonwealth context, such silence also risks damaging the association's reputation since membership is dependent on adherence to the principles of democracy and human rights articulated in the Harare Declaration.

CHRI's Executive Director, Maja Daruwala, recently called for an urgent review of Ms Latheef's trial and stated that: “It is hoped that following such blatant disregard for human rights, the international community will finally take decisive action in the Maldives. It is time for action by the Commonwealth in particular, or the association may face another situation like in Zimbabwe”.

# CMAG Marks its 10-Year Anniversary

Andrew Galea Debono

*Consultant, CHRI*

The opening of the 1995 Commonwealth Heads of Government Meeting (CHOGM) was a dramatic moment in Commonwealth history. The Nigerian military regime led by General Abacha had just executed writer and activist Ken Saro-Wiwa and eight others. Saro-Wiwa was a member of the Ogoni, an ethnic minority group whose lands have been targeted for oil extraction. As president of the Movement for the Survival of the Ogoni People (MOSOP), he had led a non-violent campaign against environmental damage caused by multinational oil companies. In May 1994, following the deaths of four Ogoni elders believed sympathetic to the military, he was arrested and accused of incitement to murder. Saro-Wiwa denied the charges but was imprisoned for over a year, then found guilty and sentenced to death. The internationally criticised trial was held before a specially assembled tribunal and led to the execution by hanging of Saro-Wiwa and eight other MOSOP leaders.

The news of the executions spurred Commonwealth leaders to suspend Nigeria from the councils of the Commonwealth and contributed to the birth of the Commonwealth Ministerial Action Group (CMAG). Heads of government accepted Canada and South Africa's suggestion to put the Harare principles into practical action, and CMAG was created through the Millbrook Action Programme on the Harare Declaration. Its creation was influenced by lobbying of human rights NGOs, the execution of Ken Saro-Wiwa and the suspension of the Nigerian military dictatorship, which created a political opportunity for progress. CMAG (which is composed of eight or nine foreign ministers on a rotation basis) turned the Commonwealth into a rules-based organisation, signalling greater condemnation and monitoring of the toppling of democracy by military regimes.

CMAG's mandate is to deal with serious or persistent violations of the Harare principles. Since its creation, CMAG has met numerous times and has sent missions to Fiji, Nigeria, Pakistan, Sierra Leone, the Solomon Islands and the Gambia. Suspensions of Fiji, the Solomon Islands and Pakistan have contributed to

positive change in those countries. However, on its ten-year anniversary, many feel that CMAG could have done, and can do, much more. One concern is that CMAG's mandate is interpreted too narrowly – focusing on the un-constitutional overthrow of governments rather than all of the Harare Principles. The composition, terms of reference and operation of CMAG are reviewed by the Heads of Government and they must ensure that CMAG expands its current narrow focus. CMAG should be more than just a democracy watchdog and should fulfil its whole mandate.

Another concern is that CMAG members may not have detailed knowledge of human rights, despite the fact that human rights are at the core of the Harare Principles. A mechanism therefore needs to be in place to ensure that they have access to credible, up-to-date human rights information and thorough investigations on which to base their discussions, even if unable to conduct such detailed investigations themselves. A Commonwealth Human Rights Commission (or Commissioner) or a Human Rights Adviser could be established as an independent body to investigate alleged violations. CMAG could then base its decisions and recommendations on independent reports by a respected Commonwealth body. A Human Rights Advisor may not have as far-reaching a role as a Human Rights Commissioner, but could still make recommendations to CMAG on the human rights situation in member countries on their agenda (or those which could be added to the agenda), and also progress in countries where suspension has been lifted. CMAG could also be assisted to rigorously investigate the human rights record of prospective member countries.

The creation of CMAG opened a new chapter in the Commonwealth's history. It was a major step in the right direction and has brought about much good in its first ten years. There are still too many human rights violations going on unchecked in Commonwealth countries for us to sit back and be content with what has already been achieved. Ten years on, it is time for CMAG to evolve into something more complete and effective to build upon what has been learnt so far. ■

# Engaging with the Commonwealth on Police Reform

CHRI is committed to engaging with the official Commonwealth and to supporting other civil society groups to do this. Therefore, prior to the Commonwealth Law Ministers Meeting (held in Ghana in October 2005), CHRI facilitated a civil society meeting on Police Accountability in the Commonwealth Africa region. Participants came from Ghana, South Africa, Kenya, Uganda, Tanzania, Sierra Leone, Malawi, Nigeria, UK, India and Australia.

Participants affirmed the need to keep police accountable, through internal disciplinary systems within the police service, and external accountability to the three pillars of state, civilian oversight bodies and the community. They acknowledged the value placed by the Commonwealth on human rights, good governance and democracy, and the principles of the rule of law and accountability; and particularly noted the priority placed on policing by Commonwealth bodies such as the Expert Group on Development and Democracy which recommended that governments should commit to: “A police force that responds to the law for its operations and the government for its administration”. They then made the following recommendations:

## *Participants make the following recommendations to the Commonwealth Law Ministers, that they:*

*Prioritize early police reforms that strive to realize democratic policing as integral to achieving good governance and rule of law;*

*Mandate the Commonwealth Secretariat to work with member governments to implement the recommendation of the Commonwealth Expert Group on Development and Democracy that member governments should commit to ensuring “A police force that responds to the law for its operations and the government for its administration”.*

*Recommend that the Commonwealth pursue the development of democratic and human rights based policing in all countries of the Commonwealth.*

*Reform Police Acts in their countries where necessary to ensure that Acts incorporate and further the principles of democratic policing, eliminate impunity, and abide by international human rights and policing standards.*

*Address the issue of police reform holistically within the context of reform of criminal justice systems.*

*Ensure that other domestic laws, rules and regulations are conducive to democratic, accountable policing. Security and anti-terror legislation, for instance must protect civil liberties and human rights.*

*Pass legislation that can assist in the development of democratic, accountable and transparent policing, such as right to information laws.*

*Establish effective bodies to oversee the police, and ensure they have adequate resources, mandate and independence to function properly. These include National Human Rights Commissions, public complaints bodies and police service commissions.*

*Mandate the Commonwealth Secretariat to provide greater technical assistance to National Human Rights Commissions and other bodies to increase their capacity to provide oversight over the police.*

## *Participants make the following additional recommendations to the Commonwealth, that it:*

*Engage with issues related to policing, to further democracy and development and adherence to the Commonwealth Harare Principles.*

*Develop Commonwealth Principles on Policing based on democratic principles and international standards.*

*Support member countries’ efforts to reform the police and develop a service based on democratic principles.*

*Develop a Commonwealth Association of Police Officers to share experiences and provide peer assistance and support.*

*Support regional efforts towards better policing, such as the development of the African Policing Oversight Forum (APCOF).* ■

# The Role of the Royal Solomon Islands Police in Ethnic Violence

Afu Billy

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Civil conflict erupted in the Solomon Islands in May 1999 when a group of Guadalcanal youth began violently evicting Malaitan settlers from their properties in Guadalcanal Province. This incident sparked a four-year-long crisis. In June 2000 Prime Minister Bartholomew Ulufa'alu was forced to resign at gunpoint. Within a month of the first incident, armed hostilities between the Isatabu Freedom Movement (IFM) of Guadalcanal and the Malaita Eagle Force (MEF) broke out in Guadalcanal. More than 100 lives were lost and an estimated 32,000 people displaced. As a result, the Solomon Islands Government was unable to fulfill its basic functions.

The role of the Royal Solomon Islands Police (RSIP) should have been to enforce law and maintain internal security, especially in protecting citizens. Instead, the RSIP played a major role in committing human rights violations in the country's ethnic and social crisis that occurred between 1998 and July 2003; ending with the intervention of the Australian led Regional Assistance Mission to Solomon Islands (RAMSI).

Prior to the conflict, the RSIP was already rife with ethnic factionalism. Viewed as "pro-Malaitan", non-Malaitans already did not trust the police. As of June 2000 approximately 75 per cent of the country's 897 police officers were Malaitan. This point is significant, due to the view in Solomon Islands that the state itself is seen as a foreign concept; an attempt by colonial powers to merge the different island groups into a single country. People align themselves with their village or language groups far more than with the state, viewing themselves as "Malaitan" or "Are Are" first, and Solomon Islander second. Most of the population lacks a sense of nationality and due to years of poor governance and corruption, there is no sense of "trust"

in the state or state run functions. These factors have contributed to a situation where the public does not trust the state run police force and provides an extreme example of where state powers and institutions did not function to effectively control law and order and protect the fundamental rights of citizens.<sup>1</sup>

The situation also explains the reaction of the RSIP at the outset of the conflict. When Guadalcanal youths started forcing Malaitans out of Guadalcanal, the police were seen to use their position to retaliate against the Guadalcanalese, resulting in police committing human rights violations. An example of this took place in September 1999, when several paramilitary police officers in a speedboat shot a man near shore, dragged him into the water and reportedly beat him to death.<sup>2</sup>

Fuelling the conflict was the availability of guns held in police armouries around the country. The armouries provided the supply of weapons and arms used by militant groups, often assisted by police. For example, in December 1998 the Tulagi Police Armoury in the Central Province was broken into by men who were identified as police officers from the RSIP in Honiara. In January 2000, the police armoury in Auki, Malaita was raided and arms stolen; these arms were later used in the formation of the Malaita Eagle Force. A day after the MEF and the police staged the attempted coup and held Prime Minister Ulufa'alu hostage, they raided the armoury in Honiara and stole arms.

After the violence began, the police rapidly lost control over the deteriorating law and order situation. The Special Response Unit and the Paramilitary Police Field Force (PPF) became like legitimized arms of the MEF within the RSIP. After the signing of the Townsville Peace Agreement in October 2000, government

<sup>1</sup> IJALS/RRRT, PDLP Solomon Islands Student's Group Work, *Solomon Islands Human Rights Legal Report 2005*, Suva, March 2005

<sup>2</sup> US Bureau of Democracy, *Human Rights and Labor, Solomon Islands, Country Reports on Human Rights Practices 2002*, March 31, 2003



attempts to control the situation through the recruitment of 1200 untrained former militants (most of whom were MEF members) into the police force as Special Constables (SC) worsened the situation as the RSIP was already seen as “pro Malaitan”. The recruitment, which was supposed to be a government effort to “reintegrate these ex-combatants into useful and lawful activities”, backfired as these ex-combatants used their new role as SCs to wield influence within the force which in turn led to the deterioration of the police response to the conflict. Members of the PFF and the SC engaged in criminal activities, including extortion, robbery, vehicle theft, intimidation and fraud, with police leadership condoning these abuses.

Public confidence in the RSIP and the government plummeted, as the government was seen to be helpless in controlling its own police force. Extreme cases include where the Ministry of Finance and the Prime Minister’s Office were targeted for extortion by criminal elements in the RSIP and militant gangs. Government revenue collected went to meeting fabricated and outrageous compensation demands as the Special Constables looked on, profiting from the lawlessness.

The SCs became a major impediment to legitimate police efforts to respond to citizen complaints and the maintenance of law and order, as they had become instrumental in dealings between militant factions.<sup>3</sup> Police investigations against SCs and armed ex-combatants were stalled for fear of reprisals. In addition to the factionalism within the police force, police work was also hampered by the lack of resources, specifically vehicles and fuel. Between the period of the signing of the Townsville Peace Agreement in October 2000 to the arrival of RAMSI in July 2003, the situation fully deteriorated within the police force, rendering it corrupt, violent, undisciplined, biased and dysfunctional.<sup>4</sup>

The police as the traditional defender of the people had failed to effectively protect the nation. Without police backing, the government was ineffective to maintain law and order and many officers exploited the situation and their government positions for personal gain.

A closer analysis points to a number of long-standing issues that had contributed to the deterioration of the RSIP. These include:

- Years of poor governance and corruption by successive governments after independence in 1978.
- Continuous struggles within government over resources (for example, logging profits).
- Lack of national identity within the population.
- Total public distrust of government services.

This scenario reflects successive Solomon Islands governments’ lack of adherence to the principles of democracy, good governance, human rights and respect for the rule of law. Governments were corrupt; the law enforcement arm had failed in its obligations to protect the rights of citizens, instead contributing to the violation of citizen’s rights. Although Solomon Islands is a nation that professes to be democratic, a democracy needs to be one which practices good governance and upholds the rule of law to ensure that the human rights and freedoms of its citizens are protected and enjoyed without violations. Democracy, good governance, human rights and the rule of law cannot be separated.

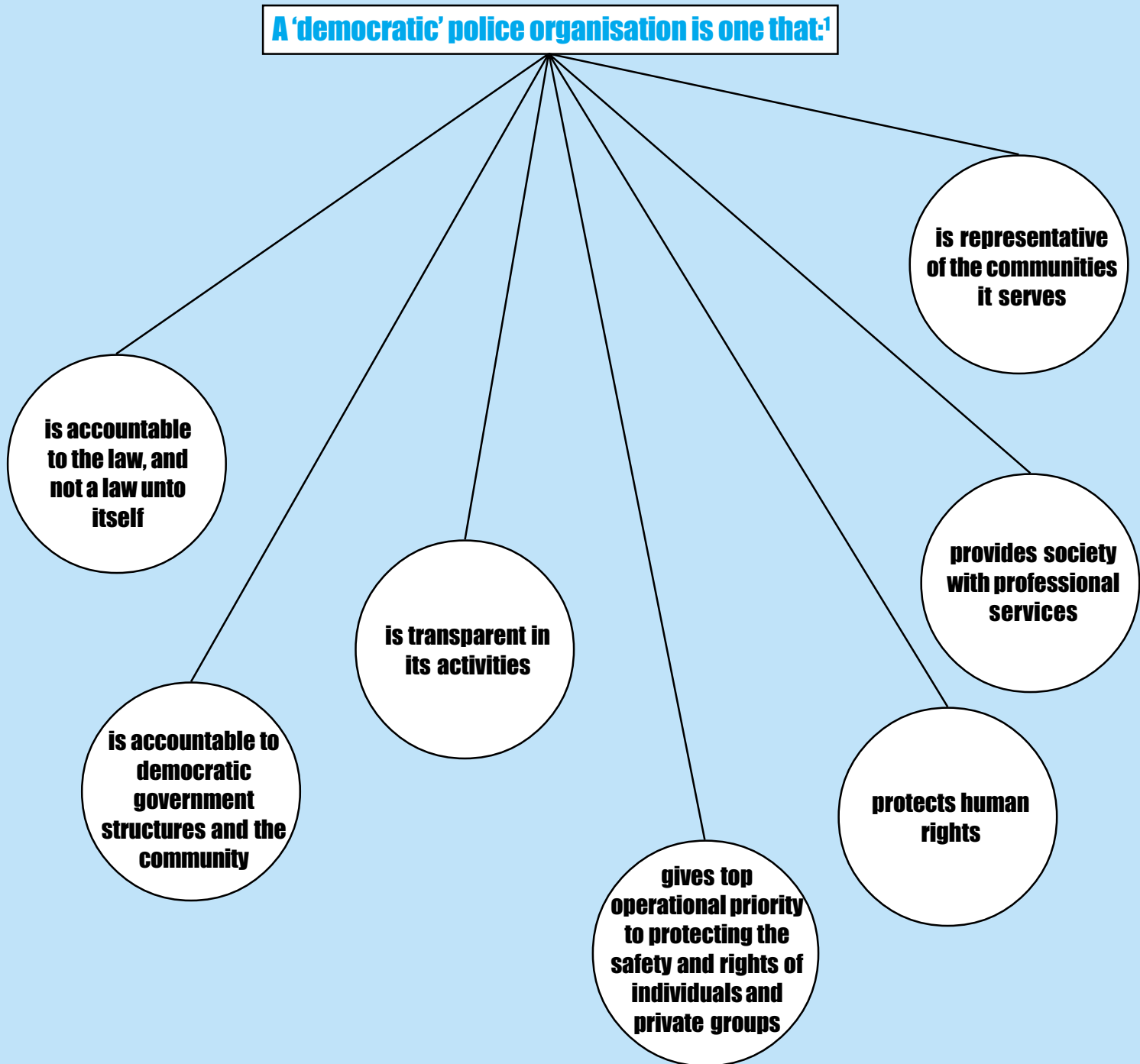
Where these principles are not adhered to, as was the case of Solomon Islands, poor governance and corruption become major features of government functions, including the police. In the Solomons situation, this disabled the police force in its role as a provider of security for its citizenry. The values underlying corruption and poor governance had spread to individual officers who used their positions for personal gain, rather than for the good of the public.

The role of the police everywhere is to uphold the rule of law and human rights, and ensure that people are protected. This was not the case in Solomon Islands during the crisis. Currently, the RSIP is being retrained; overseen by RAMSI, a collaborative force supported by the Government of Australia. It is my personal opinion that to instill the values of good governance, democracy and respect for human rights in the RSIP, training in human rights needs to become part of the training programme for the Solomons police. As a Solomon Islander, I believe this should be a priority.■

<sup>3</sup> Interview with Police, Honiara, November 2003

<sup>4</sup> Dr. Tarcisius K, Tara, 2000, *Beyond Ethnicity*, p4

**DEMOCRATIC POLICING** is both a process – the way the police do their work – and an outcome. The democratic values of the Commonwealth lay down a sound framework for this.



<sup>1</sup> This section is adapted from Bayley, D. (2001) *Democratising the Police Abroad: What to Do and How to Do It*, National Institute of Justice, US Department of Justice, Washington, pp 11-15; Bruce D. and Neild R. (2004) *The police that we want: a handbook for oversight of police in South Africa*, Center for Study of Violence and Reconciliation, Johannesburg, and Open Society Justice Initiative, New York; and Stone, C. E. and Ward H. H. (2000) *Democratic policing: a framework for action*, Policing and Society, Vol. 10, number 1, p 36.

## ntability: Too Important To Neglect, Too Urgent To Delay

This selection of text was taken from Chapter 2, which discusses democratic policing. In its seven chapters, the Report argues that an effective system of police accountability is based on the principle of multiple levels of accountability: to the government, to the people, and to independent oversight bodies; within a supportive legislative and policy framework. It provides a comparative overview of accountability arrangements, highlights good practice, and gives recommendations for reform to assist governments, police officials, and civil society in the development and strengthening of effective accountability regimes. Both the Report as well as its Executive Summary can be downloaded from our website at: [http://www.humanrightsinitiative.org/publications/chogm/chogm\\_2005/default.htm](http://www.humanrightsinitiative.org/publications/chogm/chogm_2005/default.htm)

### ACCOUNTABILITY IN PRACTICE

A key feature of democratic policing - in line with the checks and balances that characterise democratic systems of governance - is that the police are formally held to account in a variety of ways for their performance as much as for any wrongdoing, and are made to bear the consequences.

There are commonly four types of accountability or control over police organisations:

*Government (or state) control:* The three branches of government – legislative, judicial and executive – provide the basic architecture for police accountability. In a thriving and active democracy, the police are likely to be regularly held to account in all three halls of state. For instance, police chiefs are often required to appear in the legislature and answer questions from the elected representatives of the citizenry. Or they may be subject to questioning by other branches of government such as Auditors-General or Finance Departments. Where there is a strong and independent judiciary, cases may be brought in courts regarding police wrongdoing, with possible compensation for those affected, or to verify or amend decisions made by police officials.

*Independent external control:* The complex nature of policing and the centrality of police organisations to governments require that additional controls are put in place. Institutions such as Human Rights Commissions, Ombudsmen and public complaints agencies can oversee the police and limit police abuse of power. At least one such independent, civilian body is desirable in any democracy, although many Commonwealth countries in fact enjoy the services of a number.

*Internal control:* All “well functioning accountability systems are grounded, first and foremost, on internal police mechanisms, processes, and procedures.”<sup>1</sup> Reliable disciplinary systems, appropriate levels of training and supervision, and systems for monitoring, evaluating and recording performance and crime data all create the necessary apparatus to hold policing to a high standard.

*Social control or ‘social accountability’:* In a democracy, holding the police accountable is not merely left to formal institutions that represent the people, but is also the right of ordinary people themselves. The media, community groups (such as crime victims, business organisations, and local civic or neighbourhood groups), and individuals all monitor and comment on police behaviour to spur them to better performance.

<sup>1</sup>Global Facilitation Network for Security Sector Reform: [http://www.gfn-ssr.org/good\\_practice.cfm?id=27&p=13](http://www.gfn-ssr.org/good_practice.cfm?id=27&p=13) as on 17 May 2005.

### A Model for Police Accountability: 3 + 1

There is no hard and fast rule about the form that good police accountability must take. Much depends on the circumstances of each country and the nature of the existing relationship between the police and the community. CHRI advocates that the basics of sound accountability required in *most* circumstances are vigilant internal processes and procedures coupled with *external oversight* by the three wings of government plus one independent body:

**Democratically elected representatives (in national parliaments if police are structured at the national level, in state legislatures if police are organised at the state level, and in local councils if policing is organised at the local level);**

**An independent judiciary;**

**A responsible executive (through direct or indirect policy control over the police, financial control, and horizontal oversight by other government agencies such as Auditors-General, Service Commissions and Treasuries); and**

**At least one independent statutory civilian body, such as an Ombudsman or a Human Rights Commission or, ideally, a dedicated body that deals with public complaints about the police.**

# Cementing Accountability: The Office of Police Ombudsman for Northern Ireland

**Tim Gracey**

*Director of Information, Police Ombudsman for Northern Ireland*

**F**or more than three decades, televisions and newspapers across the world have painted Northern Ireland as a violent society and one divided against itself. Policing in that community had to deal with all the issues arising from such a conflict, while at the same time many on both sides of the community viewed policing as a major political issue.

In recent years Northern Ireland has become a less violent place, with many of the terrorists having declared a commitment to peace. The political divisions remain, however, and policing seems as big a political issue as ever. Despite this, many observers have been amazed that a new system for dealing with complaints against the Police – called the Office of Police Ombudsman for Northern Ireland – has won general support in the divided society, and in particular seems to have won the support of the more extreme sides of the political debate.

Independent research records that more than 83% of Catholic people and 75% of Protestant people feel they would be treated fairly by the Office. This would seem to be borne out from figures produced by the Office: 49% of its complaints come from Protestant people and 41% from Catholic people. Such a thing would have seemed unbelievable five years ago – the Office opened in November 2000 – but such has been the undeniable success of the new system that other jurisdictions have been examining the model very carefully.

The woman at the heart of this project is the Police Ombudsman, Mrs Nuala O’Loan: “I had to create a new independent, impartial service for dealing with complaints against the police which would win the support of all sections of the community. It had to be independent. In many countries throughout the world

the police investigate themselves. We have created an organisation of highly skilled and professional investigators who were and are not a part of the police service they investigate”.

Mrs O’Loan’s study of similar attempts at independent police investigation elsewhere had shown that they suffered from two main problems: lack of funding and lack of training. To avoid facing these problems, she began with a budget of almost £ 6 million. She also cast her net internationally to ensure she had the most experienced of staff. Before the Office opened, those staff underwent intensive training. The Office now has 126 staff which comes from widely different disciplines and professional backgrounds, including police officers, solicitors, academics and the like. They provide a 24 hour a day, 365 day a year service.

It was also essential to ensure that the new service would meet the needs of the community. Mrs O’Loan undertook an extensive programme of consultation across Northern Ireland to establish how people wanted that service delivered. “People told us they wanted an open, transparent, fair and impartial system. They also said they wanted a system which was easily accessible and which they could understand,” she recalled.

One of the main benefits of the new system is that the community has accepted it will provide an independent and highly professional investigation of complaints against the police. According to Mrs O’Loan, “Quite often, an incident occurs which can bring the police and the community into conflict. The fact that people know my Office is investigating seems to calm things down. Where before there may have been a dangerous level of tension, there now seems a contentment to let my Office get on with the job”.



A case in point, which illustrates this well, was a tragic incident in a market town in Northern Ireland where a young man was killed by the gates of the local police station. He had been among a crowd that had chased a man towards the police station where, outside its gates, they kicked him, punched him on the head and threatened to kill him. Seeing the attack, a police officer rushed to the station gates, which were opened for him, and confronted the crowd. When they refused to stop the attack, the officer tried to grab the victim and pull him into the base to safety. Several men kept hitting the man as the police officer tried to pull him inside. The officer managed to get the intended victim inside the gates but at least two other men got in too. One of the men tried to run back through the gates but was caught between them as they began to close.

The police officer, seeing what had happened, shouted to a colleague to open the gates again and banged on the safety mechanism on the gates four or five times with his fist to stop them closing. However, the safety mechanism had been disabled on the gates, which continued to close and the gates crushed the man. Police officers at the scene gave first aid but he died shortly afterwards in hospital from his injuries.

The Police Ombudsman immediately investigated the issue of any possible police misconduct, which might have contributed to the man's death. Police Ombudsman investigators were called immediately to the scene, which had been cordoned off. The area was forensically examined and CCTV in and near the police station was seized. Statements were taken from police officers involved and from people who had been in the crowd. The people in the crowd had been drinking and there were discrepancies in their accounts of what happened, the order in which it happened, and in the timing of events.

Paperwork completed by various contractors who had worked on the gates was examined. The investigation revealed that an engineer who had been working on the gates long before the accident had found additional wiring in the gates' control panel, which appeared to have the effect of bypassing their safety edges. The

man said he was not qualified to deal with this and assumed that someone else was carrying out work on this part of the gates.

In her final report on the matter, the Police Ombudsman found no evidence to link any individual police officer to the problems with the gate. She said the officers on duty that night did not bear responsibility for the death but said that the Police Service of Northern Ireland (PSNI) as an organization was guilty of corporate failure in their duty to maintain the gates so that they operated safely – a failure that had terrible consequences.

“The man's family accepted the findings of our report and so too did the wider community. We also made a series of 16 recommendations designed to ensure that the gates at the station were made safe and that there are no similar problems at other stations,” she said.

Mrs. O'Loan has said police accountability is a role, which is not for the faint hearted: “The job is not for the faint hearted, but it is very rewarding. We regularly get letters from people who not only thank us for helping resolve their problems but, just as importantly, thanking us for the manner in which we treat them. We have come a long way in five years.”

The Independent Commission on Policing in Northern Ireland was set up in April 1998 in an Agreement reached after years of conflict. The Agreement argued that “it provides the opportunity for a new beginning to policing in Northern Ireland with a police service capable of attracting and sustaining support from the community as a whole”. The Commission was tasked with formulating a blueprint for police reform. The role of Northern Ireland's police, and general issues around policing policy and practice, were major components of the Agreement's preamble and prioritised as needing particular attention in its implementation. The recommendations of the Commission were central in the creation of independent oversight mechanisms such as the Police Ombudsman, and to forge a human rights culture within the police service.

# The National Police Commission in Sri Lanka: Squandering a Golden Opportunity

Kishali Pinto-Jayawardena

*Kishali Pinto-Jayawardena practices in public law in Sri Lanka's appellate courts and has been lead counsel in cases successfully filed against the Sri Lankan State before the United Nations Human Rights Committee in terms of the International Covenant on Civil and Political Rights and its Optional Protocol. Currently she is also Director, Legal Unit, Law and Society Trust, the editor of the LST Review and the editorial (Legal) consultant for the Sunday Times, Colombo for which newspaper she writes a regular rights column. Her publications have been on policing issues, media law and gender rights.*

When the Speaker of Parliament certified the 17th Amendment to Sri Lanka's Constitution on 3<sup>rd</sup> October 2001, it was veritably a momentous occasion. In a House consisting of parliamentarians otherwise bitterly divided on party political lines, this constitutional amendment was passed without opposition<sup>1</sup> with one singular purpose in mind - to restore public confidence in the rule of law.

This strengthened the process of appointment to existing key institutions such as the Public Service Commission, the Human Rights Commission and the Bribery Commission. Vitally, it created two new monitoring bodies, the National Police Commission (NPC) and the Elections Commission. Members of these Commissions were appointed by the President on the recommendation of a newly created Constitutional Council (CC), which had significant 'apolitical' representation.

This paper attempts to highlight some issues related to the functioning of the NPC. It asks the question of whether Sri Lanka is squandering a golden opportunity in relation to the creation of a body that is unique in its constitutional formulation, particularly where law and order institutions in South Asia are concerned.

If the NPC had functioned according to its constitutional mandate, it may well have proved to be a shining example for the rest of South Asia. Regrettably, the converse has been the case.

## *Sri Lanka's Policing System – The Historical Critique and Its Present Deterioration*

The historical critique of policing is not difficult to trace. Several government commissions released reports, including the 1946 Justice Soertsz Commission, the 1970 Basnayake Commission, the 1995 Jayalath Committee and the Commissions of Inquiry into the Involuntary Removal and Disappearance of (Certain) Persons, set up in 1994 and whose final reports were submitted in 2001. The Basnayake Commission recommended an independent Police Service Commission to be in charge of appointments, transfers, dismissals and disciplinary control.

However, the reality is perhaps far worse than what these official reports suggested. After decades of civil and ethnic conflict, the country was left with more of a system of military style social control than a sophisticated crime investigation institution. Reported instances of abuse by police officers are now legion. Many victims have brought cases to the Supreme Court resulting in many judgements on the prohibition of torture. While the Court has awarded compensation, its directions to the Inspector General of Police (IGP) to enforce disciplinary sanctions have gone unheeded.

## *The NPC – Serious Deficiencies in its Functioning*

The NPC was the first serious legislative attempt to remedy this situation. It comprises a body of 7 persons whose security of tenure is explicitly provided for.<sup>2</sup>

<sup>1</sup> It is on record though that representatives from the primary Tamil minority party walked out of the House thus not participating in the passing of the constitutional amendment while the single member of the *Sibala Urumaya* (an ultra Buddhist nationalist party) also abstained

<sup>2</sup> See 17<sup>th</sup> Amendment, Article 155A

Its powers are two fold. Firstly, it is vested with the powers of appointment, promotion, transfer, disciplinary control and dismissal of all officers other than the Inspector General.<sup>3</sup> Secondly – and most vitally – the 17<sup>th</sup> Amendment stipulates that the NPC “*shall* establish procedures to entertain and investigate public complaints and complaints from any aggrieved person made against a police officer or the police service...”

### *Disciplinary Control of Police Officers*

Insofar as the first mandate is concerned, the performance of the NPC was initially disappointing due to its decision to delegate the disciplinary control of subordinate police officers to the IGP. Such delegation was justified on the basis that it was considered necessary for the IGP to administer his own department. The IGP in turn referred the cases to his subordinate officers, or to a special investigation unit. However, as police officers continued to investigate other police officers, no effective change took place in the rampant indiscipline of the service.

In addition, as the higher ranking officers who earlier oversaw the conduct of such inquiries were accustomed to making settlements between complainants and alleged perpetrators rather than conducting inquiries in an objective manner, most complainants were rightly distrustful of these inquiries.

Till July 2003, the functions of the NPC in this regard were appropriately described by its critics as being similar to that of a ‘post box’; that is, it merely entertained complaints and referred them to the police for investigation. Very few disciplinary inquiries were completed, and the outcome of these was not known.

Due to strong public criticism, the NPC decided in mid 2004<sup>4</sup> that it would recall its delegated powers and

assume substantive disciplinary control as mandated by the 17<sup>th</sup> Amendment over the police officers of all ranks, excepting the IGP. This decision was taken amidst adverse statements by frontline ministers that the ‘independence of the NPC’ was not needed and that the IGP should be involved in the decision-making processes of the NPC. Inflammatory remarks by other political figures of the ruling coalition also added fuel to the fire.<sup>5</sup> Hostility between the IGP and the NPC surfaced as the IGP felt the creation of the NPC had imposed an unwarranted fetter on his powers.

Despite this hostility, the interventions of the NPC in preventing politically motivated transfers of police officers prior to elections and its recent interdictions of police officers found culpable in rights violations, is to its credit. Such initiatives will however be short-lived unless the necessary support by the Government as well as the Office of the Inspector General of Police is forthcoming. Currently, this is notably lacking.

### *Public Complaints Procedures*

In so far as the second mandate is concerned, Article 155G(2) of the Constitution clearly requires the mandatory establishment of meticulous procedures regarding the manner of lodging public complaints against police officers and the police service. The NPC also has a duty to recommend appropriate action in law against police officers found culpable, in the absence of the enactment of a specific law whereby the NPC can itself provide redress.

Such complaints procedures would include detailing the persons who can complain, the way it is recorded and archived and the way in which it is inquired and investigated. Quick responses need to be manifested in terms of not only documentation but also ensuring medical attention and victim protection. Similar procedures in other countries require the OIC (Officer in Charge) and his superior officers to automatically

*Contd. on page 17*

<sup>3</sup> See 17<sup>th</sup> Amendment, Article 155G(1)(a)

<sup>4</sup> Most of the work of the NPC since its official inauguration in November 2002 was devoted to matters relating to promotions, particularly the filling of about 4000 vacancies in important posts, which remained vacant due to inaction under the earlier system of administration. Resolving this problem of vacancies was looked upon as a priority by the NPC in order to get the system to function properly

<sup>5</sup> See the Island, 12<sup>th</sup> August, 2005

# A Fair Police Service for London's Communities

**Philip Powell**

*Director of Communications, Metropolitan Police Authority*

**T**he Metropolitan Police Authority exists to make sure that London's police are accountable for the services they provide to people in the capital. The MPA has achieved real benefits for the people of London. There are now over 30,300 police officers, the largest number ever, and London was first to introduce Police Community Support Officers (PCSOs). Over 1,700 PCSOs now provide extra public reassurance and tackle anti-social behaviour that affects our communities.

The MPA has 23 members, 12 elected London Assembly Members, 4 Magistrates and 7 independent members, all appointed for four years. Each member is closely associated with one of London's boroughs and is responsible for liaising with local police and others working to reduce crime locally. Members meet regularly in committee to discuss police policy and monitor performance. They recommend changes that deliver improvements and meet the needs of London's communities. The Authority believes that working in partnership is the most effective way to achieve our aim of making London the safest city. The Authority promotes equality and diversity within the police service and is working in partnership to ensure all those who live and work in the capital are treated with respect.

The Authority's job is to:

- secure continuous improvement in the way policing is provided in London;
- increase community confidence and trust in London's police;
- consult with London's communities to find out what they expect from the police;
- oversee management of the police budget; and
- produce an annual policing plan that sets targets for the police.

## *Listening to Londoners*

A vital part of the MPA's role is to consult with Londoners about the police, their performance and how this can be improved. Consultation helps the MPA learn what should be set as priorities for the police in the year ahead.

Ways of consulting include:

### *Safer London Panel*

The Authority's own citizens panel is made up of 3,000 people chosen to reflect London's population. They are asked to give their views on specific issues about how London is policed.

### *Community engagement in every borough*

The MPA is committed to ensuring that every borough in London has a means for people to communicate with their local police. This usually takes the form of a Community Police Consultative Group, but in some areas different methods are being developed. The MPA takes part in numerous events and organises community engagement programmes across the capital. Details of these events are published on our website [www.mpa.gov.uk](http://www.mpa.gov.uk).

### *MPA public meetings*

MPA committee meetings are open to the public and everyone is welcome to attend. Dates, times and reports for these meetings are published on the MPA website and are also available from public libraries.

### *Policing London*

Since the terrorist attacks on London on 7 and 21 July of this year, the men and women of the Metropolitan Police - police officers and police staff - have worked hard to ensure the continuing safety of Londoners and



visitors alike. And they have worked alongside the MPA to ensure that our rollout of the groundbreaking Safer Neighbourhoods initiative (dedicated local community teams of uniformed police officers and community safety officers) across the whole of London continues ahead of schedule. And we continue to share a vision to make London the safest major city in the world.

### Managing the Metropolitan Police Service budget

The MPA has overall responsibility for the budget of the Metropolitan Police Service (MPS). Planning and managing the annual police budget of over £2.7 billion is one of the Authority's core responsibilities. About 78% of the budget comes from central government, the rest from council tax raised in London by the Mayor.

The Metropolitan Police Service draws up a detailed budget submission, drawing on the work undertaken for the medium-term financial plan to identify future commitments, known savings or areas of reduction, while also highlighting new initiatives. The MPA scrutinises and considers each year's budget, with reference to 'affordability', how the budget fits in with the MPA's priorities and taking into account the Mayor's priorities. It then recommends a budget submission to the Mayor, highlighting how the MPA budget fits with the Annual Policing Plan and the Mayoral policies, priorities and strategies.

A key responsibility of the MPA is budgetary control. Budget monitoring reports are submitted to the MPA on a regular basis as it is important that the MPA is aware of variations in actual or anticipated spend against the approved budget, together with proposals for remedial action if under or overspends are anticipated. ■



*Contd. from page 15 .... NPC Sri Lanka*

report categories of grave incidents to the monitoring body, whether a complaint is made or not.

These procedures would hold accountable both the police officer concerned and officers of the NPC so that both act in strict compliance with their constitutional and statutory duties. This is particularly important where officers of monitoring bodies have been accused of colluding with the very perpetrators of terror. Acts of collusion include settling with victims of gruesome torture for small sums of money and in extreme cases, collaborating with the police to cover up the incidents.

Such Public Complaints Procedures have, however, not yet been established. The NPC currently appoints district coordinators (mostly retired policemen) to look into complaints. However, what is required is not *ad hoc* consideration of complaints where the complainant is left to the mercy of an individual NPC officer but the prescribing of uniform procedures in this regard. Clearly, not adopting such procedures continues to be in dereliction of its mandatory constitutional duties.

### Conclusion

It is evident that during its first term of existence, the NPC has been cribbed, cabined and confined in respect of many aspects of the fulfillment of its constitutional duty. This term is almost over and the second set of Commissioners will soon be appointed.

For the future, it is crucial therefore that the NPC be given all the support that it needs by the government as well as by the IGP in order that it effectively carry out its mandate.

On its own part, the NPC will have to create strong disciplinary procedures and enforce them. Importantly, it needs to put into place the Public Complaints Procedures as constitutionally decreed. Without these two factors complementing each other, a dramatic (albeit difficult) process towards change within the Sri Lankan police force may be impossible. ■

# A Democratic Police Law for India: Seize the Moment

**Mandeep Tiwana**

*Consultant, Access to Justice Programme, CHRI*

**A**t the recently concluded conference for district police chiefs in early September, the Prime Minister of India, Dr. Manmohan Singh reiterated the need for the police to be equal to the challenges facing the country's future. Lamenting that the police are still governed by the Police Act of 1861<sup>1</sup> whose sole consideration was defending the establishment, the Prime Minister asserted that the police at all levels and particularly at the grassroots (or cutting edge) must change from being a feudal force to a democratic service. This resolve has been backed by the establishment of an Expert Committee comprised of eminent jurists, police officers and experienced civil servants, to prepare a draft of a new Police Act<sup>2</sup> within six months.

Civil society has warmly welcomed this development as a window of opportunity to analyse how the existing police legislation contributes to the state of policing in India, and most importantly where it falls short. The major criticism of the Act of 1861 is that it vests the superintendence or control of the police directly in the hands of the political executive, without placing any limits or checks in the exercise of executive power. In practice, this means that state police chiefs enjoy their tenure at the pleasure of chief ministers. They may be removed at any time without any reasons being assigned. This leads to widespread politicisation of the police with allegiance being owed not to the law but to the ruling party in a state. The upshot is that the police have frequently become an instrument to marginalise political opponents and appease the existing political elite. Officers who resist illegitimate interference in their duties are subject to constant transfers and in extreme cases, departmental inquiries and even false legal proceedings.

In addition, the Act barely addresses police accountability. It relies solely on internal mechanisms

to deal with acts of police misconduct. These may be arbitrary arrest, non-registration of cases, registration of false cases, excessive use of force, bias in investigation or general indiscipline. The problem with internal disciplinary systems is that people have little faith in them and there is a tendency within the police itself to protect its staff and image. By not seeing policing as a service whose performance must be assessed against set indicators on a recurring basis, the Act contributes to declining standards and public dissatisfaction with policing. Another persistent criticism is that the Act places no duty on the police to engage communities and enlist their partnership in achieving policing objectives. This is responsible for the negligible public input in policing plans and strategies, leading to widespread police – public alienation.

While substantive police reform requires a comprehensive and multi-pronged approach, at a minimum, the legislative framework governing the police should be steeped in democratic values and able to ensure the following.

## **Insulation from Partisan Politics**

As with all public agencies, the police are accountable to the elected government. Equally, it is essential to give the police functional autonomy to do its duty by law. The distinction between appropriate political direction and illegitimate political interference in operational policing matters is important to establish in law, policy and practice. Recognising the ill effects of illegitimate political interference on the police's capabilities, the National Police Commission, 1979-81 (NPC) asserted that the government's superintendence over the police should be limited to ensuring police performance in strict accordance with the law. The NPC recommended that oversight of the police should be

<sup>1</sup> Some states, which have enacted their own police legislation, have unfortunately replicated many of the provisions of the 1861 Act.

<sup>2</sup> The committee members are required to take several factors into account: the changing role/responsibility of the police; the challenges of insurgency/militancy/naxalism; people's expectations in a modern, democratic society; scientific investigation methods; tackling futuristic trends including cyber crimes; concern for human rights and rights of weaker sections, women and scheduled castes and tribes.

carried out by a specialised body - the State Security Commission - whose mandate will include laying down broad policy guidelines and directions for preventive and service oriented functions of the police, evaluating and keeping under review the functioning of the police. The NPC also called for a merit based and open procedure to appoint state police chiefs and to assign them a fixed tenure of three years. Assuring stability of tenure through law for cutting edge level posts, including those of district police chiefs and station house officers, will help prevent rampant politicisation of the police.

### Multiple Levels of Accountability

In addition to internal disciplinary systems, the Police Act should provide for an independent mechanism to investigate public complaints against the police. In England and Wales, an Independent Police Complaints Commission addresses individual complaints against officers. South Africa has an Independent Complaints Directorate, separate from the police department and equipped with its own specialised staff to receive and investigate complaints. Further, the police as an organisation should be held accountable for the services it is expected to provide and on which huge amounts of taxpayers' money are spent. The National Police Commission has recommended the appointment of a Director of Inspection to evaluate police performance and report to the State Security Commission. In Northern Ireland, the Policing Board, an independent public body established under the Police (Northern Ireland) Act 2000, sets objectives and targets for police performance and uses these to monitor progress. The Board publishes an annual report of performance against these objectives. In addition, the Board monitors trends and patterns in crime and devises ways for the public to cooperate with the police to prevent crime.

### Community Consultation and Partnership

As policing in a democracy essentially involves serving communities, it is vital that police organisations be required by law to understand and respond to community needs, through consultation and partnership. In England and Wales, the Police Act of 1996 requires the police to make arrangements to find out the views of the local people and also to involve

them in cooperating with the police to prevent crime. The Police Reforms Act 2002 further enables the chief officers of police to appoint suitable support staff from amongst citizens to function as community support officers and gives them powers to deal with anti-social behaviour. In South Africa, provincial governments are charged with the constitutional responsibility "to promote good relations between the police and the community". The South African Police Service Act of 1995 prescribes the establishment of Community Police Forums at the police station level to act as the liaison between the police and the community. The liaison helps establish and maintain community – police partnerships. It promotes communication and co-operation; improves the rendering of policing services in the community; increases transparency in police functioning; strengthens accountability to local communities; and promotes joint problem identification and problem solving.

### A Comprehensive Charter of Duties and Responsibilities

It is imperative that the Police Act contains a charter of duties and responsibilities, based on constitutional values, and attuned to upholding the rule of law. The National Police Commission did draw up a Model Police Act, way back in 1981 whose preamble stresses that "*the police has a paramount obligation and duty to function according to the requirements of the Constitution, law and the democratic aspirations of the people*", and requires it "*to be professional and service-oriented and free from extraneous influences and yet accountable to the people*". An elaborate list of relevant duties has been prescribed by the NPC, which can be taken into consideration.

In the past, numerous official committees and commissions have delved into the vexatious area of police reform in India, only to have their recommendations consigned to the record rooms. This happened because governments of the day did not wish to lessen their control over the police, who were deemed a tool of political patronage and manipulation. It is hoped that the present national government will deliver on its stated commitment to police reform by seriously considering the enactment of a democratic police Act, at least in the federally administered union territories. This will give it the moral strength to persuade state governments to follow suit. ■

# CHRI Calendar

## CHRI Headquarters

### September 2005

Organised a regional freedom of information (FOI) workshop for Pacific MPs, with the Commonwealth Parliamentary Association.

Conducted capacity building workshops on implementing RTI in India in Ahmedabad, Madhya Pradesh, Nagaland, Uttaranchal, Tripura, Meghalaya, Chhattisgarh, Jharkhand, Delhi, Jaipur and Kolkata.

Campaigned extensively to raise awareness of International Right to Know Day (September 28).

Presented on lobbying for the RTI Act for Women Power Connect trainees.

Presented on the Domestic Violence Bill, at a workshop organised by the Institute of Development and Communication.

Presented at a regional UNDP conference in Cambodia on Human Rights Based Approach to Access to Justice.

### October 2005

Held the AGM of the Delhi Executive Committee.

Conducted capacity building workshops on implementing RTI in India in Delhi,

Ghaziabad, Rajasthan, Uttar Pradesh, Uttaranchal, Mizoram, Chennai.

Participated as a resource person at a RTI workshop in Nairobi, Kenya.

## CHRI Africa Office

### September 2005

Presented on 'Assessing the Development and Implementation of Freedom of Information Legislation in the Commonwealth: Challenges and Prospects' at the Commonwealth Law Conference in London.

Participated at a meeting of the Network of Human Defenders in West Africa.

### October 2005

Participated in discussions on the topic of 'Institutional and Organizational Preconditions for Transparency and Information Flows' at a workshop organised by the Ghana Journalists Association and the World Bank Institute.

Held the AGM of the Ghana Executive Committee.

Hosted the first regional launch of the 2005 CHOGM report 'Police

Accountability: Too Important to Neglect, Too Urgent to Delay' for the Africa region, held in Ghana.

Facilitated a two-day African regional conference on Police Accountability.

Presented a paper on CHRI at the Commonwealth Law Ministers conference held in Accra, Ghana.

## CHRI Trustee Committee (London)

### September 2005

Participated at the civil society preparation meeting, prior to the Committee of the Whole meeting.

### October 2005

Participated in Pre-Commonwealth Civil Society drafting committee meetings and made an intervention on behalf of the Africa working group to promote the right to information.

Presented on states that wish to apply for membership in the Commonwealth at a seminar organised by the CJA and the Institute for Commonwealth Studies.

Held the Annual General Meeting of the Trustee Committee.

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

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