

# Commonwealth Human Rights Initiative

# Newsletter



Volume 14, Number 4  
New Delhi, Winter 2007

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CHRI's Electronic Magazine,  
'Commonwealth Policewatch'.

## Rough days follow the Kampala summit

**Derek Ingram**

*- Member of CHRI's Executive Committee, UK*

The summit in Uganda turned out to be the curtain-raiser to weeks of political upheaval in parts of Commonwealth Asia and Africa. On the eve of its opening on 23 November the Commonwealth Ministerial Action Group (CMAG) of nine foreign ministers suspended Pakistan from the councils of the Commonwealth for a second time because President Pervez Musharraf had still not stepped down as army chief as he had three times promised the Commonwealth and the Secretary-General personally - he would do.

In fact, Musharraf did take off his uniform a few days later, but to retain its credibility the Commonwealth had to act when it did. In any case, the sacked and detained judges were not restored. The CMAG meeting proved difficult because Sri Lanka, and to a lesser extent Malaysia, was opposed to the re-suspension. Then, only days after the Commonwealth Heads of Government Meeting (CHOGM) came first the assassination of Benazir Bhutto and then in December the tight elections in Kenya that led to a sudden and unexpected eruption of bloodshed there.

CHOGM itself passed off well, despite months of anxiety about the controversial venue. President Yoweri Museveni does not have an altogether clean human rights or democratic record. Nine opposition leaders had been held on treason charges during the last elections and remained so even while CHOGM was held.

In terms of results it was a useful, if not groundbreaking, meeting. It marked a changing of the guard with the election of Indian diplomat Kamallesh Sharma to succeed New Zealand politician Don McKinnon as Secretary-General on 1 April. And it was notable for the launch of two important reports.

The first, *Civil Paths to Peace*, came from the Commonwealth Commission on Respect and Understanding, which was chaired by Nobel laureate Amartya Sen. It is one of the best documents the Commonwealth has produced,

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

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dealing with the most pressing social problems of our day – group-based violence and its impact on communities – and looks at the cause of conflict and extremism.

The report recommends new forms of political participation, an emphasis on non-sectarian, non-parochial education that expands rather than reduces the reach of understanding, and greater support of young people – half the Commonwealth's two billion citizens.

The last section sets out briefly and clearly the way in which the Commonwealth has been a major and influential international player over the last several decades – a role much underestimated in member countries and the wider world, partly because of the failure of its own public relations effort and the leaders' reluctance and inability to articulate its achievements. This is a matter Sharma needs urgently to address when he takes over.

The second report deals with the future membership of the Commonwealth, which now stands at 53 countries with several more to knocking on the door to join. The criteria for membership had long needed further clarification.

Some countries aspiring to belong have no historical or constitutional connection with existing members. Most immediate is the application of Rwanda, once a German and then a Belgian colony.

The Committee, headed by former prime minister P.J. Patterson, favours only a moderate increase in membership and the CHOGM was even more conservative. In no way are the floodgates to be opened, which could lead to the development of a mini-UN. However, the report does provide for exceptions which "should be considered on a case-by-case basis."

Applicant countries must be committed to, inter alia, democracy, free and fair elections, the rule of law and an independent judiciary, protection of human rights, freedom of expression and equality of opportunity.

Only Rwanda has an application actually on the table. Its President, Paul Kagame, was a so-called Special Guest in Kampala and host Museveni was hoping that Rwanda might be admitted on the nod, but that was not going to happen.

Its qualifications will now have to be vetted and the next summit in Trinidad and Tobago in 2009 will decide. The UK for one is keen for Rwanda to join, but question marks are bound to arise over the quality of its democracy and human rights. A precedent was set in 1995 when former Portuguese colony Mozambique, a neighbour of Rwanda, was admitted as 'a special case' and it has to be said that it has proved an admirable Commonwealth member.

One recommendation made by the membership commission was that CHOGMs should revert to a full three days' duration. The length of the summit has been whittled down over the years and apart from one executive session the whole two-and-a-half day meeting is now held in Retreat. However, from 2005 the summit is preceded by a two-day foreign ministers meeting, which saves the Heads time spent dealing with the more routine matters.

The Retreat is the great Commonwealth pioneering success story. It is at these informal meetings of Heads without officials in a secluded venue where the real business is done, with leaders getting to know each other on first-name terms and where the use of a single language comes into its own.

In these high pressure days international summits are inevitably short, but the Commonwealth now scores by the huge expansion and involvement of civil society and its meetings extending over more than two weeks. In Kampala 1,500 people and 600 organisations took part in 20 workshops. In addition, something like 10,000 Ugandans visited the so-called People's Space where exhibitions and displays were held.

All this means that the total CHOGM happening is spread over nearly as long as its antecedents, the Commonwealth Prime Ministers Meetings. The first of these, in 1944, lasted 15 days, but only five leaders were then involved. The total CHOGM event in Uganda beginning with the Youth Forum on 14 November ran till 25 November. The question is arising again, however, whether the timing of this huge civil society effort is right. To make the maximum impact on governments should it be held alongside the biennial summit or should it take place in the year between? After all, the object of the exercise is to influence the leaders, but there is no way they can access them personally at that time and in any case it is much too late to affect any decisions they might take at the CHOGM. NGOs do now have a half-day session with the foreign ministers after the ministers own meeting, and that is developing into a useful encounter. But it cannot

influence the Heads who by then are already in the middle of their summit.

Would it be more productive if civil society held its meetings in the summit venue a year beforehand, giving them ample time to feed their ideas to the Heads?

Such an occasion would also give the Commonwealth itself a separate focus for publicity within and beyond the country where the summit is to take place and well ahead of it. As it is, the huge civil society effort gets little attention outside the media of the host country because it is overshadowed by the immediate glamour and newsworthiness of the Heads' meeting. ■

## CHOGM 2007: The Foreign Ministers Meeting

**Lucy Mathieson**

*-Coordinator, Advocacy Programme, CHRI*

The fourth Commonwealth Heads of Government Meeting (CHOGM), hosted in Kampala, Uganda, came to a close at the end of November 2007. Prior to the 2007 CHOGM, civil society groups had the opportunity to meet, bring issues forward and draft a civil society Communique through the Commonwealth Peoples Forum (CPF). A Communique/Statement focused on human rights, drafted from the concluding statements of the Commonwealth Human Rights Forum, was also appended to the CPF Communique.

As one might expect, the usual issues were brought forward via the civil society mechanism – amongst other things, poverty, the Millennium Development Goals, climate change, education, health, HIV and AIDS, recommendations for the Commonwealth Ministerial Action Group (CMAG), good governance, gender, work, children and human rights protection and compliance. However, the reality of the presentation of, and reception towards, the civil society Communique during the Foreign Ministers Meeting, was somewhat disappointing – with what could be deemed to be the political tradition of cautious and token bureaucratic gestures. And, as many civil society members departed, some wondered whether their well-orchestrated endeavours would yield benefit.

The Foreign Ministers Meeting had been intended for civil society members to advance advocacy points that had resulted in the development of the CPF Communique to our Commonwealth foreign ministers. His Royal Highness, The Prince of Wales, made an appearance and heard the presentation from the representatives of the Youth Forum. However, in the end, only two or three of the represented thematic areas of the CPF had the opportunity to present their recommendations – the Youth Forum, Climate Change and Human Rights. Inevitably, many of the Foreign Ministers who did make responses to the presentations stayed the path of least resistance, offering token gestures of goodwill and understanding towards the youth representatives, focusing upon forwarding the Millennium Development Goals and stating their recognition of the need for practical solutions and clean technologies to address issues of climate change. Many civil society members left the meeting without having had the time to bring forward their recommendations. And, some of those who had been given speaking time, departed unheard. One could only wonder how such a process could be truly consultative when the Heads of Government 2007 Communique had already been finalised the previous day.

Given that governments can be seen to have a fiduciary duty to advance the interests of their citizens, one would have hoped that any consultative process would have offered more than a token gesture. Fiduciary relationships entail trust and confidence and require that fiduciaries act honestly, in good faith, and strictly in the best interests of the beneficiaries of such relationships. For civil society consultative processes to be fruitful, given that CHOGM occurs only every two years, government representatives must honour previous commitments to the inclusion of civil society consultation – and, such processes must be designed in a manner in which civil society voices will be heard, issues discussed and recommendations for Head of Government seriously considered. ■

# Raising The Gambia

## - CHRF Approach and the Concluding Statement

Lucy Mathieson

*- Coordinator, Advocacy Programme, CHRI*

**D**uring the drafting of the Commonwealth Human Rights Forum Communique/Concluding Statement, an issue that CHRI has been following through its Ghana Office, was raised and included therein to the objection of the Foreign Minister of The Gambia.

CHRI's Ghana Office had previously brought the matter to the attention of the Secretary General of the Commonwealth Secretariat in a letter dated 20 July 2007. Arising out of the deliberations of the CHRF, concern was reflected about incidents that had taken place within The Gambia, including a particular instance that took place during 2005, where according to survivor accounts, over 50 people of different nationalities including several Ghanaians transiting via Banjul from Dakar, Senegal, were picked up from Barra Beach by state forces and detained in custody of state forces. These individuals were held for several days without charge, were never brought before any court of competent jurisdiction. Later, some of the bodies of these persons, known to have been in custody of The Gambian state forces, were discovered. Other individuals have yet to be found and are presumed disappeared. In its Communique/Concluding Statement, the CHRF included reference to The Gambia incident under paragraph 18, that:

“In relation to the Gambia we note with grave concern the deteriorating situation in The Gambia particularly the extrajudicial killing and/or disappearances of 50 Africans in 2005, media repression, arbitrary arrests and disappearance and acts of impunity by the Gambian government. CMAG should accordingly as a matter of urgency investigate the human rights situation in The Gambia”

The matter had previously been widely reported in the media within both The Gambia and Ghana. The Commonwealth Human Rights Initiative (CHRI) had formerly asked the Government of Ghana to appraise the public of the facts and to state what actions the government was taking to investigate the matter - the circumstances of the case creating a strong presumption that, in this instance, extrajudicial killings and/or disappearances had taken place. During August 2005, following wide public concern, the Government of Ghana informed CHRI that a joint investigation team was established. The decision of the President of The Gambia to lead a delegation to meet

with the Ghanaian government and constitute the Joint Investigation Team gives indication of the strong basis found for such an investigation. In a high level meeting, attended by the President of The Gambia, a joint investigation team was constituted by the governments of Ghana and The Gambia – indicating both governments level of concern and, arguably, strong basis for the establishment of an investigation into reported killings and/or disappearances.

Having included reference to the incident and the failure to conduct a full and open investigation into the disappearance and alleged deaths of some of the victims within the CHRF Communique/Concluding Statement, the Foreign Minister of The Gambia called its inclusion into question. CHRI responded to this query via a formal letter to the Foreign Minister stating, “[that] CHRI’s ongoing stance and response to the query of the Foreign Minister of The Gambia, is that the government of The Gambia and Ghana must expedite an impartial investigation and verification of the facts, and circumstances around the killings and/or disappearances.”

The allegations in the CHRF statement do not come as new or as a surprise. The Government of Ghana’s responses to the incident have been widely publicised over the past year. CHRI has brought the issue to the attention of the President of Ghana, also Chair of the African Union, during the Jubilee People’s Assembly in Accra. There has been no response from the Gambian envoy in Accra to date. Furthermore, on 19 May 2007, CHRI officially requested the necessity of an investigation before the African Commission’s 41<sup>st</sup> ordinary session. Present during the intervention, The Gambian delegation was additionally provided with a copy of the CHRI statement and a request for response, via one of its representatives. Despite all such efforts, including CHRI having made a formal response to the query by the Foreign Minister at CHOGM, no response has been received from the Government of The Gambia.

Over time the evidence for the investigation and prosecution of the stated case is weakened. CHRI continues to be concerned that despite two years having lapsed since the incident, investigations have yet to be progressed and any investigative findings that may have taken place remain unpublished. ■

# Trial by Ordeal

## 2008 & International Human Rights Mechanisms

R. Iniyan Ilango

*- Consultant, Human Rights Advocacy Programme, Commonwealth Human Rights Initiative*

Whilst 2008 will mark the 60<sup>th</sup> anniversary of the Universal Declaration of human Rights, human rights mechanisms continue as the anachronism in international affairs. Efforts towards an effective international body for human rights bear testimony to this tendency. The most earnest of such efforts began with the establishment of the Commission on Human Rights in 1946. However, it was not until 2005, that the UN Secretary General's reform package for the UN identified several defects in the commission. It had taken the UN machinery more than fifty years to resolutely identify problems in the Commission - by which time the problems had incubated into well-entrenched abuse. To counter this, the reform package suggested a new Geneva based body-the UN Human Rights Council.

The Council that was finally launched in 2006 turned out to be a watered-down version of what was suggested in 2005. The Council's performance in the past one and a half years has been plagued with the same problems that haunted the Commission. One of the criticisms of the Commission was that its membership was providing berths to human rights violators who want to shield themselves. One and a half years down the line the UN Human Rights Council with members such as Pakistan, Sri Lanka, Bangladesh, Nigeria and Malaysia - who all have serious allegations of human rights violations against them - has proved to be no different. Today, 2008 presents the possibility of Pakistan and Sri Lanka running for re-election; their candidatures being likely to be sponsored by powerful voting blocs and like-minded groups within the Council.

In the last five decades the Commission on Human Rights in Geneva was in practice always an important stage for several nefarious activities with the slightest bearing on human rights. These include factionalism and divisional politics of political blocs, espionage, counter-espionage, trade negotiations, political and economic assistance etc. While it is hard for such habits to change overnight, many states still see human rights as a threat to national security or as means for enhancing financial assistance, while others see it as a tool for enlarging their spheres of political and economic influence - leaving efforts for effective

international human rights mechanisms at the whimsical mercy of state interests. The new Universal Periodic Review Mechanism (UPR) that is to swing into action during April 2008, is an example of this. Being established in 2007 as a mechanism to review human rights records of UN member states, from its very inception, it has been touted as "a cooperative mechanism, based on an interactive dialogue". The process has been clearly described as a state driven process in which civil society merely observes. States are requested to submit a report on their human rights records, with encouragement to hold civil society consultations. Civil society is to submit its findings to the Office of the High Commissioner for Human Rights, who will prepare a summary of all such findings. So far, while civil society has been struggling with extremely short deadlines to submit information, many states do not seem to have had the appropriate encouragement to ensure broad civil society consultations.

In the meanwhile, in New York, at the Fifth Committee of the UN General Assembly a different drama was playing out in the last days of December 2007. The Committee backed by powerful donor countries was reluctant to approve the Council's new budget. The budget included approximately USD13 million essential to conduct the UPR. It is feared that without sufficient money the Council's work including the UPR may have to be frozen. Details of the budget that was eventually passed are still emerging and there are fears that there may be significant reductions. A wide cross section of states and civil society following the UN Human Rights Council are still waiting for things to settle in. New processes in the Council including the UPR create an uncertain environment even for members of the Council. Little seems to have been learnt from the similar uncertain beginnings of the Council's predecessor.

It will be difficult to establish credible international human rights bodies as long as states remain engaged in Machiavellian tactics and Cold War approaches. The UN Human Rights Council can only be effective if there is a change in states' attitudes towards human rights. However, such a change must take effect whilst the Council remains nascent, 2008 may be the last chance. ■



# Homosexuality

## A Commonwealth Blindspot on Human Rights

The Hon Michael Kirby  
*- Australian Judge*

In the Summer edition of CHRI *Newsletter*, Derek Ingram, member of CHRI's Executive Committee, reminded us of the assertion that the Commonwealth "is about human rights and democracy or it is about nothing". He warned that the Kampala Meeting of Commonwealth Heads of Government (CHOGM) in 2007 was shaping up to be one of the most difficult for many years. So it was to prove.

There is one subject on which the CHOGM meeting in Uganda was completely silent, reflecting a serious gap in the achievements of the Commonwealth in the struggle to advance human rights for all Commonwealth citizens throughout the world. I refer to the significant burdens cast in most Commonwealth countries on sexual minorities (especially homosexuals). Unfortunately, most of the Commonwealth countries inherited from Britain criminal laws that still penalise consenting adult same-sex conduct, even when occurring in private. These laws were repealed in Britain itself 40 years ago and throughout most of the original members of the Commonwealth (Canada, Australia, New Zealand and South Africa). But they remain steadfastly in place in virtually all of the developing countries of the Commonwealth.

Recent press reports (including from Uganda) disclose strong, and apparently officially backed, attitudes of homophobia and discrimination that diminish respect for the human rights of this minority. These attitudes make it more difficult for the promotion of safer sex messages that are essential for prevention of the further spread of HIV/AIDS. More fundamentally, these diminutions of the human dignity for an attribute of nature that is as indelible as race and skin colour, appear as a serious gap in the Commonwealth's agenda to uphold human rights of all its peoples.

A recent review of the criminal laws in Commonwealth countries discloses that, in most of them, the Penal Code continues to include offences targeting specifically homosexual men. Since the research throughout the twentieth century on the origins and prevalence of variations in sexual orientation and following the reforms of the criminal law in the countries that first made such laws, there is no excuse for the continued resistance to reform existing in most nations of the Commonwealth. Indeed, it is time, and beyond time,

for the repeal of those laws both for human rights reasons and so as to improve the chances of getting the messages out to affected populations in countries which are already seriously affected by the spread of HIV/AIDS.

If the list of countries where the old criminal offences are still maintained is placed alongside the list of countries where HIV prevalence is highest, there is a remarkable coincidence in the nations concerned. Sadly, on this issue, the outgoing Secretary-General of the Commonwealth, Don McKinnon, who was otherwise plain-speaking on infractions of human rights, maintained a puzzling silence. The likely attitude of the incoming Commonwealth Secretary-General, Mr Kamallesh Sharma (India), is unknown. However, attempts to secure the repeal of the applicable provision of the Indian Penal Code, s 377 has so far failed for lack of parliamentary leadership. This is so despite a strong open letter published in the media of India, signed by leading figures of Indian public life, including the Nobel Laureate Amartya Sen and the former Attorney-General, Soli Sorabjee.

The list of shame of the surviving criminal provisions targeting homosexual Commonwealth citizens should have the early attention of Mr Sharma as he takes up his duties as Secretary-General. Above his desk he should have inscribed in gold, the motto: "The Commonwealth is about human rights and democracy or it is about nothing".

A recent attempt to reform the provisions of the Singapore *Penal Code* failed despite earlier eloquent words of support for reform by the former Singapore Prime Minister, Mr Lee Kuan Yew. In the Singapore Parliament the reform proposal was based on a compelling report of the Singapore Law Society. However, it was opposed on the basis of supposed "conservative" values and by MPs speaking from a particular religious viewpoint. The imposition of criminal penalties, stigma and discrimination in the name of religion is a major challenge for the Commonwealth as it faces the decades ahead.

In such a vast community of races, creeds and other diversities, there needs to be a space for all citizens to live their lives in freedom and without fear or oppression. The message of the Commonwealth Human Rights Initiative to

the new Secretary-General should be one of encouragement to advance the human rights agenda of the Commonwealth. This should include the all too long neglected concern of the human rights of sexual minorities - the human rights blindspot of the Commonwealth of Nations.

The way ahead is for the new Secretary-General to form an Advisory Panel of experienced Commonwealth citizens to

consult with countries of the Commonwealth and to explore ways in which law reform might best be achieved. The Commonwealth has been very strong in building defences against racial discrimination. Increasingly in recent years it has done fine work in combating gender discrimination, poverty and HIV. A new initiative on discrimination on the grounds of sexuality is now needed. This is a real test for the universality of the Commonwealth's respect for human rights. ■

## Unpopular Rights

**Lucy Mathieson**

*-Coordinator, Advocacy Programme, CHRI*

It was only the day before the Foreign Ministers Meeting, beyond the comfortable hotel suites of the country delegates that one group of people had been denied entry and/or forcibly removed from the Peoples' Space – an interactive space where civil society could share thoughts, ask questions, discuss ideas, network with other professionals, and be inspired by the creative expression of Commonwealth citizens from around the world. Standing outside the Peoples' Space with this group, with security and intelligence personnel inquiring as to names and nationalities of the few foreigners who had gathered in support of the Ugandan group, one began to question the popularity of some rights over others. Stones thrown at the inclusion of the rights of homosexuals within the CPF, by the Rev. Canon Aaron Mwesigye, as being “evil and break[ing] up society”, were typical of Uganda's religious leadership responses printed within Kampala's newspapers. Perhaps even more worrying were the alleged statements of the Ugandan Minister of Ethics, Mr James Nsaba Buturo, who had allegedly accused the CPF of “sinister intent” in having included the rights of LGBT (Lesbian, Gay, Bisexual, and Transgender/Transsexual) peoples within its Final Communiqué. So, while the Foreign Ministers sat the day following this incident, espousing the progression of the Millennium Development Goals and the importance of recognising issues and reacting to climate change, those human rights issues that would perhaps be deemed not so popular were not even discussed. Even amongst the many INGOs (International Non-governmental Organisations) and NGOs with a human rights mandate, few raised the issue of LGBT rights, preferring to stay the path among the many more important of our human rights. And, while the sun set on CHOGM, some of us sat sipping Nile, pondering what the future would hold when the ability to influence CHOGM is preordained by the popularity of certain rights, and on the reliance of the generosity of States to recognise all rights, even those that are deemed not so popular. ■

## Ye Jo System Hai Na - a TV Series on Legal Literacy

**Swati Kapoor**

*- Media and Communication Officer, CHRI*

CHRI has developed two pilot episodes for a TV series on legal literacy - supported by UNDP's Strengthening Access to Justice in India Programme - I(SAJI-I). The social-drama series with a dash of humour has been made keeping in mind the viewing patterns and needs of women, senior citizens and underprivileged sections of society. The aim of the programme is to educate people on their rights vis-a-vis police. The interesting aspect of the series is that it reflects on both sides of the system i.e., the police's and the citizen's. The police as an institution is itself bound by many limitations. Political pressures and transfers, lack of funds, inadequate infrastructure and human resource, low salaries, and on top of it long working hours make it very challenging for them to ensure best delivery of services to the citizens. On the other hand, the citizens most of the times are unaware of their rights and roles and therefore do not even question the authorities. By presenting both the sides of the coin, CHRI seeks to bring about awareness about constitution and citizens rights which would help them in engaging meaningfully in democratic governance. CHRI's two pilot episodes can be developed into a full-fledged TV series and taken on a national broadcasting channel for airing. The means to sustain the project would be either through corporate partnership or a support from the media channel. For more information on the pilots or for engaging with CHRI on the project, contact us at [swatikapoor@humanrightsinitiative.org](mailto:swatikapoor@humanrightsinitiative.org). ■

# CHRF 2007: Concluding Statement and Recommendations

The third Commonwealth Human Rights Forum was organised on 19 and 20 November 2007 in Kampala, Uganda. The meeting brought together human rights activists and civil society actors from all over the Commonwealth. After two days of deliberations, participants circulated a concluding statement and recommendations which is printed below.

**W**e, the members of civil society and representatives of peoples' organisations in the Commonwealth at the Commonwealth Human Rights Forum, from 19 to 20 November 2007, in Uganda:

**Recognise** that human rights, democracy, good governance and the rule of law remain of central importance to the Commonwealth, as set out in the Harare Declaration.

**Recognise** that an enabling environment is required, at both the national level and Commonwealth level, in order to achieve full civil society participation within the Commonwealth.

**Reaffirm** that the Commonwealth has committed itself to pursuing democratic governance.

**Express deep concern** that within the Commonwealth, women, children, persons with disabilities, indigenous peoples and other vulnerable and minority groups continue to face discrimination, harassment and other human rights violations.

**Note** with grave concern the tendency in the Commonwealth countries to restrict civil society space, democratic rights, freedom of expression, particularly the media and the right to dissent and the targeting of Human Rights Defenders accompanied by extreme impunity by State actors all of which are reducing the commitment of Commonwealth States to the promotion, protection, and realizing of human rights in the association.

**Express concern** about the increase in cases of disappearance, occurrence of internal displacement, and the killing of innocent persons, as Commonwealth governments continue to fail to live up to their human rights commitments and, in not doing so, fail to transform societies for the realisation of people's potential.

**Note** that an increasing number of countries have promulgated repressive legislation and taken administrative steps under the pretext of counter-terrorism measures in breach of established Human Rights instruments.

**Recognise** the need, given the current global climate of counter terrorism and resultant increase in police powers, for the development of standards and monitoring of Commonwealth police practices.

**Affirm** that a pan-Commonwealth approach is the most efficient and effective way to assist member states improve the quality of their policing, and ensure effective democracy and development.

**Concerned** that civil society is still struggling for space in many Commonwealth countries.

Urge the Commonwealth Heads of Government to consider the following recommendations:

## Recommendations

### Protection Rights and Mechanisms for Compliance

1. An Expert Group on Policing should be established to develop best practice guidelines on all aspects of policing, training and in order to monitor police practices across the Commonwealth.
2. Commonwealth governments must comply with past human rights commitments and, in order to ensure such compliance, establish a formal mechanism to monitor compliance with such commitments.
3. The Commonwealth Ministerial Action Group (CMAG) should devise a formal system for consulting with civil society.
4. Commonwealth governments should establish a Commonwealth mechanism for the protection of human rights defenders.
5. Ensuring that the procedure the UNHRC adopts for Universal Peer Review should be independent and meaningful, with appropriate participation of experts (and not merely by other member states); and that the



process should be preceded by some discussions at the national level and the participation of civil society - Commonwealth members should fully implement their pledges and commitments to the promotion and protection of human rights at the UN Human Rights Council, including making decisions consistent with human rights values.

### **Human Rights Obligations**

6. Commonwealth governments should work actively to ensure the adoption of and effective implementation of Access to Information laws in order to enable democratic participation.
7. Commonwealth governments should note the state of vulnerable and minority groups (with special reference to women, children, victims, refugees and people with disabilities) within the Commonwealth and, in doing so, encourage all Commonwealth governments to ratify conventions for the protection of such groups.

### **Election Observation**

8. Commonwealth governments should revisit the Commonwealth's election monitoring role, including the examination of ways to strengthen such a role via civil society consultations.

### **Enabling Rights Framework**

9. Commonwealth governments must ensure the independence of National Human Rights Institutions, and accord them due recognition including adequate resources, ensuring strict conformity with the Paris Principles.
10. Commonwealth governments should work to develop Commonwealth best practices around freedom of information.

### **Civil Society Participation**

11. The Commonwealth should uphold previous commitments to enabling space for civil society participation.
12. The Commonwealth should call on Uganda to exercise special leadership as it takes the chair of the Commonwealth to improve its human rights record including the protection of civil society space.

### **The state of vulnerable and/or minority groups within the Commonwealth**

13. Commonwealth governments should fully recognise the rights of, or provide adequate representation to, the issues of people with disabilities.

14. Commonwealth governments should sign, ratify and implement the United Nations Convention on the Rights and Dignity of Persons with Disabilities to realise their potential.
15. Commonwealth governments should note the increasing rate at which women's rights are violated and in doing so, fully domesticate their commitment to the CEDAW Convention, including the establishment support, and strengthening monitoring structures.

### **Suspended States and Non-Compliance**

16. In respect to the situation in Zimbabwe, member states should take action in terms of Article B.3 (viii) of the Millbrook Plan of Action to protect and promote the fundamental political values of the Commonwealth as agreed in the Harare Declaration.
17. CMAG should suspend Pakistan from the Councils of the Commonwealth at its next meeting on 22 November 2007. CMAG should recommend that the Commonwealth Secretary General engage with Pakistan for the urgent restoration of the Constitution, lifting the emergency and separation of the two offices held by the President. The civil society organisations and other relevant organisations should extend to the people, media and non-government organisations of Pakistan full support for the restoration of democracy.
18. In relation to The Gambia, we note with grave concern the deteriorating situation in The Gambia, particularly the extra-judicial killings and or disappearances of fifty Africans in 2005, media repression, arbitrary arrests and disappearances and acts of impunity by The Gambia Government. CMAG should accordingly, as a matter of urgency, investigate the human rights situation in The Gambia.
19. Commonwealth governments should recommend that CMAG remain seized with the situation in Fiji and engage with all political parties to ensure early elections and the restoration of the independence of the judiciary and fundamental freedoms.

Affirming that there has been a serious decline in the human rights situations and contexts within the Commonwealth, we the participants of the Commonwealth Human Rights Forum, encourage Heads of Government to give careful consideration to the recommendations provided herein. ■

# Police Reforms in the Solomon Islands

**Louise Edwards**

*-Programme Officer, Police Reforms, Access to Justice Programme, CHRI*

**T**he Solomon Islands, like a number of its Pacific neighbours, has a considerable level of Australian and New Zealand (NZ) government supported policing and police reform initiatives. Since 2003, the Australian-led Regional Assistance Mission to the Solomon Islands (RAMSI) has worked towards restoring peace and order in the aftermath of severe internal conflict which erupted in October 1998. Much of RAMSI's work involves policing by a predominantly Australian Participating Police Force (PPF) and reform of the Royal Solomon Islands Police (SI Police). Five years on, a recent review of RAMSI has noted that while there is a considerable level of government and civil society support for the ongoing presence of RAMSI in the Solomon Islands, there are problematic aspects of RAMSI's approach to and implementation of police reforms. These issues have consequences across the board, from the community's interaction with the police at a station level, the lack of civil society participation in the reform process and the deteriorating relationship between the Solomon Islands and Australian governments.

## Background to RAMSI

In the midst of severe internal conflict, the genesis of which is ongoing ethnic tension between the Malaitan and Guadalcanal people, successive leaders of the Solomon Islands government requested international assistance to restore the basic functions of government and deal with the disintegrating law and order. The Solomon Islands' own police force was incapable of dealing with the crisis. Elements of the Malaitan-dominated police willingly co-opted into the ethnic strife and are implicated in serious human rights abuses, including indiscriminate firing into villages occupied by women and children and ill-treatment of child suspects. Following a coup by the Malaitan militia, the police disintegrated as a functioning organisation and police were either part of the militia or entirely unable to take counter-action.

Initially, the Australian government failed to meaningfully respond to requests for assistance and limited its involvement to financial aid which was distributed through the Australian government's aid agency, AusAid. In the meantime, the Solomon Islands was on the brink of becoming the Pacific's first failed state with an almost complete breakdown in governance and security. It was not until the terrorist attacks

in the United States in 2001 and Bali in 2002 that Australia finally intervened, identifying a number of its Pacific neighbours, especially the Solomon Islands, as coming within an 'arc of instability' which would threaten Australia's own security and that of the region. Additionally, Australia was, and remains, concerned about the increasing financial influence asserted over the Pacific by China and Taiwan. These factors contributed to a change in Australian government policy in respect of the Pacific, with the establishment of a more interventionist, hands-on approach. The flagship of the new policy direction was the initiation of a region-wide, Australia and NZ-led intervention to rescue the Solomon Islands from governmental, financial and civil implosion.

In July 2003, the ensuing RAMSI agreement was signed in Townsville, Australia and involved varying levels of contribution from fifteen regional partners. In its first phase, RAMSI was essentially a police-led operation with approximately 330 police officers of the PPF, backed by around 1800 military personnel working to disarm militants and clear out the criminal element within the SI Police. This process resulted in numerous successes as existing accountability structures and processes within the SI Police were invoked to clean up the state's police. Around 50 members were arrested and a further 400 were removed from service, the effect of which set a precedent for better use of internal accountability measures. As the security situation has substantially improved, the military component of RAMSI has been gradually reduced.

The second phase of RAMSI involves a more holistic reconstruction and development programme, across the economic, financial and justice sectors. The aim of this phase is to equip the Solomon Islands Government to function effectively, efficiently and within the framework of international good practices for governance. RAMSI is also working with the Solomon Islands Government to rebuild key accountability institutions (including the Ombudsman) to shape an efficient and accountable public service.

## RAMSI Five Years On...

In late 2007, the Australian National University (ANU) conducted the "People's Survey" which quantitatively gauged public perception on key areas of RAMSI's work. The survey

noted that locals generally feel safer and 90 per cent of the 5,154 respondents strongly favour its continued presence. However, the responses to a number of questions around the issue of police performance indicates a reluctance by Solomon Islanders to report crime to police and an unwillingness to make complaints against police who fail to do their job properly. This is due to a number of reasons, including the fact that Solomon Islanders have very little trust in the police's ability to safeguard their interests. In terms of accountability, as has been demonstrated in other regions, good accountability mechanisms fail if they lack public confidence or are not the subject of community education.

Another problematic aspect of RAMSI, which was not covered in the ANU survey, is the strong feeling amongst civil society in the region (including Solomon Islands) that policing is within the purview of the Australian and NZ governments and that civil society input into the reform process is limited. As the ANU survey demonstrated, Solomon Islanders do not sufficiently trust their police force. In order to build a trusting relationship, the SI Police must be representative of the needs of the community it serves. CHRI's experiences have found that civil society participation is the key in ensuring that the community has a voice in the reform process and for providing a space for more democratic discussions around the type of service the communities will use and trust.

The general lack of trust in the police, coupled with civil society's limited participation in the reform process, points to the disempowerment of Solomon Islanders when it comes to the day-to-day functioning of their police service and to the broader reform process. This disempowerment is arguably reflected in the disintegrating relationship between the Australian government and the Solomon Island government, with accusations that Australia's intervention in the Solomon Islands and its approach to the Pacific generally, has been heavy-handed, paternalistic and non-inclusive. Criticism was leveled at the former Howard Government for taking a 'what's good for you' approach to its assistance in the region, and for communicating its differences with the Solomon Islands government by public statement, instead of more diplomatic approaches. The relationship was further strained by Australia's attempt to extradite Solomon Islands Attorney-General, Julian Moti, in relation to child sex offences, a move which was criticised by some observers as reflecting the lack of respect Australia has for the sovereignty of the Solomon Islands.

## Building Empowerment and Trust – RAMSI's Second Phase

While not underestimating the enormity of an international intervention which is aimed at ensuring short term security, sustainable peace and good governance, RAMSI must be a more inclusive and collaborative exercise on all levels. The newly elected Prime Minister of Australia, Kevin Rudd, has foreshadowed a more co-operative engagement with his Pacific neighbours who have expressed their willingness to engage, including the Solomon Islands newly elected Prime Minister, Dr David Derek Dikua.<sup>1</sup> The Australian government's promise of a more collaborative approach to international relations in the Pacific must be reflected in the operation of RAMSI.

A recent report into RAMSI by Australia's Centre for Independent Studies (CIS) was insightful. It noted that at a governmental and public institution level, RAMSI is failing to adequately build capacity among Solomon Islanders to run their country without RAMSI. Australian and NZ personnel occupy the main positions of influence across the ministries and public service. However, implementation of RAMSI's second phase is where opportunity for real capacity building and a more inclusive reform process exists. This inclusivity must be twofold; capacity building at the highest levels of government and police force is vital, but so too is a concerted capacity building exercise at a grassroots civil society level. It is essential to the establishment of a democratic, community focused police force that civil society is involved at all stages of the police reform process.

The need for collaborative reform is particularly important because there is an element of ethnic conflict in the Solomon Islands. As we have seen with the police reform initiatives in countries such as Northern Ireland and India, a successful reform programme is one that sensitively and fairly addresses ethnic tension within a democratic policing framework. Measures must include initiatives such as ensuring an ethnic and gender balance at all levels of policing structure.

It is imperative that the RAMSI reforms process is approached in a collaborative and cooperative manner involving all levels of the Solomon Islands community (from the highest levels of government, to grassroots civil societies). Unless this takes place, there is a danger that the new SI Police will fail to meet the needs or enjoy the confidence of the people it serves. ■

<sup>1</sup> See David Mark's report for the Australian Broadcasting Corporation's "The World Today" programme, *Rudd Outlines Foreign Policy Vision*, available at <http://www.abc.net.au/worldtoday>. See also the major policy address by Hon. Prime Minister Dr. David Derek Dikua MP – 18 January 2008.

## At the Beehive

### Information Commissioners meet for 5<sup>th</sup> International Conference

**Reshmi Mitra & Sohini Paul**

*-Project Officers, Access to Information Programme, CHRI*

The 5<sup>th</sup> International Conference of Information Commissioners (ICIC) was held in Wellington, New Zealand from 26-29 November. The conference brought together Information Commissioners, Ombudsmen, government officials, academics, civil society representatives from around the world and provided an occasion to the participants to reflect on the opportunities and challenges of maintaining openness and transparency in government. One of the important objectives of the workshop was to provide the participants with an opportunity to share their experiences and learn from each other about the working of legislations providing for the right to access official information. The Conference also marked the 25<sup>th</sup> anniversary of New Zealand's Official Information Act, 1982 (OIA). This article summarises the presentations of some of the key speakers at the conference.

The four-day Conference comprised a day of closed meetings for the Information Commissioners from across the world and three days of open sessions where stakeholders discussed challenges faced by countries that have recently enacted access to information laws. An important issue that came up for discussion was the challenges faced by civil society representatives in countries that were yet to make any progress towards having a Freedom of Information (FOI) legislation. The Conference also addressed the role of multiple stakeholders in creating a culture of openness and participation through better implementation of FOI laws.

One of the key speakers was Professor Alasdair Roberts from the Maxwell School of Citizenship & Public Affairs, Syracuse University, USA who in his keynote address titled "Going Forward: Should we be building a global transparency movement?" addressed the key challenges facing the global Right to Information (RTI) movement. He was concerned that with globalisation and liberalisation of the economy in many countries, many government functions are being sub-contracted to private bodies which falls outside the purview of the access to information legislation. He cited examples of ports, airports and air traffic control, which are being rapidly privatised and warned of the danger that information relating to such operations being unavailable for public scrutiny. Professor Roberts observed that the challenge before the FOI

community is to see how Freedom of Information can ensure that private companies participating in the privatisation of public services are made accountable to the public.

The second important challenge raised by Professor Roberts was the need for bringing private contractors managing and maintaining digitised records under access laws. This assumes importance because even though records are primarily maintained by the Government, however with records being digitised and electronic databases being developed, there is a growing trend where record keeping is outsourced and in that context bringing them under the Access to Information Law assumes significance.

Professor Roberts also stated that since the structure of the security sector (i.e. the police, defence, intelligence, law enforcement agencies) was changing with increased collaboration and information sharing between inter-government security agencies, the challenge before the RTI movement was how to keep track of these information sharing agreements and to see whether in dealing with requests for controversial information, there was a public interest override that would likely make a case for release of any such information. There were other challenges that were discussed and one of these was the need for creating awareness about the law. He noted that many FOI laws recently adopted by some countries were actually 'dead' because they are not being used by the people because of lack of knowledge and understanding of the law. He noted the problem was coupled with problems of lack of staff training for handling information requests. In order to ensure people use this law persistently, he emphasised that the implementation should include raising the level of requisite knowledge of the law, understanding the processes and creating awareness about how requests and complaints are to be filed.

Maurice Frankel, Director, Campaign for Freedom of Information, United Kingdom, presented UK's experience on how requests for information on ministerial policy advice which are at times politically sensitive are being managed. To further explain this he discussed about the multi-stage appeal process that exists in the UK i.e. internal

review, Information Commissioner, Information Tribunal and High Court. He noted that the multi-stage appeal process in a unique way provides a scope for a stage by stage review on a point of law which had resulted in the robust approach to requests for access to ministerial policy advice or internal discussions. He stated that the Information Tribunal had so far decided six such cases and in each occasion has either upheld or gone beyond the Commissioner's decision. The outcome has been the full disclosure of the information involved in each case. However in some of the cases, the Government had taken recourse to appeals in the High Courts, arguing that disclosure of high level discussion was unprecedented that would "strike at the heart of civil service confidentiality". He also reflected on some challenges such as delay in processing sensitive requests due to the multi-stage appeals process under UK's Freedom of Information legislation. He also discussed the use of the "public interest test" which in UK as well as many other jurisdictions was central to requests where relevant exemptions apply.

Mark-Aurele Racicot, Adjunct Associate Professor, University of Alberta, Canada, in his presentation emphasised on the need for training multiple stakeholders in order to create a culture of openness and participation. In Canada though the FOI legislation was enacted in the late 1970s, yet the legislation does not address in detail the roles of the multiple stakeholders in creating a culture of openness. He stated that governments, commissioners, universities, Non Government Organisation's, civil servants and citizens have important roles to play in reaching the legislation's objective and stressed on the need for conducting trainings and the tools and technologies available for delivery of such training.

Richard Thomas, Information Commissioner from UK in his presentation shared the experience from UK where they have tried to focus on ensuring that access to information was not stifled by backlogs of cases leading to delay. He said that ever since the implementation of the Act, there has been a high number of requests made and it wasn't long before complaints about non-fulfilment of requests came to the Information Commissioner's Office. He said that this was mainly due to the high volumes information requests, the novelty and complexity of the issues raised, the interpretation and application of

new legislation and, in some quarters ignorance of or resistance to the principles of FOI.

The Mexican Information Commissioner, Alonso Lujambio Irazabal in his presentation discussed the tensions and synergies of the relationship of sub-national FOI review bodies to their national counterparts and also gave a detailed insight of the established systems on standardisation to access information under national or sub-national FOI bodies as well as allowing access to information via electronic media.

New Zealand's Minister of Justice, Annette King, discussed her country's experience in implementing the Official Information Act (OIA) in the past 25 years. She noted, that because of the widespread acceptance of the principle of open government, the *Transparency International: Global Corruption Report*<sup>1</sup> has reported that New Zealand had the lowest level of perceived corruption in the public sector, which was largely attributable to the OIA, and that it was fair to say that the OIA had made the principle of open government central to the ethos of public administration in New Zealand.

Among the civil society representatives, Toby Mendel of Article 19, stressed on how the models for the right to information could be applied across the board with particular reference to Asia. Mrs. Maja Daruwala, Director, Commonwealth Human Rights Initiative, spoke on the value of the right to information as a vital fundamental right to the survival of the poorest and clearly pointing out that it is not just a tool to enhance strong governance or primarily of relevance only to the media.

While the Conference heavily drew from the experience of developed countries like the UK, Canada, New Zealand and Australia, it completely overlooked the need for contextualising the experience of developed countries vis-à-vis that of the developing countries regarding FOI implementation with a special reference to the needs of these countries especially in the Pacific, Caribbean, South Asia and Africa.

The location of the next ICIC meeting has been decided with the Information Commissioner of Norway working on the possibility of holding the next meeting there in 2009. ■

<sup>1</sup>Transparency International: Global Corruption Report 2007 is available at [http://www.transparency.org/publications/gcr/download\\_gcr#download](http://www.transparency.org/publications/gcr/download_gcr#download).



# New Police Laws - Shrouded in Secrecy

**Shobha Sharma**

*-Coordinator, Police Reforms, Access to Justice Programme, CHRI*

**I**n the wake of police reform measures ushered in by the Supreme Court's judgment in the *Prakash Singh & Others Versus the Union of India and Others* in September 2006, many states have commenced drafting new police legislation. Policing is a state subject therefore states can legislate on it. Where a state does not have its own police Act, the Central government's Police Act of 1861 applies.

This can be seen as a hugely positive step for a country still operating under the archaic and colonial Police Act of 1861. There is an urgent need for a complete re-write of police laws in India. Some headway was made in this direction when the Ministry of Home Affairs set up the Police Act Drafting Committee in 2005. The Police Act Drafting Committee submitted its Model Police Act, 2006 to the Ministry of Home Affairs in October 2006.

Unfortunately, no more has been heard of the Model Police Act with the exception of the Union Home Minister's pronouncement that it would be tabled at the budget session of Parliament in February 2007. The budget session has come and long gone with no news.

Despite being a government that put police reform on the agenda and that embarked on major administrative reform, the Union government is setting a poor example for the states by dragging its heels on the issue of new police legislation. In the meantime, states have commenced drafting their own police laws. What is emerging, however, are laws that do not embody the principles of modern democratic policing.

States that have led the way in passing new police Acts in 2007 include Haryana, Tripura, Kerala, Bihar, Tripura, Chhattisgarh, Himachal Pradesh, Rajasthan, Assam and Punjab. Many other states such as Madhya Pradesh, Karnataka, West Bengal, Tamil Nadu, Manipur, Meghalaya, Orissa, Andhra Pradesh, Uttarakhand, Sikkim, Jharkhand and Arunachal Pradesh are still drafting laws, which are in various stages of completion.

New police laws are of enormous significance to the public. Information about them and the process leading up to their development is certainly useful and important to the community at large. It stands to reason that

consulting those who will be implementing the Act, namely the police, and those who will be impacted by its implementation – namely the public at large, will go a long way to ensuring that a sound and effective law is created.

A broad based consultative process will not only educate the public but also strengthen democracy. Yet we hear nothing. The legislation is being developed in secrecy. Without a single exception the members of the public in all the states are completely unaware that their state government is even contemplating bringing in new police legislation. This is in a country with the most progressive Right to Information Act in the world.

Under India's Right to Information Act the general public can get access to a range of information from public authorities. In addition to the information that the general public can apply for, public authorities are also required to publish proactively a wide range of information on their own, even if no one has specifically requested it. This is a key provision of the Right to Information Act because it recognises that some information is so useful and important to the community at large that it should be given out without anyone specifically requesting it. More broadly, it recognises that transparency is generally in the public interest and that public authorities should therefore strive to make as much information public as possible.

Section 4 of the Right to Information Act, 2005 requires all public authorities to routinely publish 17 categories of information, which should be updated regularly. These categories include information about the structure of the organisation, its process of functioning, financial details and schemes relating to the organisation, details of consultative arrangements and details relating to accessing information. Of particular significance in the present circumstance of numerous new police bills being drafted all over the country is Section 4 (1) (c), which says:

*Every public authority shall publish all relevant facts while formulating important policies or announcing the decisions which affect public.*

The important words in this section are '*while formulating policies*'. The Act does not provide for the provision of information

*after* formulating policies. The public has a right to be involved in the formulation of policy. Public authorities have a legal obligation to involve the public. There is no evidence this is occurring in the lead up to the introduction of new police laws in various states.

It could be argued that Section 4 (1) (c) refers to “policy” and not “legislation”, and therefore home departments (the department responsible for police) are not obliged to publish information about draft police legislation. However, the Right to Information Act applies to all public authorities performing a range of functions, which may span policy making as well as law making. Section 4(1)(c) is therefore equally applicable to the formulation of policies as well as laws.

There is a greater onus on public authorities to make proactive disclosures to the public about the drafting of laws, particularly one as significant as a new Police Act. It's only then that we will be able to have a policing system of our choice.

Proactive disclosures about the drafting of police legislation are not occurring in any state. It is a task conducted in complete secrecy. It seems the public has no option but to request disclosures invoking section 4 (1) (c) about any documents, file notings, and/or opinions relating to new police bills in their state. As proactive disclosure information is meant to be widely published for free by the government, no specific application needs to be made and no application fee paid. Since it is not treated as an application, there is no 30-day wait to get the information. The information must be given immediately.

Communities are the main beneficiaries of good policing and the main victims of bad policing – community participation in the process of drafting new police laws is essential if the police are going to be efficient, effective and accountable. Members of the public will have to resort to the use of the Right To Information Act to find out something they have a right to know and something that public authorities are obliged by law to publicise proactively. ■

### Right to Secrecy or Right to Information?

In 2007 Commonwealth Human Rights Initiative wrote to the Public Information Officers of the Home Departments of seven states/territories requesting information on the police reform processes initiated by the state government, including details about any activities related to drafting new police laws under Section 4(1)(c) of the RTI Act.

Two states rejected the request initially. Arunachal Pradesh supplied the information after we appealed the decision. In Orissa, we appealed the decision that rejected the information request. The first appellate authority also rejected the request so we have filed a second appeal. Madhya Pradesh, Karnataka, and Maharashtra did not bother to reply to the letter.

Tamil Nadu's response maintained that all their actions are “as per government procedure” without any elaboration of what that procedure might be, thus making a mockery of the RTI Act; whilst Goa responded by stating they have forwarded the request to the Police Headquarters. No response has been received as yet from Goa Police.

The Public Information Officer, Home Department, Assam stated that he did not understand the request and asked that another application be made!

The most common response to these requests has been a refusal on the basis that no application fee accompanied the request (despite our stating that Section 4 requests do not attract a fee as per the Act). Further, the information request was rejected on the grounds that the request had not been made on the prescribed form. Again, the Act does not preclude information from being given because requests are not made on a prescribed form.

Whether these information requests are being refused out of ignorance about the provisions of the RTI Act or whether the reason for the refusal is indicative of a culture of secrecy rather than transparency, the result is still a stark deviation from the principle of participatory governance upon which the act is grounded. ■

# Police Reforms in Jamaica and Antigua & Barbuda

**Louise Edwards**

*-Programme Officer, Police Reforms, Access to Justice Programme, CHRI*

**I**n late 2007, the governments of two Commonwealth Caribbean nations, Antigua & Barbuda and Jamaica, announced their intention to engage in varying degrees of police reform. The backdrop to police reform in the region, and particularly Jamaica, is high levels of violent crime fuelled by the drug trade. The Caribbean is a key trafficking route which links South America to the United States and Europe and drug trafficking, crimes of violence (including sexual violence and gun violence), kidnapping, robbery and transnational organised crime are all prevalent forms of crime in the region.

In both Antigua & Barbuda and Jamaica, the governments are promising police reform in a campaign to crack down on the increasing levels of violent crime. In Antigua & Barbuda, proposed reform measures include new dispatch rules (aimed at improving police efficiency), new evidence collection systems and increasing sentences for crimes involving firearms or other dangerous weapons. While it is important to improve the environment in which police forces operate, the reform process must also include legislative and operational frameworks to ensure that police discharge their duties in a manner consistent with human rights, and provide for mechanisms which make police accountable for failing to do so. The introduction of effective accountability mechanisms is particularly important in Jamaica, where police abuses and extra-judicial killings are the most reported human rights abuses by Jamaicans to the Jamaica Council for Human Rights.

In the Jamaican context, the Attorney General and Minister for Justice, Dorothy Lightbourne has announced that her cabinet will issue drafting instructions for the establishment of an Independent Investigative Body (IIB) for the Jamaica Constabulary Force (JCF). Currently, police oversight in Jamaica is the domain of numerous bodies, including the Police and Public Complaints Authority, the Office of the Public Defender, the Police Civilian Oversight Authority, the Police Services Commission and the Professional Standards Branch (incorporating the Office of the Professional Responsibility and the Bureau of Special Investigations).

These existing mechanisms have been beset by problems, including a lack of enforcement powers, low staffing levels,

insufficient resources and concerns about commitment to tasks and standards of work. The IIB must take into account the factors that have rendered the plethora of existing accountability and oversight mechanisms ineffective. In addition, the new body must be designed to work with and compliment the accountability mechanisms that will remain in place following the establishment of the IIB.

In Antigua & Barbuda, the Attorney General and Minister for Legal Affairs announced that the government proposes to embark on a more general reform of the Royal Police Force of Antigua & Barbuda. As part of this process, the retired Assistant Commissioner of the Royal Canadian Mounted Police, Mr. Alphonse Breau was commissioned to investigate and report on the effectiveness of the police. However, Mr. Breau's report has not been released publicly in order that the reform process is transparent, participatory and enables key stakeholders (including civil society) to engage and consult.

There is currently no standing internal investigation body in Antigua & Barbuda, despite concerns about the extent to which political influence on police has resulted in corruption at the political directorate and police rank levels. In the event that Mr. Breau's report does not recommend the establishment of an independent police oversight body, the Government of Antigua & Barbuda should nevertheless introduce such a mechanism.

Any proposed independent police accountability mechanism in Antigua & Barbuda, and the proposed Jamaica IIB, must accord with international standards of good practice. These standards include:

- Independence – the mechanism should be independent of the executive and the police and empowered to report directly to parliament.
- Sufficient powers – the mechanism should have the authority to independently investigate complaints and issue findings. This requires concomitant powers to conduct hearings, subpoena documents and compel the presence of witnesses including the police. It should also be able to identify organizational problems in the police and suggest systemic reform.

- Adequate resources – the mechanism should have sufficient funds to investigate at least the more serious complaints referred to it. Skilled human resources to investigate and otherwise deal with complaints should also be available.
- Power to follow up on recommendations – the mechanism should be empowered to report its findings and recommendations to the public, and to follow up on actions taken by the police chief in response to its recommendations. It should also be

able to draw parliament's attention to instances where police take no action.

While the announcements by the governments of Antigua & Barbuda and Jamaica signal the first steps on the road to reforming their respective police services, only comprehensive police operational reform coupled with a truly independent, empowered and resourced independent oversight body will ensure that the post-reform police operate effectively, with respect for human rights and with full public confidence. ■

## CHRI's 2008 Calendar



Carrying forward the tradition of developing the annual calendar, CHRI has brought its calendar for 2008, highlighting some success stories where Right to Information has helped people solve their day to day problems. Our mascot - Info Genie (he emerges from the RTI Act and helps people solve their problems) illustratively takes you through the stories month by month. Be it a housing issue, public works problem or unearthing of corruption at political level, the genie solves it all! The illustrated stories motivate one and all to use RTI. Just like people of Keolari in Madhya Pradesh got their right to use the village well; or village representatives of Panchmahal, Gujarat got themselves to participate in the panchayat activities; or a lazy teacher with no students got transferred to another college; you also can witness the magic of RTI. The calendar also lists out the complete set of Information Commissions in India with their contact details.

For your copy of the calendar, please contact *Snati Kapoor* at [snatikapoor@humanrightsinitiative.org](mailto:snatikapoor@humanrightsinitiative.org) or *Sobini Paul* at [sobini@humanrightsinitiative.org](mailto:sobini@humanrightsinitiative.org) ■

2008													
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Commonwealth Human Rights Initiative

# The ABC of Law

Swati Kapoor

*-Media and Communications Officer, CHRI*

**I**n January 2007, CHRI received a grant from the Canadian High Commission to work on a project on access to justice. We decided to develop a radio programme on good policing and citizen's rights vis-à-vis the police; a storybook for children (5 yrs – 7 yrs) and complementing CD ROMS with interactive learning techniques.

## Getting started

CHRI had considerable experience in developing products for the radio. In the past we have developed a radio series of 13 episodes on Right to Information. We were confident of developing this one, keeping in mind the attitudes, listening habits and needs of both rural and urban listeners. First and foremost, as an exercise, it was important for us to identify the issues and the aspects to be covered in the series. And for this it was necessary to study the issues concerning the rural and urban set ups.

Once that was achieved through research and workshops, we had to simplify these issues into digestible information. It was a learning exercise for us to discover that one of the most troubling issues is the recording of the First Information Report (FIR) by the police. The very first formal police-public interaction happens when the First Information Report gets lodged with the police by the complainant. It was observed that most police stations in rural India charge a fixed amount for lodging the FIR; they generally do not file a complaint instantly; and if at all they do write, never is a copy of the FIR handed over to the complainant. Another common problem found was that most of the times the police was under political pressure, favoured the rich and powerful and generally ignored the vulnerable section of the society. With these key concerns in mind, we decided to set them against a story plot for the radio series.

## Structuring the plot

The story revolves around the inhabitants of a village who face different problems with the police in each episode. Not knowing what to do, when the police outrightly refuses to file an FIR or when the rich and powerful of the village harass the weaker sections, they run to Mr Bhan – a wise man who knows the law and is ready to share information

and motivate fellow villagers. Bhan would educate people about their rights and duties and inspire them to stand up for themselves. By the end of the episode, a group of people are prepared to fight for their rights and would determine to make a difference to the society by actively encouraging many more. In the end, CHRI's postal and e-mail address is announced for listeners to reach out to us with queries and suggestions. The last two episodes announce the names of people who wrote in and also address their queries with some interesting info.

## Other Products

Along with the radio episodes, we are also developing a basic level storybook for young children (5 yrs – 7 yrs). This book is based on popular fairy tales with a moral. We have picked up on fundamental rights that can be taught via the story.

A family of three – mummy, papa and baby bear sit together and the mother tells a story with a message on a fundamental right. They are joined by baby bear's close friend chubby puppy and kitten and they all have a discussion at the end of the story. For instance, the story of ugly duckling demonstrates discrimination and inequality, prejudice and apathy. The duckling was not liked by friends and teased for his appearance. His friends would not play with him and treat him differently.

After the story finishes, the bears have a discussion that how the constitution guarantees them of their rights and any one in the position of the duckling can avail his/her rights. In addition, the book also consists of inspiring quotes from great leaders to inculcate a feeling of national integration and patriotism in the children.

The last section of the book is an activity segment where children are reminded of what they've just learnt. Another interesting product that we are developing is the CD ROM with highlights of the storybook. The CD ROM ensures a quick recap of the points addressed in the storybook. CHRI endeavours to bring out more of such informational material in the future. We are thankful to Canadian High Commission for supporting the project. ■



## CHRI Acquires New Office Space



CHRI recently acquired a new office space close to its headquarter office in Delhi. The office accommodates the Administration and Finance teams. The office houses a library and its big space offers in-house meetings and conference facilities. CHRI staff organised a small *puja* (religious ceremony performed when acquiring anything new) at the new office on 19<sup>th</sup> December 2007. The Director Ms Maja Daruwala along with the staff whole-heartedly participated in the ceremony. ■

# CHRI Calendar : September - December 2007

## CHRI Headquarters (New Delhi)

- Venkatesh Nayak participated in the release function of the RTI User Guide (Assamese ver.) organised by the Northeast Network (NEN), Guwahati - 8 October.
- Venkatesh Nayak resourced orientation seminar on RTI Act for officers, district administration, West Khasi Hills, Meghalaya - 11 October.
- Claire Cronin attended the Pacific Islands regional CSO forum organised by PIANGO and the Pacific Islands Forum Secretariat's media conference.
- Venkatesh Nayak and Sohini Paul in collaboration with Manusher Jonno Foundation conducted a three-day workshop on "Advocacy for the RTI in Bangladesh" from 29-31 October at Dhaka.
- Sohini Paul and Reshmi Mitra attended the 5<sup>th</sup> International Conference for Information Commissioners at Wellington, New Zealand. CHRI's Director Maja Daruwala was key speaker at the Conference. (November 26 - 29, 2008)
- CHRI organised a public consultation on 'Strengthening the J&K RTI Act' with the University of Jammu - 15 December. Wajahat Habibullah, Chief Information Commissioner was Chief Guest Speaker.
- Sanjay Patil, Ebba Martensson & Pushkar Raj attended a meeting by Observer Research Foundation on Police

Reforms in India: Challenges and Prospects.

- Swati Kapoor organised a focused group discussion on CHRI's pilot TV episodes on legal literacy developed under the UNDP and Govt. of India project - 31 October Mumbai.
- Shobha Sharma and Pushkar Raj conducted a workshop in Chandigarh on 'Campaign for Better policing in Punjab.'
- Pushkar Raj spoke on 'Civil Society & Human Rights' at National Institute of Open Schooling - 10 December.

## CHRI Accra Office

- CHRI staff attended a round table discussion on 'Child trafficking and its implications for Human Rights' in Ghana organised by Ghana Center for Democratic Development.
- CHRI staff and the Legal Resource Center carried out a fact finding mission in Anloga Volta region, Ghana to investigate the dash between the Police and the youth in the traditional area of Anloga.
- Florence Nakazibwe (CHRI) attended a lecture organised by Media Foundation for West Africa and the Ghana Journalist Association.
- Nana Oye Lithur (CHRI) made presentation on the breakfast show of GTV to discuss '50 years of the Rule of Law in Ghana: Assessing Human Rights Protection'.
- CHRI staff attended a roundtable discussion on 'Reparations and the road to National Reconciliation' organised by Ghana

Center for Democratic Development.

- CHRI, Commission for Human Rights and the Ghana Bar organised the Third annual Human Rights Lecture on '50 years of the Rule of Law in Ghana: Assessing Human Rights Protection'.
- CHRI staff attended the African Human Rights and Access to Justice 11th International Litigation Workshop on Access to justice: fair trial and the application of international human rights standards.
- Florence Nakazibwe, made a presentation on 'Prisoners' Rights' at Journalist for Human Rights Workshop - Labone in Accra.

## CHRI London Office

- In October 2007, the London Liaison Officer, Uttara Sahani and Swati Mehta, former CHRI Delhi staff, attended preparatory meetings - Committee of the Whole at the CW Secretariat and campaigned for an expert group on policing.
- Neville Linton and Richard Bourne made representations to the Govts. of the UK, Malta and Caribbean. The expert group found a mention on the communiqué that came out of the Committee of the Whole but was later expunged at CHOGM.
- Uttara Shahani attended the Foreign and Commonwealth Office briefing on Pakistan on 14 November, and stated CHRI's position.

*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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**Acknowledgement:** Many thanks to all contributors

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**Published by CHRI, B 117, First Floor, Sarvodaya Enclave, New Delhi - 110 017, INDIA**  
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