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Inside

Pakistan Government Yet to Fulfill Promises Made to its Electorate

Zohra Yusuf,
Member International Advisory Commission, CHRI

Spring in Pakistan did not bring with it warnings of the proverbial 'ides of March.' Instead, as the new prime minister elected unopposed by the national assembly gave his maiden policy speech in Parliament, there was a perceptible rise in hope. Spring had brought with it a new beginning, after seven and a half years of military dictatorship. The elections of February 2008, though mired in blood and controversies, brought into power a government with democratic and secular (in the context of Pakistan) leanings.

Prime Minister Yusuf Raza Gilani committed his government to the implementation of many of the reforms demanded by human rights organisations. In fact, he set the optimistic tone by ordering the release of all judges (illegally detained for over 5 months by the government of Pervez Musharraf) immediately on being elected prime minister. Other reforms announced included amendments in the Frontier Crimes Regulations - a set of laws applicable to the county's Federally Administered Tribal Areas (FATA) only and rightly criticised for their harshness and lack of justice.

Significantly, in a move that raised confidence in the elected government's commitment to human rights principles, the Interior and Law ministers announced that the abolition of the death penalty was on the cards. On being questioned by the Supreme Court regarding the implications and modalities, the decision was placed on the back-burner for the time being. Till June 2008, 15 prisoners had been executed this year. However, the death sentence of two prisoners was stayed shortly after the dates for their execution were announced. It should be noted that over 7000 prisoners remain on death row in Pakistan.

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While the government's steps in the initial months justified optimism, subsequent passivity on the promises made is once again causing concern.

The major back pedaling has been seen in the case of the promised reinstatement of the superior court judges, illegally dismissed by the Musharraf government, following the proclamation of emergency on 3 November 2007. Both the ruling party, the Pakistan People's Party, and its erstwhile coalition partner, Pakistan Muslim League (N) had agreed to reinstate all the judges. The PML (N), in fact, left the government over its failure to fulfill the commitment.

Although several judges have been reinstated, the requirement of a fresh oath has been a humiliating process. Observers agree that without the restoration of the Chief Justice, Iftikhar Mohammed Choudhury, the government's claims of being committed to judicial independence ring hollow.

While the judiciary in Pakistan has a dismal record of legitimising military rule, the defiance shown by Justice Chowdhury in March 2007 when the then president tried to dismiss him, inspired the lawyers to launch a movement for his reinstatement and for judicial independence. This movement was supported by a wide cross-section of the people from workers to students, journalists and civil society organisations. All these groups are understandably disappointed at the government's back tracking on this issue.

The present government is currently confronted with two major crises: one economic and the other of terrorism. The uncontrolled spread of terrorism, with suicide bombings in major cities, has also added to the economic crunch as investors have opted to stay away from Pakistan. Terrorism and the government's military action in the affected tribal areas has also created a major humanitarian crisis of internally displaced persons (IDPs).

Refugees from Bajaur in FATA and from Swat in the Frontier province have been forced to leave homes, caught as they are between the violence of the militants and the shelling of the military. US drone attacks have also caused considerable civilian loss of life in these areas. So far, they have received little relief from the government or aid agencies. It should also be noted that people displaced earlier due to military action in Balochistan a few years ago have yet to be resettled.

Pakistan's alliance with the United States in its war on terror also resulted in large scale disappearances. However, the enforced disappearances include not only those with alleged links to Al-Qaeda or the Taliban, but activists of nationalist parties as well. Shortly before the dismissal of the Chief Justice of Pakistan, the Human Rights Commission of Pakistan (HRCP) had filed a petition in the Supreme Court drawing its attention to the case of missing persons. HRCP's list included details of over 600 names, verified from the above thousand that it had received from families of the disappeared. Some were produced and set free on orders of the Supreme Court; the majority continue to be among the 'missing'.

Many of the decisions that raised hopes in the early months have got mired in bureaucratic mishandling or controversies. For example, the government has done nothing to remove the constitutional anomalies brought in by General Musharraf to strengthen the powers of the President. Currently, the President retains the power of sacking the Prime Minister and the National Assembly. While the Pakistan People's Party had made an electoral commitment to restore the original constitution, once in power, it has taken no tangible steps towards initiating the process.

Similarly, little progress has been made in improving and implementing the Freedom of Information Act. Rights groups have also expressed concern over the government's inability to check the rampant rise in honor-related crimes, some of which have taken heinous forms. In fact, much to their dismay, a parliamentarian who defended honor crimes on the floor of the house has been appointed a minister in the federal cabinet.

There are many human rights challenges facing the new government. It can choose to address them and demonstrate its commitment to a democratic order or opt for political expediency as it makes compromises with religious and other unenlightened groups.

CHRI: A UK Perspective

William Attfield
London Liaison and Programmes Officer, CHRI

In 1993, following an ambitious and innovative bid to challenge the traditional 'hubs and spokes' model of the Commonwealth, CHRI rotated its headquarters from its London birthplace to its current location in New Delhi. Due to its strategic location, the London office continued, and indeed continues to play, a principle role in CHRI's programme work all across the Commonwealth by promoting its various projects to the Secretariat and other Commonwealth and Government bodies. It also continues to act as a liaison between these official bodies and the Delhi headquarters, a role that was subsequently extended to include CHRI's Africa office which opened in 2001.

As well as undertaking periodic enquiry missions and special reports into pertinent human rights issues, the London office is developing its capacity to take on the role of CHRI's regional programmes office for the Western Hemisphere. One of the key challenges for me since I started in July 2008 has been getting up to speed with a joint four-year human rights capacity building project that has been commissioned by the UK Government and Commonwealth Foundation, and includes a significant CHRI component administered from the London office. The aim of the project is to provide multi-sectoral human rights support to the UK Overseas Territories of the Caribbean, Pacific and South Atlantic. Within this remit, the role of the London office is to provide: technical assistance and advice to governments, human rights advocacy training and education to civil society organisations, and reporting skills to the media.

The initiation of this sizable project in 2007 not only served to affirm CHRI's reputation as the seminal NGO for protecting and promoting human rights across the Commonwealth but, significantly, marked the opening of a new chapter for the London office.

As the capacity of the London office grows, it aims to continue expanding its operational base across this significant geo-political region by taking on additional project work in Canada, Cyprus, Malta, the Member States of the Caribbean and the UK. To this end we have recently focused on our energies on Malta, a Commonwealth Member State that passed the FOI Bill in 2008. Freedom of information is viewed, not only by CHRI but also the wider international community, as crucial for the existence of any truly participatory and democratic system of governance. Moreover, the European Commissioner for Human Rights has for decades acknowledged the fact that freedom of information is not only a fundamental human right but also the touchstone for all other human rights. Building on the recent analysis of the 2007 draft Bill submitted to the Maltese government by our Delhi office along with a number of recommendations, we are currently working on a project proposal aimed at laying a solid foundation for a culture of access in Malta.

Additionally, the London office is actively engaged in the issue of police reform and is continuing its ongoing campaign to persuade the Heads of Government to establish an Expert Group on Policing. This advocacy work builds on the support that we have successfully generated for the idea amongst both government officials and civil society organisations. Our commitment was recently rewarded when, in the first intervention of its kind, a representative from CHRI was able to make a civil society presentation on the Expert Group at the 2008 Law Ministers Meeting in Edinburgh.

On top of our police reform work, we have also undertaken significant consultative work for civil society organisations within the UK. Using our recent report on the UN Human Rights Council's universal periodic review process as a springboard, CHRI London held a consultation aimed at increasing the efficiency of civil society organisations' participation in monitoring the review process-a reporting mechanism new to both governments and civil society organisations. The meeting was attended by representatives from: Amnesty International, Save the Children, Equal Rights Trust, and the Islamic Human Rights Commission. Also present were representatives from the Equality and Human Rights Commission and the Commonwealth Secretariat. The consultation was extremely well received by all those attended and we hope to hold a follow-up consultation in early 2009.

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Access to Information in the Caribbean

James Ferguson
Consultant, Access to Information Programme, CHRI

When one considers the various geographical areas of the Commonwealth of Nations, one notices that, proportionally, countries in the English speaking Caribbean are well represented in the global push for legislation on access to government-held information. To be true, currently only fourteen out of fifty-three Commonwealth Member States (26%) have adopted access legislation; however, of the twelve Commonwealth Member States whom we could consider being part of the former British West Indies (Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, and Trinidad and Tobago), five of these Member States have adopted access legislation: an inspiring 42% for the region!

The first country in the Caribbean region to implement a law governing access to information was Belize who, in 1994, passed the Freedom of Information Act, which implements the freedom to receive and communicate ideas and information without interference enshrined in Article 12(1) of its Constitution. Some five years passed before the next series of countries to adopt access legislation began to act. The first country to do so, Trinidad and Tobago, passed The Freedom of Information Act 1999, which came into effect on 20 February 2001. This was followed shortly thereafter by Jamaica who in 2002 passed the Access to Information Act 2002, and by Saint Vincent and the Grenadines who in 2003 passed The Freedom of Information Act 2003. Antigua and Barbuda is the last Caribbean nation to have adopted access legislation when, after a speech by Prime Minister Baldwin Spencer announcing his administration was drafting access legislation for public consultation, The Freedom of Information Act, 2004 was passed.

While itself not an independent country, the Cayman Islands a British Overseas Territory operationalised The Freedom of Information Law, 2007 on 1 January 2009. The passing of this law also precedes the conclusions of the United Kingdom Parliament's Select Committee on Foreign Affairs' Seventh Report dated 1 June 2008, which recommended "all Overseas Territories which have not yet done so to introduce freedom of information legislation."[1]

Current Developments

The Government of Barbados has recently circulated a Bill entitled the Freedom of Information Act, 2008, one highlight of note in the draft being the acknowledgment of the "Atlanta Declaration and Plan of Action for the Advancement of the Right of Access to Information," signed at Atlanta, Georgia in February 2008. The Atlanta Declaration states that "access to information is a fundamental human right; it is essential for human dignity, equity and peace with justice; and a lack of access to information disproportionately affects the poor, women, and other vulnerable and marginalised people." Importantly, it states that transparency provides more safety and security than secrecy, and goes on to include a set of tenets that should be included in any law or legal instrument.

The Atlanta Declaration also establishes a series of principles, stating that the right of access to information should apply to all branches of government at all levels, to all divisions of international bodies, as well as to private corporations in some circumstances. By making express reference to the Atlanta Declaration, while non-binding domestically, the Act will bring directly into the domestic legal system of Barbados the objects of the Atlanta Declaration, when considered by administrative decision makers, and on any appeals to the judiciary. Through this process of informing decisions this provision will no doubt have a positive effect in favour of disclosure.

The Barbados Bill, while being in line with international best practice in many respects, offers a number of opportunities for improvement:

- First, the Act will create new Office of the Information Commissioner, but will empower the existing Ombudsman to undertake duties that are in other jurisdictions the sole prerogative of the Information Commissioner, who should be empowered with both adjudicatory and monitoring functions in order to actualise his or her mandate under the proposed scheme. For example, the Commissioner is required to "refer to the appropriate authorities cases which reasonably disclose evidence of criminal offences," and while this is a novel addition for containing corruption something that should be included in every

[1] See UK House of Commons (2008), Foreign Affairs Seventh Report, 1 June at para. 233: http://www.parliament.the-stationery-office.co.uk/pa/cm200708/cmselect/cmfaff/147/14702.htm

Act but it is unclear how this will be accomplished as the Commissioner is not likely to be involved at any stage of the complaints or appeals procedure.

- Second, the Bill does not presently contain a sunset clause, which would require public authorities to disclose exempt information after a specified period of time, nor does it contain a general public interest override clause to place on public authorities the obligation to make determinations as to whether disclosure of exempt information would serve the public interest better. A general public interest override is required in an access law following international best practice standards, and exemptions to the disclosure of information should not be granted in perpetuity; the absence of either provision is not in keeping with a culture of openness.
- Lastly, the blanket exclusions contained in the Bill, removing certain classes of public authorities and entire classes of documents from the coverage of the law, is contrary to the international best practice principle of maximum disclosure: all organisations and bodies supported by taxpayers, and all bodies financed by public money or mandated to perform certain functions or actions for the benefit of the people should be covered by the access law. The key issue in assessing whether information should be exempted, or whether exemptions should attach to information under the control of public authorities generally, is whether disclosure in a particular case would actually cause serious damage to a legitimate interest: Is the information covered by a legitimate exemption? Will disclosure cause substantial harm? Is that harm greater than the public interest in disclosure?

One final current development of note is that the Office of the Attorney General in Bermuda is drafting an access to information law for Bermuda as a "priority", as has been reported by Attorney General Kim Wilson.[2] If passed, Bermuda will join the Cayman Islands as the only British Overseas Territories to have passed access legislation.

On The Horizon

Both Grenada and Saint Kitts and Nevis stand to be among the next wave of Caribbean nations to recognise how the right to information plays a crucial role in ensuring that citizens are better informed about both the people they are electing and the activities undertaken by government. In Grenada, although a country with one of the fastest-growing economies in the Caribbean, poverty remains widespread. Recognising the importance of the right to information, in a Speech delivered by Political Leader of the National Democratic Congress (NDC), the now current Prime Minister of Grenada, Tillman Thomas, campaigned on a commitment to adopt access legislation.[3] The NDC recognised that continued growth in investment and tourism will help to reduce unemployment and this growth can be catalysed and strengthened by a functioning access regime and this sentiment will hopefully be carried forward under the Tillman government.

Similar remarks can be made about Saint Kitts and Nevis, where tourism, offshore finance and service industries have become important sources of income; but as long as the country's economy operates without the benefit of an effective, overarching access regime, and with the associated benefit of public scrutiny, the islands will remain a target for drugs traffickers and money launderers. The current government of Saint Kitts has expressed a willingness to move forward with integrity legislation,[4] but this should also include the implementation of access legislation at a minimum (the Integrity of Public Office Act was passed in Dominica in 2003 though the government to date has failed to implement it).[5]

Adopting access legislation will help Grenada, Saint Kitts and Nevis, and other Caribbean nations, be seen internationally as safer places in which to work, live, trade with or visit. But it will be important these countries keep in mind the basic drafting principles that will enable a person to use their future laws: maximum disclosure; minimum exemptions, simple access procedures, effective enforcement mechanisms, and monitoring and promotion of open governance. From there, achieving economic sustainability will become easier, as has been found in other countries that are democratic and respect the rule of law: by promoting openness, and by reducing the gap between government and the public.

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[2] Royal Gazette (2008), "Legal draftsmen working on Public Access to Information legislation", 13 November: http://www.royalgazette.com/siftology.royalgazette/Article/article.jsp?articleId=7d8b6b730030027&sectionId=60, as on 21 November 2008.

[3] Grenada Today (2008), "Say Yes to Congress", 21 June:http://www.belgrafix.com/gtoday/2008news/Jun/Jun21/Say-yes-to-the-congress.htm, as on 10 November 2008.

[4] SKN Vibes (2008), "Integrity Legislation", 9 February: http://www.sknvibes.com/Commentary/Index.cfm/220, as on 10 November 2008.

[5] BBC Caribbean (2008), "BBC Caribbean News in Briefs", 2 May: November 2008. http://www.bbc.co.uk/caribbean/news/story/2008/05/printable/080502_nibwknd020508.shtml, as on 10

Global Network Initiative: Upholding International Human Rights Standards in Cyberspace

M. Brooke Beasley
Intern, Human Rights Advocacy Programme, CHRI

While issues of right to information and privacy are long-standing, widespread use of the internet has opened up both opportunities for easy access to information as well as novel avenues for abuse. So far in 2008, over 69 so-called "cyber-dissidents" from around the world have been imprisoned.[1] During November 2008, 24 NGOs and companies, including Google, Yahoo, and Microsoft, signed a deal pledging to curb cooperation with governments that violate human rights in cyberspace. The Global Network Initiative aims to "avoid or minimise the impact of government restrictions on freedom of expression, including restrictions on information available to users and the opportunity for users to create and communicate ideas and information."[2]

In the past, internet companies have tended to cooperate with governments, and the extensive censorship effort known as the "Great Firewall of China" offers a particularly salient example. In China, these businesses have assisted the government in filtering internet searches to exclude results that involve keywords like "democracy" or "Tiananmen Square," spying on users' private communications, blocking whistleblower or opposition blogs, and providing sensitive personal information resulting in a reporter's imprisonment.[3] Whilst China's situation has garnered the most attention, other governments (including those of some Commonwealth countries) exercise similar censorship policies and seek to suppress "cyber-dissidents". In light of the current status of the ethical debate over where to draw the line when it comes to issues of legality concerning the internet, and facing pressures from human rights agencies, member companies of the Global Network Initiative are turning toward international human rights law and standards to protect their users' freedom of expression and privacy.

The potential of such an initiative lies not in its goals and principles, but rather the strength of its implementation. Exactly how these companies will fare in heavily-censored countries will be a complicated story - countries like China are unlikely to ease information restrictions, and companies like Google are unlikely to completely pull out. The Global Network Initiative's implementation procedures do not put companies in a stand-off with states, but rather provide a general framework from which to work with each government.

Despite being overly vague, the implementation scheme seems quite sensible. The Initiative calls upon companies to consider a country's laws regarding privacy, expressions and rights prior to making business deals or providing services. Companies who sign the Initiative agree to always favor protection of individual rights when interpreting the grey area of a country's laws, and to insist that correct legal procedures be followed before releasing information. Companies are also encouraged to influence governments to create laws or proceed in ways that comply with international human rights standards. Furthermore, the Initiative calls upon companies to offer transparency to their users and to let them know the risks they take for accessing certain sites. And, whilst the Initiative does not advocate that companies outright break a state's law, some stipulations hint of strong-arm tactics. If a government asks a company to provide a user's information or to do something that is not straightforwardly legal, that company can insist on written communications clearly stating the legal authority for the censorship actions, complete with the identities of the agencies and the officials involved. This sort of move is, fundamentally, an effort to pressure the government into backing down from the request, because it forces that government to be more transparent and to jump through more hoops.

GNI and the Commonwealth

When it comes to government restrictions on the internet, Malaysia is perhaps the most notorious Commonwealth country of late. Malaysia is an interesting case because despite having a high percentage of internet users (42.4 percent - falling only behind Hong Kong and Singapore in Southeast Asia), the government does not censor information on the internet despite having over 20 laws that restrict

1. Reporters without Borders, http://www.rsf.org/rubrique.php3?id_rubrique=20, (last accessed 22/11/08)
2. Global Network Initiative, Principles, http://globalnetworkinitiative.org, (last accessed 18/11/08)
3. Maggie Shiels, Tech giants in human rights deal, BBC NEWS, http://news.bbc.co.uk/2/hi/technology/7696356.stm

freedom of speech in the traditional media.[4] However, penalties are harsh for those who post information or opinions critical of the government. Under the Internal Security Act, bloggers, like the recently-released Raja Petra Kamarudin, can be detained without trial for as long as two years.[5] "Cyber-dissidents", journalists, and activists also face harassment by the police. These laws and incidents can lead to self-censorship.

Malaysia may offer itself as a unique case where implementation of the Global Network Initiative could actually be able to change the climate of fear. Naïve internet users, just acting normally, leave their IP address (which functions like a fingerprint) on everything they touch. More sophisticated internet users in censorship-heavy countries will go to measures to cover up their identity, but companies that they register with like Yahoo and Google have an extraordinary amount of information about them every email, every chat, and any personal identifying information contained therein. When Yahoo cooperated with the Chinese government by handing over that information, people disappeared or were imprisoned because of it. If companies like Google and Yahoo refuse to give that sort of information, then users will be assured email security. Also, bloggers could use applications from those companies, such as Google's Blogger, and be assured safe harbour. Essentially, the advantage of having a credible outlet to protect writers is that it reduces the technical barrier to safe self-expression.

Another Commonwealth country to watch is Australia, which is currently proposing state-controlled server-level censorship that whilst not nearly as restrictive, would use mechanisms similar to those employed by China.[6] The kind of censorship that Australia proposes would prevent "illegal" internet traffic to reach users. The problem is that the Australian government has not specified what is "illegal". In essence, the government could potentially control what information is available. If internet search engines like Google refuse to cooperate with these measures, then, conceivably, a user would be able to tell when the government is blocking access to a site because it would show up in the search, but the user will not be able to access it upon clicking. Companies that sign the Global Network Initiative agree not to block content, but are left in the grey about what to do when it comes to issues of illegality such as child pornography.

Although Malaysia and Australia have recently received the most attention for their internet-related policies, many other Commonwealth countries have interfered with access to information and freedom of expression on the internet. Kenya, Sri Lanka, Gambia, Fiji, Maldives, and Pakistan exercise varying degrees of censorship. In the past, Fiji and Maldives have appeared on *Reporters without Borders*' (RWB) Internet enemy list; currently, RWB notes The Gambia, Sri Lanka, and Malaysia as "countries under watch". In the name of Pakistan's "war on terror", the Pakistani government continues to tighten its grip on bloggers and access to information, much of which is anti-state or anti-Islamic rather than terrorist. It remains to be seen how the Global Network Initiative will be able to approach countries that enforce censorship inconsistently rather than systematically.

Conclusion

Overall, the Initiative appears to be a positive step. It has the potential to give companies security in numbers so that they cannot be singled out by a government if they choose to uphold international human rights law over a restrictive national law. This agreement can be considered a classical Prisoner's Dilemma[7] - the ability for actual implementation rests on competitive pressures, and everyone has to actively cooperate in the effort in order to succeed. They can use the leverage of their collective market domination to put pressure on states.

The ongoing-learning focus and research emphasis of the GNI offered by NGO's and learning institutions that have signed on is another positive aspect. Researchers will ascertain the best practices and publicise successful legal approaches to dealing with restrictive governments. Companies who participate in the GNI can benefit from looking privacy-smart to their customers, and the ongoing research gives these companies the best tools to stick to the deal.

4. Open Net Initiative, http://opennet.net/
5. Reporters without Borders, Leading blogger Raja Petra Kamaruddin finally released, http://www.rsf.org/article.php3?id_article=29214
6. John Ozimek, Is the internet going down down under?, The Register, http://www.theregister.co.uk/2008/11/05/aussie_internet/
7. The Prisoners Dilemma shows that, in certain circumstances, if the members of a group trust each other, they can choose a course of action that will bring them the best possible outcome for the group as a whole. But without trust each individual will aim for his or her best personal outcome - which can lead to the worst possible outcome for all.

RTI in Ghana 2008 Presidential Election Party Manifestoes

Florence Nakazibwe
FOI Project Officer and Fabien Clausen, Volunteer CHRI , Africa Office

In the race to the 2008 general elections, all the 4 major parties made promises to finally pass the Freedom of Information (FOI) Bill into law should they be elected into office. The *Coalition on the Right to Information* strongly welcomes this gesture, as the importance of the Bill for a more transparent and accountable government in modern-day Ghana cannot be overemphasised.

However, as we celebrate party support on FOI, it is important that Ghanaians take a much closer look at the substantive texts on FOI outlined in the various party manifestoes and make an objective assessment on whether the parties are really committed to the valued democratic goals and aspirations of this nation.

Convention People's Party (CPP) Manifesto states that, *'The CPP will fight corruption by adequately resourcing public institutions, such as Commission on Human Rights and Administrative Justice (CHRAJ) and the Serious Fraud Office. We shall also implement the Whistle Blower law, which encourages the public to report corrupt practices, as well as pass the Freedom of Information Bill as part of a broad legislative agenda to improve governance and fight corruption.' (p.63).*

The **National Democratic Congress** (NDC) manifesto, took a similar turn by stating that '*CHRAJ will be strengthened to enable it carry out its anti-corruption mandate more efficiently and effectively.' It goes on to state that, 'the new NDC government shall enact into law the freedom of information to facilitate access to official information, buttressing our commitment to disclosures.' (p. 24).*

The **New Patriotic Party** (NPP) Manifesto, under the rubric of *'Fighting Corruption' states that, in addition to previous measures taken to fight corruption by the NPP government, it shall undertake comprehensive policy measures such as, 'review existing laws on corruption and pass the Freedom of Information Act.. This will be supplemented by stringent measures targeting administrative processes and procedures to phase-out corruption in public offices. (p.17).*

On the face of it, these endorsements stand out as impressive statements and indeed provide an indication that Ghana is poised for a more progressive democracy that is participatory, accountable and people-centred . On the other hand however, these statements attract a lot of critical thinking on a number of issues that Ghanaians should, at this moment, be concerned about.

Firstly, none of the manifestoes specifies a timeline within which the FOI law will be passed. So far, it is only Dr. Mahama, the People's National Convention (PNC) flag bearer who, early this year, publicly pronounced his readiness to pass the FOI law within 100 days in power. *(Front Page, Daily Graphic News, March 26, 2008).* A similar position from the rest of the aspirants is however yet to be witnessed. Indeed if history is anything to go by it shouldn't be forgotten that the current Bill, which has been in draft form for the past six years, should have become legislation a long time ago but this has not been the case due to a lack of political will. It is a sad commentary that it has been 16 years since the current 1992 Constitution came into force and still, Government has failed to ensure a legal framework to operationalise the right to information in Ghana. Now that fresh promises are being made, Ghanaians should not be content with mere line statements to pass FOI laws in party manifestoes but should rather insist on presidential candidates to make concrete time commitments to ensure that history does not repeat itself.

Another important issue that needs to be looked into are measures that would be required for effective implementation of Right to Information (RTI) law in Ghana. It is recalled that on numerous occasions, the Coalition for the Right to Information has urged government to pass the Bill into law yet government officials have routinely brought forward excuses, most notably an alleged lack of appropriate infrastructure for enforcing the law once it is in force. The establishment of good and proper record management systems is undoubtedly a prerequisite for an effective FOI law and yet the public record-keeping practice in Ghana is still inadequate. Simply put, it cannot guarantee practical operationalisation of such a law once passed. This notwithstanding, no party manifesto explains how such

challenges are going to be comprehensively addressed. It is therefore important for Ghanaians to understand how the next administration intends to overcome such obstacles in line with the practical situation in Ghana.

The passage of the RTI Bill into law would mean a giant step forward for Ghana's governance. However, the Bill itself is far from perfect and some of its flaws also deserve further review. For instance issues regarding numerous exemptions in the Bill, the prolonged timeframes within which information is disclosed, exorbitant fees structure as well as the need for an independent enforcement body border on core values of a best practice FOI law and demand serious consideration from party manifestoes as well by presidential aspirants who have chosen to remain silent on the subject. It should be noted that retaining the Bill in its current state risks undermining the objective of the Bill, which is to promote increased transparency and accountability in public offices through providing free and easy public access to information held by public bodies. It is therefore important that the weak provisions are reviewed in light of best practice standards before the Bill is eventually passed.

As we reflect on Ghana's democratic strides and look ahead to a new government, Ghana needs to lead by example when it comes to good governance and transparency. Guaranteeing the right to information must be seen as a critical benchmark to Ghana's democratic progress and thus, Government should ensure that the Bill is passed without further delay.

The commitment expressed in party manifestoes is a critical first step and a show of commitment from political parties and their flag bearers. However, it is vitally important that these promises are no more made in vain. In this regard the party manifestoes, in order to demonstrate their respective positions convincingly, should have outlined their agendas for instituting a fully-functional FOI law that adheres to international human rights standards; the strategies that will be employed to ensure that this law is effectively implemented to promote maximum disclosure of information to the public and specify the timeframe within which such a law will be passed. Now is the opportune time for all stakeholders; the public, policy makers, legislators and presidential candidates to ensure that the Right to Information is tabled as a key issue on the political agenda in the struggle for national transformation particularly to promote open and informed societies in Ghana and also maintain Ghana's leading reputation as a strong democracy on the African continent.

Mohammad Nashid is New President of Maldives

Mohammad Nashid of the Maldivian Democratic Party (MDP) became the new democratically elected President of Maldives after he won the second round of elections held in October end. The MDP leader got nearly 54 per cent votes defeating the country's long tem ruler of 30 years, president Maumoon Abdul Gayoom. President Nasheed is the third President of Maldives since the country got independence from the United Kingdom in 1965. In its final report, the Commonwealth Observer Group stated that the election process was 'credible' and 'met many of the benchmarks for democratic elections' however the Group underlined the need for addressing voter registration and compilation of the voter list. In its report, the observer group also made recommendations concerning capacity building of Election Commission and training of election officials; that political parties maintain their constructive engagement in the electoral process and a need for a sustained and comprehensive programme of civic education, targeting areas such as voter registration and acquirement of ID cards.[1]

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Since its inception more two decades back, CHRI has and continues to attract many extraordinary people from all across the globe, and over the past few months I have been privileged to work alongside exceptionally committed, passionate and motivated people from all three of CHRI's offices. Although a relatively small organisation, CHRI has rare ambition that allows it to punch well above its weight, and this is, for me, what continues to make it stand out from the crowd.

[1] http://www.thecommonwealth.org/files/185267/FileName/FINALREPORTMALDIVESCOG2008PRINTVERSION.pdf

Fiji's High Court Judgment: Determining the Independence of the Fijian Judiciary

Lucy Anna Mathieson
Coordinator, Human Rights Advocacy Programme

"What good is power if you don't use it?" (One king to another as he walks along with a smoking gun in his hand.)

ID: 29642, Published in *The New Yorker* February 24, 1997

"Judicial independence is not an end in itself, but a means to an end. It is the kernel of the rule of law, giving the citizenry confidence that the laws will be fairly and equally applied…Judicial independence also allows judges to make decisions that may be contrary to the interests of the other branches of government. Presidents, ministers and legislators at times rush to find convenient solutions to the exigencies of the day. An independent judiciary is uniquely positioned to reflect on the impact of those solutions on rights and liberty, and must act to ensure that those values are not subverted. Independence is the wellspring of the courage needed to serve this rule of law function."

Judge O'Connor

In Fiji, the President, as head of State, is required to preserve the Constitution. It can, however, when examining the ratio decide of the recent High Court Judgment,[1] that by endowing the Office of the President with far-reaching 'prerogative powers', there is potential for the abrogation of the Constitution - encouraging would-be usurpers to utilise those 'ultimate reserve powers'. Whilst the Judgment itself raises some serious questions specific to the constitutionality of the actions during December 2006, its reasoning raises perhaps more serious concerns about the application of legal theory as a legitimising force for coup regimes. The Commodore had, afterall, abrogated the Constitution in his actions; the President had then sanctioned those actions, and that of the Republic of Fiji Military Forces (RFMF), and by protecting them from prosecution and selecting the Commodore for the position of Interim Prime Minister, essentially legitimised the events of December 2006.

Whilst it can be accepted that the President does have the prerogative to act in times of emergency, at what point can such prerogative be questioned when his

[1] Qarase and Others v Bainimarama and Others (9 October 2008).

decisions are themselves questionable?[2]

The case itself was about the lawfulness or otherwise of certain acts carried out by the President following military intervention in the government of the State. The defendants maintain that the President retained prerogative powers which enabled him to act in an emergency for the public good. They say those powers enabled him to ratify the acts of the military in the takeover, and ultimately in consequence absolving the participants of unlawfulness. But did such powers allow him to act without specific authority of the Constitution? Were his powers as the plaintiffs argue circumscribed within the confines of the Constitution with regard to the dismissal of the Prime Minister and his Cabinet and the dissolution of Parliament? Were those powers further confined by the common law by the requisite conditions set out in the case of *Prasad: Republic of Fiji & Ano.v Prasad* [2001] 2 LRC 743. As advised by the Fijian lawyer, Graham Leung, the recent Fiji High Court's decision reliance upon prerogative powers that are equal or analogous to those of the British monarch "is wrong and bad law".[3] There are, afterall, very good reasons, for placing limitations upon the scope of prerogative powers.

The Fijian Constitution does provide for Presidential discretion under section 96(2), whereby it states that, "this Constitution prescribes the circumstances in which the President may act in his or her own judgment." Arguably, there are situations that the Constitution may not necessarily have prescribed for which there are prerogative powers. However, in such instances, it would seem, in keeping with a more reasonable application of the Doctrine of Necessity, that in such instances, the President's prerogative should be guided by the Constitution. Other overseas jurisprudence has already found that the basic structure of a Constitution cannot be altered. Afterall, you cannot uphold the unconstitutional[4].

Judicial independence is far too important a public interest issue not to be publicly discussed when the occasion demands, lest silence induced by tact or timidity be misconstrued as acceptance of the unacceptable. In this regard, a judge who strays beyond his judicial functions cannot escape public scrutiny and criticisms of his extra-judicial activities.[5] Unfortunately, the latest Fiji High Court Judgment is symptomatic, in recent years the Fiji experience has not been a role model.[6]

Professor John Hatchard & Dr. T.I. Ogowewo (2003) in their analysis of the jurisprudence that has developed from coup regimes within the Commonwealth have stated that a proactive approach to the problem of unconstitutional usurpations of government also calls for the enthronement of a culture of constitutionalism. The absence of this culture prevents citizens from perceiving with clarity the vice of a usurpation (such as the removal of constitutional safeguards) if the usurpation occurs at a time when there has been a failure of democracy and government.[7] They have argued that the absence of a culture of constitutionalism is created by a number of factors: first, one effect of military rule is to thwart the

[2] On 9 October 2008, the Fiji High Court upheld decisions made by the President after the December 2006 coup, including the granting of immunity to the interim Prime Minister and his soldiers involved in the overthrow of the Qarase government. The controversial ruling dismissed deposed Prime Minister Laisenia Qarase's challenge of the President's powers and cemented the President's authority and prerogative in emergency. The ruling by judges Anthony Gates, John Byrne and Devedra Pathik was delivered by Acting CJ Gates to a packed courtroom. The Judgment comes as a controversial one and to an extent follows a growing body of jurisprudence within the Commonwealth, whereby Judicial decisions often serve to legitimate governments taken by force, otherwise referred to as coup jurisprudence. The recent High Court Judgment appears to show that the court held that the President has very wide prerogative powers; powers that not only authorised the interim Government appointments in January 2007, but also allows the President to continue to govern the country and make laws for as long as he thinks the circumstances require leaving the question of the timing of elections solely to the President's discretion. Justice Gates stated that the decision by the President to ratify the dismissal of Mr Qarase and appoint Dr Jona Senilagakali as caretaker PM to advise the dissolution of Parliament were valid and lawful acts. Advising that was in exercise of the prerogative powers of the head of State in a crisis, Justice Gates ruled the decision of Ratu Josefa to rule directly pending the holding of fresh, fair and accurate elections was upheld as valid and lawful. He also advised that the President's decision to make and promulgate legislation in the interest of peace, order and good government in the intervening period prior to a new Parliament is upheld as valid and lawful. Justice Gates advised that the granting of immunity by Promulgation was within the powers of the President in the emergency. The question posed to the Court was whether those powers enabled Ratu Josefa to ratify the acts of the military in the takeover and allow him to discharge duty without the specific authority of the Constitution. Justice Gates advised that the pivotal question was how far the courts could subject the President's conduct to judicial review.

[3] Sadhana Sen "ANU panel criticises court's decision" (24 October 2008) at http://www.fijitimes.com/story.aspx?id=104162 [last accessed on 13 November 2008]

[4] The Indian Supreme Court Decision in Keshavananda Bharati Vs. State of Kerala (AIR 1973 SC 1461) and two United States of America Supreme Court decisions, one expressly and one implicitly, address this issue most directly: Youngstown Co. v. Sawyer and Hamdan v. Rumsfeld, 126 S. Ct. 2749, 2775 (2006) (describing the post-September 11 AUMF as having "activated the President's war powers").

[5] "A Diminished Judiciary" Sir Vijay R Singh [in Journal of South Pacific Law] at iswww.paclii.org http://www.vanuatu.usp.ac.fj/journal_splaw/Special_Interest/Fiji_2000/Fiji_Singh1.html (This article first appeared in the Fiji Times of October 17, 2000) [last accessed on 17 October 2008].

[6] "Interference with Judicial Independence in the Pacific" Presented by: Hon. Sir Thomas Eichelbaum (Retired Chief Justice of New Zealand) at http://www.paclii.org/PJDP/resources/PJC/Interference_%20with_Judicial_Independence_in_the_Pacific.pdf [last accessed on 17 October 2008].

[7] Professor John Hatchard & Dr. T.I. Ogowewo (2003) "Tacking the Unconstitutional Overthrow of Democracies: Emerging Trends in the Commonwealth" Commonwealth Secretariat Part 1, pp.10

development of a constitutional culture. When a democracy is then reintroduced, the institutions need to undergo a sharp learning curve.[8] As the learning process is slow the institutions may become enfeebled leading to the "twin failures". Another military coup then occurs to "correct" these failures with the ironical consequence that a full-blown military dictatorship purports to correct an inchoate or at worst an illiberal democracy. The result is a "start-stop" process that continually thwarts the development of a constitutional culture. A compounding factor in this process is the jurisprudence on coups that encourages this cycle, where success is rewarded with validation.[9] And, in countries such as Fiji, Pakistan and Zimbabwe, where the rule of law is under threat and being undermined in one form or another, there is a greater burden on the judiciary to reinforce constitutionalism and respect for democratic principles and constitutional government.[10]

Fiji's system of government is based on a written constitution and subscribes to the general principle of a separation of powers between the three branches of government, namely, the legislature, the executive and the judiciary. Under Article 118 of the Constitution the judges of the State are independent of the legislative and executive branches of Government. Fiji is a signatory to the 1997 Beijing Statement of Principles of the Independence of the Judiciary[11] in the LAWASIA region. These principles stress the importance of the independence of the judiciary to the rule of law.[12]

Under the provisions of Fiji's constitution, judges of the Supreme Court, justices of the Court of Appeal and High Court judges are appointed by the president on the recommendation of the Judicial Service Commission. That appointment should be made after consultation by the commission with the minister of justice and the relevant sector standing committee of the House of Representatives. As a consequence of the actions of the coup leaders in Fiji, none of these was in a position to carry out his, her, or its constitutional functions. All subsequent recommendations to the president have accordingly been made without the concurrence of the only member of the Judicial Service Commission constitutionally empowered to make them.[13]

In Fiji before taking office, judges are required to take a constitutional oath [See Constitution of Fiji, D Oath or Affirmation for due expectation of Judicial office, page 112]. In *Prasad v Republic of Fiji* [2000] FJHC 121[14] Justice Gates commented on the oaths that Judges take said.

"The oath is two pronged. First the judge swears to uphold the Constitution, and second he swears that he will do right (i.e. will do justice) to everyone in

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[8] G.N. Na'Abba, the Speaker of the House of Representatives, in his paper "Military Rule and the Parliament in Nigeria: 19662000" (paper presented at the conference on "Legal Deterrents to Coups, January 1516, 2001), observed thus: "The continued overthrow of constitutional governments has over the years made it impossible for Parliament to develop and mature."

[9] Professor John Hatchard & Dr. T.I. Ogowewo (2003) "Tacking the Unconstitutional Overthrow of Democracies: Emerging Trends in the Commonwealth" Commonwealth Secretariat Part 1, pp.10-11.

[10] Military coups against constitutions are the obvious form of usurpations, although usurpations could take other forms. One experience a significant number of Commonwealth member states have in common is that of the unconstitutional overthrow of government. Over the past thirty years, one third of all Commonwealth member states have experienced at least one usurpation or attempted usurpation. Eleven Commonwealth states have seen their civilian governments overthrown by the military. These are: Bangladesh, Fiji Islands, The Gambia, Ghana, Grenada, Lesotho, Nigeria, Pakistan, Seychelles, Sierra Leone, and Uganda. Nigeria epitomises the military in government. Between independence, in 1960, and 1999, the country experienced eight military rulers; four constitutions (one of which was never used); two civilian regimes that lasted a total of ten years, and one civil war attributable to military rule. Commonwealth states that have experienced attempted usurpations include Cameroon, Kenya, Maldives, Vanuatu and Zambia. Militias have also staged attempted usurpations in the Solomon Islands and in Trinidad and Tobago. [Professor John Hatchard & Dr. T.I. Ogowewo (2003) "Tacking the Unconstitutional Overthrow of Democracies: Emerging Trends in the Commonwealth" Commonwealth Secretariat Part 1, pp.7].

[11] Any discussion about Judicial Independence should start with some definition of the subject matter. And among numerous examples, the 1995 Beijing Declaration, subscribed by many of the Chief Justices from this region, must rank as comprehensive as any, which can be found at: http://search.live.com/previewx.aspx?q=Beijing+statement+of+the+principles+of+the+Independence+of+the+Judiciary&FORM=CBPW&first=1&noredir=1 [last accessed on 20 October 2008].

[12] "Fiji - rule of law and civil rights issues" MEDIA RELEASE New Zealand Law Society (21 May 2008) at http://www.lawsociety.org.nz/home/for_the_public/media_centre/media_releases/media_releases2/2008/fiji__rule_of_law_and_civil_rights_issues [last accessed on 16 October 2008].

[13] "The Fiji Judiciary at the Crossroads: Judicial Independence and the Rule of Law" Remarks by GRAHAM LEUNG Commonwealth Lawyers Conference Nairobi, Kenya (12 September 2007) Hdata:\GEL speeches\20070824JudicialIndpendenceCLA.gel, and http://209.85.175.104/search?q=cache:hNqqLsA3z58J:www.commonwealthlaw2007.org/speakers_material/assets/C9GrahamLeung.pdf+independence+of+Fiji%27s+judiciary&hl=en&ct=clnk&cd=4&gl=in, and http://www.commonwealthlaw2007.org/speakers_material/assets/C9GrahamLeung.pdf [last accessed on 18 October 2008].

[14] Gates J based his decision upon the "doctrine of necessity". He made several orders, including that '[t]he revocation of the 1997 Constitution was not made within the doctrine of necessity and such revocation was unconstitutional and of no effect. The 1997 Constitution is the supreme and extant law of Fiji today.' [*Prasad v Republic of Fiji* [2001] New Zealand Administrative Reports 48]. The Interim Civilian Government decided to appeal to the Court of Appeal of Fiji. On 17 January 2001, a single judge of the Court of Appeal granted the parties leave to produce new evidence. The appeal was heard by a five judge bench over four days from 19 to 22 February 2001. The Court of Appeal comprised Casey J (Presiding), Barker, Kapi, Ward and Handley JJA. Even though this was a domestic Fijian court, each judge was based outside of Fiji and would come to Fiji to sit as a member of the Court as the need arose. The Court handed down its decision on 1 March 2001. It issued a unanimous judgment in which it dismissed the appeal, but made new declarations in lieu of those made by Gates J in order to reflect the new evidence before it. Most importantly, like Gates J, the Court ordered that '[t]he 1997 Constitution remains the supreme law of the Republic of the Fiji Islands and has not been abrogated.'[*Republic of Fiji v Prasad* (Unreported, Fiji Court of Appeal, Casey J (Presiding), Barker, Kapi, Ward and Handley JJA, 1 March 2001), 40]. The Court of Appeal reached this result by different reasoning to Gates J. It rejected use of the

accordance with the laws and usages of the Republic (that is he will not go against the law or make a perverse decision or one not in accordance with the law). Finally he will so act, with courage without malice or spite towards anyone. A judge's first duty is to uphold the Constitution. Because a judge may be called upon to pronounce upon the legality of executive action when an instance of supra-constitutionality occurs, it is a wiser counsel for a judge, indeed for the Bench of Judges, to make no public statement on the matter.……A judge's strength and value lies in continuing to hold office and to carry out his or her duties with integrity, even-handedness, boldness and courage. If the judiciary is deserving of any respect, it must at least aim for these precepts."

Arguably, only a judge appointed conformably with the provisions of the constitution can constitute "a court of law". The English Court of Appeal, ruled in a 2003 case that the de facto doctrine by which the orders of a judicial appointee, whose appointment has been infected by irregularity, may be upheld, cannot validate the authority or acts of a person who knows that he does not have that authority.[15]

Judicial impartiality is essential to the proper discharge of the judicial office and judicial responsibilities. A competent, independent and impartial judiciary is necessary for the protection of human rights. These attributes are likewise essential if the courts are to fulfill their role in the proper administration of justice and in upholding constitutionalism and the rule of law. Furthermore, a judge is required to exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous or impermissible influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason. The Bangalore principle of Judicial Conduct also states that "propriety and the appearance of propriety are essential to the performance of all the activities of a judge". The importance of this principle lay at the basis of decision of the Fiji Court of Appeal, where, in the *Takiveikata* case,[16] their Lordship's opinion indicate that the test of bias is whether in the mind of a fair independent observer seated at the back of the court room, the accused would receive a fair trial because of the appearance of prejudgment.[17]

It was, afterall, Gates J. who made the following remarks in *Jokapeci Koroi & Ors v Commissioner of Inland Revenue & the Attorney-General* Lautoka High Court, Civil Action No 0179/2001L:

"Unruly persons are unlikely to seek validation for their usurpations from judges. Nor should the courts give their sanction when application is eventually made under the doctrine of effectiveness, for there is no such force behind it. In this regard, I respectfully differ from Kelsen. Judges should expect and anticipate that the usurpers will see them removed. So be it. Judges do not represent the law. The doctrine of effectiveness has no moral underpinning, and ***judges do no honourable business therefore in according lawfulness to de facto administrations."***

The recent High Court Judgment's reliance on the Doctrine of Necessity, dismissal of the weight of the Constitutional abrogation in the acts that the President legitimated during the December 2006 coup, and reliance upon wide-ranging unrestricted prerogative powers could quite reasonably be deemed an abuse of the Constitutional Avoidance Canon. The President of Fiji, as head of State, is required to preserve the Constitution. And, who but the Judiciary can comment on the abuse of power. When they fail to do so they open up ground for an environment that legitimates coups and suppresses the rule of law. However, in the end, perhaps the real test is whether during a constitutional crisis, judges can perform to the very standards that they have previously publicly espoused.

[15] "Fiji's new judges should be challenged" http://www.theaustralian.news.com.au/story/0,25197,23594298-16953,00.html COMMENT: John Cameron (April 25, 2008)
[16] State v Takiveikata [2004] FJHC 111; HAC005D.2004S (18 June 2004) and State v Takiveikata [2008] FJHC 31; HAM107.2007 (4 March 2008).
[17] State v Takiveikata [2004] FJHC 111; HAC005D.2004S (18 June 2004) and State v Takiveikata [2008] FJHC 31; HAM107.2007 (4 March 2008).

People's Access to Information and the Constitution of the Republic of Ghana

Venkatesh Nayak
Coordinator, Access to Information Programme, CHRI

The Access to Information Programme is analysing constitutional provisions in the Commonwealth countries that allow information to be given to the people. The first in this series is Ghana. The Constitution of Ghana places a significant amount of emphasis on the need for transparency and accountability in governance. Several provisions have been enshrined in the Constitution to ensure flow of information to the people of Ghana. This is in addition to the express recognition of access to information as a fundamental right of all persons in Ghana. Given below is a quick compilation of various constitutional provisions that –

a) require public authorities and actors to furnish information to an individual or persons directly or

b) have a bearing on the constitutional imperatives of transparency and accountability.

#	Chapter / Theme / Article
	Preamble:
1	The Preamble beds down 'probity' and 'accountability' amongst the defining values of the constitutional framework. Engendering these values requires creation of information flows to people about policies and decisions of all public authorities. *"We the People of Ghana,* *IN EXERCISE of our natural and inalienable right to establish a framework of government which shall secure for ourselves and posterity the blessings of liberty, equality of opportunity and prosperity…* *AND IN SOLEMN declaration and affirmation of our commitment to;* *Freedom, Justice, Probity and Accountability;* ***DO HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION."***
	Chapter 4: The Laws of Ghana
2	**The Laws of Ghana:** Article 11(7) places an obligation on all authorities (individuals and bodies) established under the Constitution to publish all orders, rules and regulations in the Gazette. *"(7)Any Order, Rule or Regulation made by a person or authority under a power conferred by this Constitution or any other law shall…* *(b) be published in the Gazette on the day it is laid before Parliament…"*
	Chapter 5: Fundamental Human Rights and Freedoms
3	**Protection of Personal Liberty:** Under Article 14(2), any person who is arrested or detained by law enforcement authorities has the right to know the reasons for his arrest or detention. *"(2) A person who is arrested, restricted or detained shall be informed immediately, in a language that he understands, of the reasons for his arrest, restriction or detention and of his right to a lawyer of his choice."*
4	**Fair Trial:** Article 19(2)(d) requires that every person who is charged of an offence be informed about the nature of

	offence of which he/she is charged. *"(2) A person charged with a criminal offence shall…* *(d) be informed immediately in a language that he understands, and in detail; of the nature of the offence charged;"*
5	**Fair Trial:** Article 19(2)(h) requires that every person under trial be permitted to have an interpreter free of cost at the trial if he/she cannot understand the language used at the trial. *"(2) A person charged with a criminal offence shall…* *(h) be permitted to have, without payment by him, the assistance of an interpreter where he cannot understand the language used at the trial;…"*
6	**Fair Trial:** Article 19(4) states that every person found guilty of an offence in the course of a trial is entitled to a copy of the judgement and any record that is part of the judicial proceedings on request and within a time limit. *"(4) Whenever a person is tried for a criminal offence the accused person or a person authorised by him shall, if he so requires, be given, within a reasonable time not exceeding six months after judgement, a copy of any record of the proceedings made by or on behalf of the court for the use of the accused person."*
7	**Fair Trial:** Article 19(14) requires that all trials for criminal offences be held in public unless the court decides otherwise in specific cases. This is another instance of transparency in judicial proceedings. *"(14) Except as may be otherwise ordered by the adjudicating authority in the interest of public morality, public safety, or public order the proceedings of any such adjudicating authority shall be in public."*
8	**Protection from Deprivation of Property:** Article 29(1)(b) requires the State to declare the necessity of acquiring property before it is acquired and such a statement must also contain reasonable justification for causing hardship to the person who has a right or interest over the property. *"(1) No property of any description or interest in or right over any property shall be compulsorily taken possession of or acquired by the State unless the following conditions are satisfied…* *(b) the necessity for the acquisition is clearly stated and is such as to provide reasonable justification for causing any hardship that may result to any person who has an interest in or right over the property."*
9	**General Fundamental Freedoms:** **Right to Information**: Article 21(1)(f) guarantees every person a general right to information. *"(1) All persons shall have the right to…* *(f) information, subject to such qualifications and laws as are necessary in a democratic society;"*
10	**Persons detained under Emergency Law:** Article 32(1) requires that a person detained or restricted under an Emergency law be given within 24 hours a written statement containing details of grounds on which that person has been detained. Members of the

	family of the person detained must be informed of the detention within 24 hours and they should be allowed to meet the person detained. Furthermore, the State is required to publish in the Gazette details of every person detained or restricted under the Emergency law within 10 days of such detention or restriction. *"(1) Where a person is restricted or detained by virtue of a law made pursuant to a declaration of a state of emergency, the following provisions shall apply -* *(a) he shall as soon as practicable, and in any case not later than twenty-four hours after the commencement of the restriction or detention, be furnished with a statement in writing specifying in detail the grounds upon which he is restricted or detained and the statement shall be read or interpreted to the person restricted or detained;* *(b) the spouse, parent, child or other available next of kin of the person restricted or detained shall be informed of the detention or restriction within twenty-four hours after the commencement of the detention or restriction and be permitted access to the person at the earliest practicable opportunity, and in any case within twenty-four hours after the commencement of the restriction or detention;* *(c) not more than ten days after the commencement of his restriction or detention, a notification shall be published in the Gazette and in the media stating that he had been restricted or detained and giving particulars of the provision of law under which his restriction or detention is authorised and the grounds of his restriction or detention;"*
11	**<u>Persons detained under Emergency Law:</u>** Article 32(4) requires the Minister of State to publish every month in the Gazette and in the media a list of all persons detained or restricted under the Emergency Law along with their addresses. Similarly a list of all cases reviewed by the Tribunal and the action taken on the basis of their decisions must also be published in the Gazette and the Media *"(4) Notwithstanding clause (3) of this article, the Minister referred to in that clause shall publish every month in the Gazette and in the media.* *(a) the number and the names and addresses of the persons restricted or detained;* *(b) the number of cases reviewed by the tribunal; and* *(c) the number of cases in which the authority which ordered the restriction or detention has acted in accordance with the decisions of the tribunal appointed under this article."*
	Chapter 5: Directive Principles of State Policy
12	**<u>Political Objectives:</u>** Article 35(6)(d) requires the State to promote people's participation in the decision-making processes of government at the level of regions and districts. People's participation in government requires that they be provided information about the government and its decision-making processes. *"(6) Towards the achievement of the objectives stated in clause (5) of this article, the State shall take appropriate measures to…* *(d) make democracy a reality by decentralising the administrative and financial machinery of government to the regions and districts and by affording all possible opportunities to the people to participate in decision-making at every level in national life and in government…"*
13	**<u>Economic Objectives:</u>** Article 36(8) calls upon the State to recognise that all managers of public, stool, skin and family lands carry a social obligation and that they manage these lands as fiduciaries (trust-based relationship). Hence such managers are accountable to the people. People cannot enforce accountability meaningfully unless they have

	information about the actions and decisions of the managers of such lands. *"8) The State shall recognise that ownership and possession of land carry a social obligation to serve the larger community and, in particular, the State shall recognise that the managers of public, stool, skin and family lands are fiduciaries charged with the obligation to discharge their functions for the benefit respectively of the people of Ghana, of the stool, skin, or family concerned and are accountable as fiduciaries in this regard."*
14	**Economic Objectives:** Article 36(11) requires the State to encourage worker participation in the decision-making processes at the place of work. Participation is possible only when workers can seek and obtain information about the decision-making processes prior to the making of such decisions. *"(11) The State shall encourage the participation of workers in the decision-making process at the work place."*
15	**Social Objectives:** Article 37(1) directs the State to enact appropriate laws to enable people to participate in the processes of decision-making related to development. These laws should also assure adequate access to officials and agencies of the State for people. Transparency in the working of public officials, State agencies and the formulation of development policies is indispensable to the fulfilment of this objective. *"(2) The State shall enact appropriate laws to ensure -* *(a) the enjoyment of rights of effective participation in development processes including rights of people to form their own associations free from state interference and to use them to promote and protect their interests in relation to development processes, rights of access to agencies and officials of the State necessary in order to realise effective participation in development processes; freedom to form organisations to engage in self-help and income generating projects; and freedom to raise funds to support those activities;"*
16	**Duties of a Citizen:** Article 41(f) states that it is the duty of every citizen to expose and combat wastage and misuse of public funds and property. This is closely connected to the value of accountability espoused in the Preamble. People will be able to perform this duty effectively only if they have access to all information relating to the spending of public funds. *"(f) to protect and preserve public property and expose and combat misuse and waste of public funds and property;"*
	Chapter 7: Representation of the People
17	**Voting at Elections and Referenda:** Article 49(3) requires that the results of a public election and a referendum be announced publicly at the polling station. *"(3) The presiding officer, the candidates or their representatives and, in the case of a referendum, the parties contesting or their agents and the polling agents if any, shall then sign a declaration stating -* *(a) the polling station; and* *(b) the number of votes cast in favour of each candidate or question: and the presiding officer shall, there and then, announce the*

	result of the voting at the polling station before communicating them to the returning officer."
18	**Organisation of Political Parties:** Article 55(14) requires all political parties to publicly declare their revenues and assets and the sources of such revenues and assets. They are also required to inform the people of their audited accounts every year. *"(14) Political parties shall be required by law-* *(a) to declare to the public their revenues and assets and the sources of those revenues and assets; and* *(b) to publish to the public annually their audited accounts."*
	Chapter 10: The Legislature
19	Article 106(2) requires that all Bills be published in the Gazette at least 14 days before they are introduced in Parliament. Bills related to taxes or payments out of the Consolidated Fund or debt due to the Government of Ghana are exempt from this requirement. *"(2) No bill, other than such a bill as is referred to in paragraph (a) of article 108 of this Constitution, shall be introduced in parliament unless …* *(b) it has been published in the Gazette at least fourteen days before the date of its introduction in Parliament."*
	Chapter 13: Finance
20	**Statistical Service:** According to Article 186(2), the Government Statistician has a duty to publish socio-economic data on Ghana. *"The Government Statistician under the supervision of the Statistical Service Board, shall be responsible for the collection, compilation, analysis and publication of socio-economic data on Ghana and shall perform such other functions as may be prescribed by or under an Act of Parliament."*
	Chapter 20: Decentralisation and Local Government
21	**Local Government:** According to Article 240(2)(e), Ghana shall have a decentralised system of local government and administration. People are required to be provided adequate opportunities to participate in their local government in order to ensure greater accountability of the authorities. People's participation requires the creation of mechanisms that will ensure timely access to information about local government and its decision-making processes. *"(2) The system of decentralised local government shall have the following features…* *(e) to ensure the accountability of local government authorities, people in particular local government areas shall, as far as practicable, be afforded the opportunity to participate effectively in their governance."*
	Chapter 21: Lands and Natural Resources
22	**Stool and Skin Lands and Property:** Article 267(7) requires the Administrator of Stool Lands and the Regional Land Commission to consult with the stools and other traditional authorities regarding the administration and development of stool lands and make available to them all relevant information and data.

	"(7) The Administrator of Stool Lands and the Regional Lands Commission shall consult with the stools and other traditional authorities in all matters relating to the administration and development of stool land and shall make available to them all relevant information and data."
	Chapter 23: Commissions of Inquiry
23	**Functions of Commission of Inquiry:** Article 280(3) requires the President of Ghana to make public the report of a commission of inquiry along with a White Paper within six months of the report being submitted. However if the report is not required to be published then the President must issue a written statement giving reasons as to why the report is not being made public [Article 280(4)]. *"(3) The President shall, subject to clause (4) of this article cause to be published the report of a commission of inquiry together with the White Paper on it within six months after the date of the submission of the report by the commission.* *(4) Where the report of a commission of inquiry is not to be published, the President shall issue a statement to that effect giving reasons why the report is not to be published."*
24	**Inquiry Procedure:** Article 281(1) requires that all proceedings of a commission of inquiry be conducted in public unless otherwise ordered by the commission in the interest of public morality, public safety or public order. *"(1) Except as may be otherwise ordered by the commission in the interest of public morality, public safety or public order, the proceedings of a commission of inquiry shall be held in public."*
	Chapter 25: Amendment to the Constitution
25	**Amendment of Entrenched Provisions:** According to Article 290(3), a proposal to amend the entrenched provisions of the Constitution will not be introduced in Parliament unless the Bill has been published in the Gazette at least six month in advance. These provisions relate to fundamental rights and freedoms, elections, the legislature, the executive, the judiciary, freedom and independence of the media, chieftaincy, CHRAJ, police service, decentralisation and local government and a few other specified topics. This ensures provision of ample time for debating the pros and cons of the amendment proposal. *"(3) The bill shall be published in the Gazette but shall not be introduced into Parliament until the expiry of six months after the publication in the Gazette under this clause."*
26	**Amendment of non-entrenched Provisions:** According to Article 291(1), a proposal to amend any provision of the Constitution other than entrenched provisions will not be introduced in Parliament unless the Bill has been published twice in the Gazette. There must be a gap of at least three months between the first and second publication of the proposal and the second publication must be at least ten days prior to the date of its introduction in Parliament. *"(1) A bill to amend a provision of this Constitution which is not an entrenched provision shall not be introduced into Parliament unless-* *(a) it has been published twice in the Gazette with the second publication being made at least three months after the first; and* *(b) at least ten days have passed after the second publication."*

CHRI Calendar: October - December 2008

CHRI Headquarters (New Delhi)

- I A Rehman of the Pakistan Human Rights Commission, visited CHRI and spoke to staff on the recent developments in Pakistan.
- CHRI Police Team organised Human rights training workshop for 220 sub-inspector recruits of Orissa police in Bhubaneshwar, India.
- CHRI organised an interactive session with Lord Chris Patten on *Good Policing in Situations of Conflict*, attended by Parliamentarians, senior government functionaries and civil society representatives, in New Delhi
- Louise Edwards resourced an East African Community Political Secretariat (EAC) workshop in Bujumbura, Burundi.
- As part of the project to articulate common principles for policing in East Africa, CHRI and the African Policing Civilian Oversight Forum held focus group meetings with the police, civil society and human rights commissions in Uganda and Kenya, and met with stakeholders in Tanzania.
- Advocacy team participated in the annual strategy meeting for a collective of NGOs working on the UNHRC in New York.
- Iniyan Ilango resourced the Commonwealth Secretariat's Carribean Regional Seminar on the Universal Periodic Review (UPR) in Barbados.
- Iniyan Ilango participated in the second strategy meeting on civil society participation in the UN Human Rights Council, organised by Connectas and International Service for Human Rights, Sau Paulo, Brazil.
- CHRI in collaboration with CUTS Centre for Consumer Action, Research & Training (CUTS CART) organised a seminar on "Three years of RTI in India: Rajasthan scenario-problems and possibilities" in Jaipur.
- ATI team attended a workshop organised by ORF, chaired by the Central Information Commissioner Wajahat Habibullah to discuss/recommend for improving the implementation of the RTI Act--problem areas
- A rights literacy *yatra* (roadshow) was organised by CHRI to spread awareness about the people's rights vis-à-vis policing as well as the effective use of the RTI Act, through 15 different locations covering 5 districts in the state of Chattisgarh.
- The ATI team participated in the South Asia Youth Forum organised by Friedrich-Naumann-Stiftung für die Freiheit in New Delhi.
- CHRI conducted a workshop on human rights in the administration of justice' for 55 fresh recruits (magistrates and junior civil judges) at the Andhra Judicial Academy.

Africa Office

- Nana Oye Lithur was invited by the Speaker of Parliament, Hon. Ebenezer Sakyi Hughes and the First Lady of the Republic, Mrs. Theresa Kufuor to a forum on "Women in Governance".
- Nana Oye Lithur was invited as a special guest of honour to an open forum for the presidential candidates of all the political parties to share their vision for persons with disability.
- CHRI was invited by the Institute of Economic Affairs to participate in the 2008 Presidential Debate at the Kofi Annan ICT Centre.
- The Coalition on the Right to Information convened an Advocacy Strategy Workshop in Cape Coast and Takoradi respectively with a view to providing information and building the capacity of interested regional stakeholders to advocate for the passage of the Right to Information Bill.
- CHRI participated in the African Commission on Human and Peoples' Rights (ACHPR) 44th Session in Abuja. CHRI was represented by Nana Oye Lithur, Regional Coordinator and Florence Nakazibwe, Project Officer of CHRI Africa Office.
- Nana Oye Lithur was invited by the Hon. Lady Chief Justice, Georgina T. Wood in honour of the Partners for Gender Justice Colloquium opening ceremony.
- CHRI was invited to participate in a Pan-African Human Rights Conference to commemorate the 60th anniversary of the Universal Declaration of Human Rights and the Adoption of the International Labour Organisation Conventions on Freedom of Association and Protection of the Right to organise.

UK OFFICE

- William Attfield, the London Liaison officer attended an evening function at the S. African Embassy.
- Richard Bourne and Liaison officer attended a meeting organised by the London Office with Samidha Garg at the NUT on furthering HRE in secondary schools.
- William Attfield attended a ComNet meeting at the Royal Commonwealth Society (RCS) followed by an informal meeting with Joanna Bennett and Claire Anholt at the RCS to get a status update on the ComClubs and HRE.
- Liaison officer attended pre-bid consultative meeting at the RCS on their Youth Summits programme.
- Liaison officer made a presentation in a consultative meeting coordinated jointly by the CPSU and ERIS on the state of democracy across the Commonwealth.
- Liaison officer attended the civil society consultation meeting at Marlborough House.

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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Tel.: 91-11-2685 0523, 2686 4678 Fax: 91-11-2686 4688 Email: info@humanrightsinitiative.org

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