

Commonwealth Human Rights Initiative

Newsletter

Volume 10 Number 2
New Delhi, Autumn 2003

Inside

- 4 Months to go!
- The Road to Abuja...
- Exploring the Commonwealth as a platform for creating change
- The Death Penalty
- 13th Commonwealth Law Conference 2003 - Cherie Blair commends CHRI Submission
- Health in Madhya Pradesh Prisons
- Setting the "Agenda" for an Era of Change
- CHRI Seminar: Anti Terror Legislation in the Commonwealth
- Indigenous Rights in the Commonwealth Caribbean and Americas
- RTI: Losing ground in the US
- Right to Information Implementation Audit



Walking a tightrope - Zimbabwe and the Commonwealth

- Derek Ingram

Member, Trustee Committee, CHRI

A message from Zimbabwe the other week was heartrending, but one of many. It read: "Many of us are on the verge of giving up. Our lives have become almost unbearable. Our small towns seem to have been taken over completely by political warlords who have the power to take over businesses, ban newspapers, arrange for people to be beaten if they are thought to support the political opposition". The writer adds: "It is not land or race which has caused Zimbabwe's hell, just evil politics."

The situation in Zimbabwe is in danger of undermining the Commonwealth - and time is running out.

In the first week of December the next Commonwealth Heads of Government Meeting (CHOGM) takes place in Abuja, Nigeria. If by then nothing has been resolved in Zimbabwe, the Commonwealth will face its worst crisis since the mid-sixties when it was convulsed by events in, ironically, the same country the war caused by the white settler rebellion led by Ian Smith.

President Robert Mugabe is a clever politician. When 9/11 forced the postponement of CHOGM in Australia he awaited the new date before scheduling his presidential elections. Thus when the leaders met in Coolom in March 2002, the Zimbabwe poll was just two weeks ahead and observers were on the ground. CHOGM could not decide whether to take action against Zimbabwe or wait until the elections had taken place.

The leaders decided to set up a so-called troika consisting of the past, present and future CHOGM chairpersons - Presidents Thabo Mbeki of South Africa and Olusegun Obasanjo of Nigeria, and Prime Minister John Howard of Australia. The three were empowered to meet immediately after the election and decide in the light of the report of the observer group report what action the Commonwealth should take.

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

4 months to go!

Clare Doube

Project Officer, CHRI

With just four months to go until the next Commonwealth Heads of Government Meeting (CHOGM), thoughts are turning to Nigeria. Heads of Government will meet between 5 – 8 December and discussions will be around the theme of *Development and Democracy: Partnerships for Peace and Prosperity*. The Expert Group on Democracy and Development, established at last CHOGM, has met twice and will meet again in July and will finalise their report soon after. This report will be provided to governments prior to CHOGM and no doubt will assist in discussions on the subject. It is positive to note that the Group has taken the Commonwealth's commitment to involving civil society as not just rhetoric but has welcomed input from NGOs. As well as presenting to their initial meeting, CHRI has also commented on the draft report and met with the Chair of the Group.

Democracy and development is also the topic of the Civil Society Meeting (CSM), organized by the Commonwealth Foundation, to be held on December

1 - 3 as part of the Commonwealth People's Forum prior to the meeting of the Heads of Government. This meeting is an important opportunity for civil society to have an input into the discussions of the official Commonwealth, and the final statement of the CSM will be presented to the Heads of Government. The Civil Society Meeting is being preceded by five regional consultations, also organized by the Commonwealth Foundation. The discussions at these meetings will be synthesized into one document for the CSM and this meeting will provide the base for the development of a *Commonwealth Plan of Action on Maximising Civil Society's Contribution to Democracy and Development*. The first of these consultations was for the Asia region, and was held in New Delhi, May 6 – 8. The West Africa consultation was also held in May (the Gambia May 26 – 29), followed by Kenya and Barbados in June. The final one, for the Pacific region, was held in New Zealand in July. ■

Below is an excerpt from the final statement of the Asia Regional Consultation.

Commonwealth Asia Regional Consultation on Maximising Civil Society's Contribution to Democracy and Development

New Delhi, India

6-8 May 2003

Statement

Preamble

We, the representatives of civil society organisations from Commonwealth countries in Asia met in New Delhi, India from 6 to 8 May 2003 to seek ways and means of maximising the contribution of civil society to democracy and development.

Recognising our social and political responsibility to deepen democracy and make development pro-people, we:

Commit ourselves to the values of participation, equity, gender sensitivity, social justice, diversity and pluralism in Asia and across the world;

Affirm the role of civil society in strengthening the process of democratisation and bringing development to the marginalised sections of our communities;

Commit ourselves to working together to deepen the democratic process and ensure freedom from fear and want for all the people in our respective countries; and

Call upon the State to provide a statutory framework and conducive policies that would strengthen civil society initiatives and participation in democratic process and governance.

Context and Emerging Issues

I. Role of Civil Society Organisations

Civil society organisations (CSOs):

- ♦ Play a crucial role in making democracy work by bringing people's issues and the voices of the marginalised to the social and political arenas.
- ♦ Contribute towards delivering public services and facilitating democracy and development at the grassroots.
- ♦ Have a role to play in shaping public agenda and influencing public policies.
- ♦ Promote the values of human rights, social justice, participation, accountability and pluralism that make democracy and development meaningful.
- ♦ Hold government and multi-lateral organisations to account on their policies, programmes and actions.

II. Civil Society - Government Interface

- ♦ The interface between the state and CSOs is ambivalent, under-developed and incidental.
- ♦ Although the rhetoric about such participation is increasing, the space for effective civil society participation in governance is shrinking. This is particularly so in the face of increasing security and anti-terrorism legislation that restricts space for civil society activities.
- ♦ The absence of enabling legal frameworks, conducive policy environments and facilitative institutional arrangements creates obstacles for the growth and effectiveness of CSOs.
- ♦ The lack of a guaranteed and effective right to information, as well as of transparency and accountability of governments makes the task of CSOs difficult.
- ♦ While the role of the private sector and unfettered market forces in determining public policy priorities is constantly expanding, there is an increasing trend to undermine the role of CSOs and restrict their freedom and growth.

- ♦ Although there are increasing instances of fruitful collaboration between government and CSOs in strengthening democracy and development, there is a lack of capacity to replicate and scale up what works; there is also a lack of adequate space and a policy framework to strengthen such collaboration.

II. Challenges Within

- ♦ The strength of CSOs in using innovative approaches to address pressing problems and influence public policies needs to be further harnessed through networking, alliance building and synergy across a wider spectrum of civil society initiatives.
- ♦ There is a critical challenge of strengthening the capacity of CSOs to interact with government at all levels and to influence public agenda and macro-level policies.
- ♦ There is an urgent need for CSOs at all levels to expand collaboration with each other in areas of mutual interest and on common agendas.
- ♦ The lack of adequate information, research and public discussion on the role, effectiveness and impact of CSOs results in limited public appreciation of the contributions of their initiatives.
- ♦ There is an urgent need for CSOs in the developing world to reduce dependency on external aid and promote financial self-reliance, institutional sustainability and professional competence within their organisations.

Towards Effective Civil Society Participation in Democracy and Development

I. Government Policy

- ♦ Many governments do not engage meaningfully with CSOs and therefore must make an effort to move away from a culture of controlling and regulating CSOs to one of promoting and enabling their work. Government policies can only be effective when there is a conducive environment that enables and encourages CSOs to be "in" rather than "outside of" governance mechanisms.
- ♦ Government must recognise that dissent is part of a healthy democratic society, which is essential for development processes.

- ◆ The level of collaboration extended to the private sector by the government should also be extended to CSOs.
- ◆ There must be recognition of the role of civil society in planning and policy making by all levels of government. CSOs must be valued as partners in a democratic society and not be considered adversaries competing for political space, or merely viewed as subcontracted service providers.
- ◆ Governments must also support efforts towards capacity building and sustainability of CSOs and not undermine them.
- ◆ Donors must contribute to an enabling environment for CSOs, particularly by providing substantive space for their participation at all stages of engagement.

II. Institutional Arrangements

- ◆ Consultative mechanisms must be put in place to ensure that the government-CSO dialogue is not incidental but is one of strategic mutuality.
- ◆ It is important for government bodies, at all levels of administration, to be exposed to working with CSOs and there must be greater inter-departmental co-ordination within government.
- ◆ A transparent self-regulatory system for CSOs that is widely accepted by communities must be promoted.
- ◆ CSOs must promote the substantive participation of citizens and marginalised peoples' organisations. There is a need to create enabling conditions where citizens and marginalised communities can represent and advocate for themselves.
- ◆ CSOs must ensure that they have a stated policy of collective, decentralised leadership and withdrawal mechanisms for senior leadership.
- ◆ Where appropriate, CSOs can also organise themselves into federations or coalitions for greater advocacy. Indeed, the primary function of some focal points should be to support CSOs in dealing with generic issues for effective advocacy and engagement with government. This should not take away the autonomy and independence of local organisations but should merely play a role in supporting them on generic issues that affect all CSOs. CSOs must also be exposed to working with governments.

III. Skills Needed

- ◆ Governments and CSOs require skills and capacity development in the areas of analysis, dialogue, participatory decision-making, management and co-ordination, advocacy, popular communication, financial management, IT and research.
- ◆ There must also be skill transfer between government and the civil society sector.
- ◆ Attitude and perception change must also take place to allow for confidence building of both government and CSOs and an improved rapport between the two.
- ◆ Participatory methodologies that focus on processes with communities must incorporate a result-oriented focus to make all interventions more effective.

V. Strategy

- ◆ CSOs must identify mechanisms for strategic and effective participation in institutions of government.
- ◆ CSOs need inclusive and participatory methods for working with others in civil society and for working with government.
- ◆ Conflict resolution strategies must be promoted, including the multi-stakeholder dialogue approach that incorporates grassroots organisations, the private sector and religious institutions etc.
- ◆ CSOs must seek to maintain their relevance by addressing issues of national public interest.
- ◆ CSOs must continuously use public education to engage and maximise grassroots participation.

Actions and Recommendations

Actions that can be taken:

I. Internal (CSOs)

- ◆ Strengthen networking and information sharing and build umbrella alliance organisations.
- ◆ Establish and consolidate micro-macro level linkages (local, national, regional, global).
- ◆ Increase credibility by consolidating existing self-regulatory mechanisms.
- ◆ Update existing codes of conduct.

- ◆ Develop specific, practical and tangible tools and mechanisms for transparency and accountability, for example a CSO database.
- ◆ Work towards financial and operational organisational sustainability.
- ◆ Improve mechanisms for information dissemination to increase the influence of CSOs.
- ◆ Establish mechanisms for policy monitoring and holding policy-makers to account.

II. Interface

Governments and CSOs

- ◆ Increase the capacity of governments and CSOs to work with each other.
- ◆ Promote on-going, strategic partnerships between governments and CSOs that are based on shared common values.

Governments

- ◆ Develop clearly defined policies that promote and enhance government – CSO interaction.
- ◆ Establish multipartite national fora and processes that allow for CSO input on democracy and development.
- ◆ Streamline all official procedures for NGOs and other CSOs, such as registration and taxation.
- ◆ Adopt legislation that provides an enabling environment in which CSOs can work; for instance, effective freedom of information and security laws that do not restrict civil liberties.

III. Commonwealth

- ◆ Create space at Commonwealth meetings, including that of the Heads of Government, for interaction between the intergovernmental and related civil society events for increased transparency and accountability.

Commonwealth Foundation

- ◆ Document and map innovative experiences in government – CSO interface for replication, and support related networking and mutual learning across the Commonwealth.

- ◆ Facilitate regular dialogue and interface between government and CSOs for mutual sensitivity and learning.

Epilogue

The unique membership of the Commonwealth that brings together the developed and developing worlds, pro-war and anti-war nations, unilateralist and multilateralist states, G8 and G77 members, offers us hope that this forum can be a space to create enabling socio-economic and political conditions for genuine democracy and participatory development that ensure human rights for everyone and freedom from fear and want.

We hope that this “common wealth” truly transforms itself into a “common humanity” where the redistribution of global wealth is promoted to achieve the Millennium Development Goals.

We express our solidarity with the global popular social movement for peace. We are deeply concerned about the unilateral militarisation that threatens the sovereignty of nations and peoples, violates basic human rights and undermines the values and spirit of democracy. Hence, we commit to working towards a more democratic and pluralistic world.

We look forward to a Commonwealth Heads of Government Meeting in Abuja, Nigeria that expands the space for civil society interventions and participation. We hope governments will reaffirm the partnership with civil society organisations in order to deepen democratic processes and pro-people development, and that such partnerships will occur in reality, not just rhetoric.

We call upon all concerned to ensure that the 2003 CHOGM’s civil society process is inclusive and participatory, taking into particular account the concerns of poor and marginalised communities and groups, such as women, Dalits, ethnic minorities, and indigenous peoples.

For the full report visit www.commonwealthpeople.com

The Road to Abuja...

What Civil Society is taking to the Heads of Government at CHOGM 2003

Bernice Baiden

Programme Co-ordinator, CHRI, Ghana Office

*'[W]e call on the many intergovernmental, professional and **civil society bodies** which help to implement our Commonwealth values, to join with us in building closer Commonwealth 'family' links, and strengthening consultation and collaboration.
Colum Declaration 2002*

Biennially, CHOGMs like other international events are characterised by a plethora of activities by pan-commonwealth organisations, civil society groups and the official Commonwealth. And increasingly, the distinctive role of civil society in contributing to democracy and development is slowly registering recognition and acknowledgement. Civil society is steadily carving its own space within governments, inter-governmental bodies, bi-lateral and multi-lateral agencies. While contributing to civil society contributes to critical debates on a myriad of topics that shape democracy and development, engagement of civil society either as part of the process or as monitors of state level commitments provides the opportunity for citizens' participation in the democratic and developmental processes of any nation. Notably, civil society has in the past struggled to achieve this enviable engagement though not in totality as some non-governmental organisations are noted for the tendency to show 'the other side of the coin' in matters relating to their governments.

Challenges that face civil society include: peace building, a necessary prerequisite for democracy particularly in the West African sub-region, sustaining citizens' participation in governance, strengthening institutions of democracy through provision of information and expertise, and derailing the view held by some governments that civil society groups are competitors politically and financially.

It should be recognised that there are cultural differences in the way governments and civil society groups operate.

- ◆ Multi-partism is by nature divisive whereas activities of civil society promote consensus and uniformity and do not begin with entrenched positions.
- ◆ Culture of multi-partism is adversarial whereas that of civil society is non-adversarial and seeks common grounds.
- ◆ Multi-partism is a dogmatic culture reducing the vast complexity of human life into common slogans whereas civil society cannot be reduced into slogans.
- ◆ Governments tend to work in exclusive and often secretive ways, contrasting with the culture of civil society, which tends to be inclusive.

The above were views expressed during a four-day preparatory meeting of civil society groups in Banjul, The Gambia under the theme, 'Maximising civil society's contribution to democracy and development', which sought to develop West Africa's input into the Plan of Action on maximising civil society's contribution to democracy and development.

The critical question for many groups represented defining democracy in a way that does not reduce it to elections, human rights and rule of law but includes a continuous engagement of civil society in all democratic processes. Which of the two - democracy or development should come first? For example, there are countries that are democratic but not developed due to many reasons such as nepotism, corruption, abuse of human rights etc. Likewise there are developed countries, which are not democratic. Hybrids of these two extremes exist hence terms like 'least developed', 'developing' and 'transitional democracies' have flowered recently to describe some countries. The

Commonwealth analyses democracy by way of models established for decades. It is pertinent to recognise that there are other models of democracy like in The Gambia, which has 5 nominated members of Parliament in addition to elected members.

At the end of the consultation, civil society made the following recommendations:

For Civil Society Organisations (CSOs)

- ◆ Organise programmes on civic and voter education, monitor elections and organise programmes to promote women's participation in politics.
- ◆ To work in partnership with governments to organise programmes to enable people to understand and engage in global governance issues, processes and institutions such as World Trade Organisation, New Partnership for Africa's Development (NEPAD), Poverty Reduction Strategy Programmes (PRSPs) and Highly Indebted Poor Countries Initiative (HIPC).
- ◆ Organise special programmes to educate the public on budget processes and empower citizens, especially at the local level, to make input into such processes and to monitor public expenditure.

For Government

- ◆ Accommodate civil society in the process of democracy and development; accordingly, government should provide the enabling environment, space, capacity and necessary resources to civil society organisations.
- ◆ Encourage and enhance CSO engagement in the promotion of civic and human rights.
- ◆ Provide for civil society engagement in policy development and institutional reform.
- ◆ Empower civil society to play a more active role in setting budget formulation.
- ◆ Create room for civil society participation in the electoral process through funding and encouraging civil society work in voter education and election monitoring including involving civil society in electoral commissions.

For the Commonwealth

The Commonwealth Foundation and Commonwealth Organisations

- ◆ The Commonwealth Foundation should represent CSO concerns even more vigorously with the intergovernmental Commonwealth, especially at the Commonwealth Heads of Government Meetings.
- ◆ The Commonwealth Business Council should encourage corporate organisations to provide support for poverty eradication activities by CSOs as part of their social responsibility.
- ◆ The Commonwealth Trade Union Council should continue its good work in training for better understanding of the implications of World Trade Organisation policies.
- ◆ The Commonwealth Human Rights Initiative should continue to press the Commonwealth for a Human Rights Commissioner.

For Donors and International Organisations

Donors and International Organisations should:

- ◆ Support local and regional CSOs to promote sustainable development and democracy.
- ◆ Assist CSOs to develop and maintain the capacity needed to understand and engage in emerging global governance issues through technical assistance, financial and material resources.

In addition to the Banjul meeting the Commonwealth Foundation has organised three regional consultations worldwide to collate views of civil society into a plan of action that will be presented to Heads of Government in Abuja. Whether concerns raised by civil society groups will find sway with governments is a challenge that seeks to test their affirmation in Coolum to work in partnership with **civil society bodies** 'to implement Commonwealth values in building closer Commonwealth 'family' links.' ■

Exploring the Commonwealth as a platform for creating change

Amanda Shah

Project Officer, Commonwealth Civil Society Project (CPSU)

"To face the challenges of our age participants believe that the Commonwealth has to restructure itself to be first and foremost people-centred"

- excerpt from the Commonwealth Advocacy Workshop Statement

Exploring the Commonwealth as a platform for creating change was the theme of the Commonwealth Advocacy Workshop organised by the Commonwealth Policy Studies Unit (CPSU) in association with the Africa Office of CHRI on 23-24 June in Accra, Ghana.

The workshop used the hook of the forthcoming Commonwealth Heads of Government Meeting (CHOGM) in Nigeria to pull together participants from civil society organisations in the five Commonwealth member states in West Africa (Cameroon, Gambia, Ghana, Nigeria and Sierra Leone), to discuss the potential of the Commonwealth as an avenue for advocacy.

The workshop was organised as part of CPSU's ongoing Commonwealth Civil Society Project which, since April 2002, has been researching the relationship between the inter-governmental Commonwealth and civil society, and making policy recommendations to the official Commonwealth, member states and pan-Commonwealth NGOs on how linkages between these actors could be strengthened.

Throughout the work of the Project, it has become clear that one of the main barriers to a wider range of civil society organisations interacting with the official Commonwealth is "informational capacity." In other words it is a lack of knowledge, information or experience that precludes many organisations from being able to navigate the Commonwealth or engage with its mechanisms, should they wish to do so. With this in mind, the Commonwealth Advocacy Workshop was organised as one way of facilitating learning and

ideas being shared between those with different levels of exposure to the Commonwealth and its workings.

Throughout the workshop participants asked tough, probing questions including about the focus of the workshop being on the Commonwealth: "what use is the Commonwealth?", "does it really have any power to influence the issues with which we are concerned?" It was generally agreed that these were difficult questions to answer honestly and that answers given in response are usually trite and unconvincing. It was felt for example that the Commonwealth's role in bringing about the end of apartheid in South Africa whilst real, is over played. With this in mind participants suggested that instead of seeking justifications for the Commonwealth, it would be more productive to approach the Commonwealth asking what can *we* do to make the Commonwealth work in a way that we would wish, as an organisation that responds to and champions the needs of its citizens.

Ground covered during the two-day event included a briefing by the Director of the Commonwealth Foundation and the Chair of the Commonwealth People's Forum Steering Committee on civil society arrangements at CHOGM. Participants also shared their experiences of advocacy in different settings, such as small arms control at ECOWAS or Indigenous Rights at the UN, to try and draw out successful lessons that could be applied to other fora, including the forthcoming CHOGM. Break-out groups on the second day focused on human rights and development, peace and security, political transition and democracy, and the Commonwealth and West Africa and provided the substance for a workshop statement agreed and adopted

by participants on the final day. Key recommendations within the statement included a call for:

- ♦ the appointment of a Commonwealth High Commissioner for Human Rights;
- ♦ the Commonwealth Ministerial Action Group to operate in a more open and transparent manner; and
- ♦ the official Commonwealth to support more integrated regional civil society networks in Commonwealth West Africa.

Copies of the full workshop statement as well as the workshop report, which contains case study papers of advocacy in different settings, are available at: <http://www.cpsu.org.uk> or through Amanda Shah at amanda.shah@sas.ac.uk. The organisers acknowledge with thanks the support of the UK Foreign and Commonwealth Office in providing funding for the workshop and the British Council in Ghana for hosting the workshop reception. ■

Contd....editorial (from cover page)

The observers found the election seriously flawed, so the three leaders met in London and ruled that Zimbabwe should be suspended from the councils of the Commonwealth for one year.

The troika meeting had not been easy. Mbeki was reluctant about suspension but went along with Howard and Obasanjo.

The troika, which should have ceased to exist after fulfilling its primary mandate, remained in existence and when the year expired its differences deepened. Although by now the situation in Zimbabwe was worse, Mbeki, and even Obasanjo, wanted the suspension lifted. Howard was strongly opposed.

Commonwealth Secretary-General Don MacKinnon successfully argued that although the troika had been empowered to speak for the entire Commonwealth in imposing the suspension, all Heads had to be consulted about raising it. The decision would need to be taken by Heads in Abuja. He sounded out the leaders individually and the consensus was that the suspension should stay in place till December.

Since then, Zimbabwe has been intensely active diplomatically. Mugabe persuaded some fellow African leaders that it was the victim of neocolonial interference; the language became anti-west, even anti-white.

Human rights abuses became secondary. Zimbabwe said Africans should not wash their dirty linen in public. Not all African countries bought the argument, most notably Kenya.

Like all international bodies, the Commonwealth is the sum of its membership. It moves by consensus and cannot take steps, which even a small number of members reject. Those who want tougher action are never specific. Do they want Zimbabwe invaded? Such action is obviously out of the question.

The key lies with the two major countries in sub-Saharan Africa, both Commonwealth members – Nigeria and South Africa. Most important is South Africa, which is seriously affected by the instability to its north. To be fair, there is every reason to believe Mbeki is exasperated and has many times spoken sharply to Mugabe in private. But Mugabe does not listen.

One disappointment in this long crisis is that although the Commonwealth was so effective in helping South Africa end apartheid, it has never developed a warm relationship with the Commonwealth. In recent years, too, the Commonwealth Secretariat has seemed to lose some of its touch on Africa – a serious matter since one-third of the member countries are African.

That situation could be improving, and although the Secretariat has failed to engage Mugabe, contact with other players inside and outside Zimbabwe has been ceaseless and may slowly be bearing fruit. The idea that the Commonwealth has stood idly by while Zimbabwe spirals to disaster is not the reality.

The run-up to the CHOGM in Nigeria will prove extremely testing. Fortunately, the meeting will be chaired by one of the Commonwealth's most experienced leaders – President Obasanjo. Future Commonwealth success may well lie in his hands. ■

The Death Penalty

- A Violation of the Right to Life?

Saurabh Joshi

Intern, CHRI

"There is no honorable way to kill, no gentle way to destroy." - Abraham Lincoln

Capital punishment has been a widely used method of punishment mandated by the laws of every ancient civilization. And although civilized behaviour today is considered healthier than in the past, society still carries this brutal carcass of history, more for its symbolism of populist sentiment than any merit as a punitive measure.

Fraught with dangers of grave and irretrievable miscarriage of justice, the absolute finality that characterizes capital punishment demands that there be no margin of error. Unfortunately, this does not always happen, in India or anywhere else. Even in the United States, the former Governor of the State of Illinois recently imposed a moratorium on capital punishment largely due to the severe indictment of the capital punishment system by the efforts of the Center on Wrongful Convictions at Northwestern University, which successfully worked towards overturning the sentences of 17 innocent prisoners waiting on death row.

Although capital punishment has a certain spurious appeal for a section of society, in a liberal democratic state it is derisory for the law to reflect only the more vocal sentiments. It must on the contrary lead public opinion into more enlightened conclusions based on logic. In India, the abolition of base traditions like *Sati* and untouchability faced stiff resistance. Yet today, nobody can dispute that overturning such reprehensible practices was wrong merely because it was unpopular. In the United Kingdom the transformation from a time when executions were public entertainment to complete abolition of the practice came about only after an open debate and the government's legislative initiative.

The word 'justice' when applied to capital punishment is merely an orchestrated politically correct term for

revenge - human emotions of intense anger and hatred towards another human being. It appeals to the public because they see it as vengeful justice for a wrong. However, this is not an emotion or value that a state can promote. Even Mahatma Gandhi said, "...*let not democracy degenerate into mobocracy.*" The sanctity and safety of human life is not upheld by a state that panders to easily stirred emotions of revulsion and retribution. Surely, in this day and age, revenge cannot be a justification for state-sanctioned murder. The government therefore, needs to rationalise the penal system and abolish this only seemingly popular but assuredly inhuman practice.

Today, countries that actively retain the death penalty are a minority. The United States has the dubious distinction of being a member of this club, which also includes totalitarian regimes like Saudi Arabia, China and Zimbabwe. Even Russia, with a steeply rising crime graph, has imposed a moratorium on capital punishment. Most democracies, like Scandinavia, the European Union countries, virtually all the South and Central American countries, some African countries and Australia, have abolished it. Such abolition is a reflection of a nation's commitment to liberal democratic principles, a realisation that imposition of capital punishment is no deterrent to crime. Scandinavia, for instance, has no death penalty and yet has a low crime rate. India, as the largest democracy in the world and a country touted to be on the fast track to development can and should do no less.

Studies have shown that capital punishment has no effect on the frequency of serious crimes. The United Kingdom, for example, abolished the death penalty for a period of five years after which, studies showed that there was no significant difference in the murder rate. A survey¹ found that during the last 20 years, the

¹ *New York Times* Survey, September 2000

homicide rate in states with the death penalty has been 48 percent to 101 percent higher than in states without the death penalty in the United States. FBI data showed that 10 of the 12 states without capital punishment have homicide rates below the national average.

The death penalty is no deterrent for crimes of passion, crimes committed under the influence of drugs or spontaneous acts of violence. The threat of execution at some future date is unlikely to enter the minds of killers acting under the influence of drugs and/or alcohol; who are in the grip of fear or rage; who are panicking while committing another crime (such as a robbery); or who suffer from mental illness or mental retardation and do not fully understand the gravity of their crime. Likewise, children and young people are less likely to reflect upon or genuinely comprehend the consequences of their actions².

Another issue inextricably linked with capital punishment is the ability of the criminal justice system to always find the guilty and set free the innocent. India, for example, raises serious skepticism about its ability to do the same. In the Indira Gandhi assassination case, the Supreme Court of India ruled one of the alleged perpetrators to be innocent after two others had already been executed. In *Harbans Singh v State of Uttar Pradesh*, different benches of the Supreme Court gave different verdicts to the perpetrators of the crime in a case of joint liability. We must recognize that the legal and procedural safeguards our system offers lack the ability to completely eliminate all odds of the innocent reaching death row.

Recently, a discussion has been initiated in India over the method of capital punishment. The current method of hanging as a means of execution is particularly gruesome and painfully time-consuming and although it is supposed to result in instant snapping of the vertebrae, the condemned prisoner frequently dies as a result of suffocation and asphyxiation after undergoing an excruciating struggle for breath and life. Acknowledging the unconscionable nature of this

method, other methods of execution, like electrocution, firing squad, poisonous gas and lethal injection are under consideration.

Although death by electrocution was first introduced as an alternative to hanging, it is no less an affront to human, punitive practices. Electrocution can involve the burning of the organs, ignition of skin and extreme swelling amongst other particularly unpleasant sensations on the part of the fully conscious prisoner, who undergoes the sensation of being burnt to death.

Another method of execution, death by firing squad, is often considered a viable alternative as the prisoner dies instantly and so relatively painlessly. However, the extreme mutilation of the body is a major argument against this practice, even though it is a permitted method of capital punishment in the Indian armed forces.

Death by poisonous gas is reminiscent of the Holocaust perpetrated by the Nazis during the Second World War. The condemned prisoner undergoes convulsions, is fully conscious through the procedure and dies gasping for breath. Witnessing one such execution in Arizona in 1992, where the prisoner thrashed and struggled violently against the restraining straps, a reporter stated, "Obviously, this man was suffering. This was a violent death... an ugly event. We put animals to death more humanely."

The lethal injection, now widely accepted as the quickest and most painless compared to other methods, has a particularly gruesome past as it was invented by Adolf Hitler's personal physician and first used in 1939 in Austria and Germany in the Nazi eugenics program to eliminate 'defective children' for 'race purification'. Despite its professed painlessness, the medical profession in the US has been extremely reluctant to involve its fraternity in the execution of a death sentence. In fact, the American Medical Association and the American Nurses Association have strongly opposed involvement of medical workers.³

² <http://www.amnestyusa.org/abolish/deterrence.html>

³ Jonathan I Groner, Trauma Medical Director, Department of Surgery, Children's Hospital, Columbus, OH 43205, USA *Lethal injection: a stain on the face of medicine*. <http://bmj.com/cgi/content/full/325/7371/1026>

Moreover, the lethal injection, contrary to popular belief it is not free of pain. According to Dr. Rick Halperin⁴, lethal injection is for the benefit of those doing the killing. It has no link with a “humane” death (as is clearly indicated by the already lengthy body of evidence of “botched” and gruesome lethal injection executions carried out in America since its inception in 1982). There have been several recorded incidents where lethal injection has not been as quick and painless as is claimed. In one incident, the prisoner reacted to the lethal cocktail, repeatedly coughing and gasping for air before he lapsed into unconsciousness. An attorney who witnessed the execution reported that he had violent convulsions. “His head and chest jerked rapidly upward as far as the gurney restraints would allow, and then he fell quickly down upon the gurney. His body convulsed back and forth like this repeatedly. ... He suffered a violent and agonizing death.”⁵

It is a common mistake to believe that the mode of execution itself is the punishment. The punishment is death, whatever the method may be. Rendering it painless does not detract from the extreme finality of the punishment. In most countries, including India, a death sentence on a condemned prisoner is carried out long after sentencing. This is a necessary evil in any country, where a condemned prisoner has a right to exhaust all remedies before being executed. The prolonged wait and dilated uncertainty of the appeals process often results in the prisoner on death row going through excruciating mental agony while awaiting his or her death.

This conclusion reinforces the undesirability of capital punishment, leaving one with grave doubts as to its role in society and utterly refutes any conviction that death by lethal injection would be a method of punishment to be welcomed. As one death row prisoner, Scott Blystone said in 1997: “From hanging to electric chair to lethal injection: how much prettier can you

make it? Yet the prettier it becomes, the uglier it is”. There is a significant danger that ‘prettier’ methods of killing would encourage more death sentences and detract from the present rule that ‘execution must only be in the rarest of rare cases’.

Center for Human Rights Education

Curtin University of Technology, in Perth, Western Australia, has established a Centre for Human Rights Education. This follows the appointment of Professor Jim Ife to the new Haruhisa Handa Chair in Human Rights Education at the university.

From February 2004 the Centre will offer **Masters Degrees in Human Rights Practice and Human Rights Education**. These will be of three semesters’ duration: two semesters of coursework, and a one-semester project. The Centre hopes to draw students from a number of different countries and cultural traditions, to create an environment where there can be genuine cross-cultural dialogue about the meaning of human rights, and the ways in which human rights principles can be understood and implemented in different contexts. The courses will be taught from a multi-disciplinary perspective, with teachers drawn from a number of different departments in the University, and will be open to graduates from any relevant discipline. The courses are not at this time available on-line or in external study mode, and the two semesters of coursework must be undertaken at the main campus in Perth. International students can do the one semester project in their own country if they wish.

Further information on the Centre’s courses can be obtained from the Centre’s web site: www.chre.curtin.edu.au. The Head of the Centre, Professor Jim Ife, can be contacted on j.ife@curtin.edu.au. For the Centre’s Newsletter, (free, by email) contact the Centre’s Administrative Officer, Terry Gardiner: t.gardiner@curtin.edu.au.

⁴ Dr. Rick Halperin, (History Department, Southern Methodist University Dallas, Texas and President of the Texas Coalition to Abolish the Death Penalty) *Lethal Injection*: <http://www.wf.net/~connally/linjection.html>

⁵ **Bert Leroy Hunter**: David Scott, Convicted Killer Who Once Asked to Die is Executed, ASSOCIATED PRESS, June 28, 2000. Letter from attorney Cheryl Rafert to Missouri Governor Mel Carnahan, June 30, 2000.

13th Commonwealth Law Conference, 2003

- Cherie Blair commends CHRI submission

Aravinda Kosaraju

Project Officer, Police Prisons & Human Rights Unit, CHRI

On the 13th of April 2003, the **Commonwealth Human Rights Initiative's submission to the Expert Group on Democracy and Development in November 2002**, was **highly commended by Ms Cherie Blair at the biennial Commonwealth Law Conference held in Melbourne.**

The main objective of the conference was to provide a platform for experts from across the Commonwealth to share their views and expertise on issues such as human rights, rule of law, criminal law, and access to justice. In her keynote address to the Commonwealth, Ms Blair held that the existence of poverty is a serious violation of human rights, human dignity, equality and rule of law, and that the CHRI submission is a very commendable study on the same. We in CHRI, apart from being honoured at the mention of our work at such a conference, also see this as a very clear indication of the recognition and appreciation of our work in both national and international spheres.

Below is a more detailed account of Ms. Blair's speech, a large part of which centered on the role of democracy in public life.

The core issue Ms. Blair addressed: "Democracy - is it crass majoritarianism? or a vehicle for development concomitant to human rights and rule of law?" Ms. Blair emphasized that electoral democracy is not necessarily enough to ensure development; that the sine qua non for poverty eradication are the values of human rights – both civil and political freedoms and the values of economic justice, social inclusion, and cultural rights.

She further affirmed democracy as less a matter of form or arithmetical procedures, but a substantive commitment to protect and proclaim human life.

Emphasizing the Commonwealth commitment to the three core values of human rights, rule of law, and democracy; and advocating the wealth of advantages flowing from realizing these commitments, Ms. Blair further said that analyzing democratic governance merely in terms of procedural elections, might serve to reduce the scope of universally recognized rights by reinforcing pressures to detach civil and political rights from economic, social and cultural rights.

This policy commitment to an expanded vision of democracy has been given practical effect in South Africa, which has entrenched justiciable socio-economic rights in its Constitution. Furthermore, South Africa's courts have proclaimed loudly that, "civil and political and socio-economic rights are inter-related and mutually supporting", and that "there can be no doubt that human dignity, freedom and equality ... are denied to those who have no food, clothing or shelter."

Electoral democracy does not, in and of itself, do away with social marginalisation of the weak, the oppressed, the different, and the unwanted. The lessons of good governance and of substantive or "inclusive" democracy are, moreover, lessons that remain as true for liberal states as they do for non-liberal states. And to achieve democracy's development potential, it is vital that common understanding of democracy be one, which treats civil and political and socio-economic rights as an indivisible package. ■

Health in Madhya Pradesh Prisons

Junie Wadhawan

Research Assistant, Police, Prisons & Human Rights Unit, CHRI

Barring a few exceptions, the conditions of detention in most parts of the world are shockingly poor. Prisons are plagued with problems of overcrowding, corruption, violations of human rights, abuse and violence amongst inmates themselves and vis-à-vis authorities, lack of medical care, structural and physical deficiencies, and shortage of staff. The prison environment in most parts of the world is not really conducive to good health, Indian prisons being stark examples. It is a fact that the majority of prisoners come from underprivileged sections of society. These vulnerable poor bring with them aspects of drugs, mental illness, malnutrition, alcoholism etc which quickly aggravate in conditions of overcrowding, exposure to heat, unsatisfactory sanitation and poor quality of food. With mental pressure, tension, depression and stress being unduly high during incarceration, diseases flourish in such environments. As if to add to their woes, prisoners are hardly ever informed about hygiene, health care or disease. Any chance of catching diseases at their early stages are minimized by the continued ignorance of prisoners and neglect and apathy of staff.

Even the relatively healthy are at a high risk in such conditions of near contact with the unhealthy to catch communicable diseases. On release, many of these prisoners take back into their society and communities, dangerous diseases that were either acquired while incarcerated or remained untreated, while behind bars. Unfortunately, in the age of SARS/AIDS, prison and public health authorities seem unconcerned about the ability of short-term prisoners and those with chronic illnesses to carry their maladies on release into the outside environment.

Proper health care is definitely a right of all people, which include prisoners and detainees. The argument that prisoners deserve a lower standard of health care does not really stand valid for in depriving a person of

his liberty it becomes the responsibility of those under whose protection he is that his right to proper and timely medical aid is not violated.

Various international instruments such as Article 12 of the International Covenant on Economic, Social and Cultural Rights, recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. Principle 9 of the U.N. Basic Principles for the Treatment of Prisoners provides that prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation. Rule 26 of the Standard Minimum Rules requires that amongst others, the Medical Officer shall regularly inspect the quantity, quality, preparation and service of food and the hygiene and cleanliness of the institution and prisoners. There are several European bodies also in charge of monitoring prisoners' rights such as the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which overlooks ill treatment and other facets of prisoners' conditions such as health.

Closer home, The Indian Prison Act of 1894 lays down certain legal provisions to ensure that health aspects of prisoners are considered. It therefore becomes mandatory under this law to have a hospital or proper place for the reception of sick prisoners at every jail. There is also supposed to be a medical officer in every jail who shall have charge of the sanitary administrations of the prison. The Act also specifies that any prisoner who is ill or wanting medical attention will be immediately shown to a doctor.

Jail Manuals devote portions exclusively to the health care of prisoners. The Madhya Pradesh Jail Manual specifically requires the Director of Health Services to not only function as an official visitor to the prison but also be a consultative officer on all subjects connected with the general hygiene, and sanitary arrangements of

jails. The medical officer is supposed to visit the jail daily and examine every prisoner on his arrival in the jail. It is also in his jurisdiction to order any addition or alteration of diet for the sick, aged and infants. He is not only expected to ensure that the food is of good quality and properly cooked but also that the barracks and other areas are clean and hygienic. It is also his duty to see that every prisoner is provided with sufficient clothing and bedding.

Reality, however, is a far distance from these rules. Amidst pain, sorrow, frustration, loneliness and some hope etched on their faces, lies a sordid tale of the prisoners' quest for justice and what is rightfully his. Though human rights instruments voice the need for the same kind of health care to prisoners as the outside community, this is far from the truth. These closed institutions do not provide the same facilities under custodial care, as is available elsewhere. With other issues being given more consideration, medical care becomes a low priority for prison officials. However the fact that prisoners generally come from the marginalized sections of society and may be suffering from bad health, which, enhanced in the unfavorable conditions in prisons makes it all the more necessary to provide better health care and treatment facilities.

If Madhya Pradesh, the size of France and generally regarded as a well-run state is any example, things are only much worse elsewhere. Medical facilities are in complete disarray in most of the 109 jails. There is a severe dearth of medical personnel, which not only includes doctors but also laboratory technicians and operators. In many jails, equipment lies completely disused, as there is no paramedical staff available to run it. There are no incentives provided to attract doctors to work in jails. In sub jails all over the State, government doctors are appointed on a part time basis with a remuneration of only Rs 175 per month (3.5 US\$) for holding additional charge of prisons. Low

remuneration acts as a disincentive with the result that many doctors refuse to work.

There is a lack of police escorts to refer ill prisoners to outside hospitals, which is evident from the fact that in 2002, only 2,968 police personnel were provided against a requirement of 12,726 escorts. This is even less than 25% of the actual requirement. This drastic shortage means that timely medical treatment is most often an exception rather than the rule. In most jails there are no vehicles available to transport prisoners to hospitals during exigencies. Unfortunately in many instances, authorities often misuse these vehicles for personal work.¹

Tuberculosis is rampant and accounts for approximately 40% of deaths in the jails in M.P. There are no TB specialists and hence diagnosis of the disease becomes a major problem.² Other major diseases afflicting the prisoners are anaemia, dysentery, abscesses, boils, skin diseases and respiratory problems. There are no lady doctors though there are about 407 women prisoners³ and there is no question of any special attention for gynecological problems.⁴

Many and even a majority of the prison population are just those awaiting trial, people who may be innocent or in for minor crimes unable to get bail. These prisoners should not be and indeed by law may not be forced into risky and life threatening situations of ill health that they would not face on the outside. High health risks coupled with the already well known risks of physical abuse and violence that are wide-spread in prison amounts to additional punishment over and above the years of restraint that the guilty are paying with and the innocent must put up with. In this world both real and unreal, where time stands still for most of those incarcerated, it then becomes the responsibility of the state to at least ensure that these men, women and children behind iron grills are not deprived of their rights to good medical care. ■

¹ CHRI workshop on Prison Reforms on October 7,2002,Bhopal.

² Ibid

³ Statistics as in October 2002, given by the M.P prison department.

⁴ Medical Facilities in Indian Prisons-a study by Arvind Tiwari, 2002.

Setting the “Agenda” for an Era of Change

- April 2003 Conference on Police Reform in Kenya

Joshua Auerbach

Former Project Officer, Police, Prisons and Human Rights Unit, CHRI

In the twenty-four years that President Daniel arap Moi ruled Kenya, police, academics, and human rights activists may have been as likely to meet one another in the now-notorious detention facility at Nyayo House, a Nairobi skyscraper, as in any other setting. Yet, on April 24-25, 2003, on the PanAfric Hotel’s hillside terrace overlooking Nyayo House, representatives of the government, the police, academia, and civil society came together to discuss the transformation of the Kenyan police from a “force,” an institution defined by its authority to use coercive tactics against citizens, to a “service,” an institution fundamentally committed to providing quality service to citizens. Kenyan representatives were joined by colleagues from Uganda, Tanzania, Nigeria, South Africa, Australia and India.



[From left - Michelle Kagari, CHRI; E.J. Myaseda, Commissioner of Police, Kenya Police Force; Pheroze Nowrojee, Advocate, High Court of Kenya]

The conference, “Police as a Service Organisation: An Agenda for Change,” was jointly sponsored by CHRI and the Kenya Human Rights Commission (KHRC), one of the most visible and effective human rights organizations on the Kenyan scene. Willy Mutunga,

Executive Director of KHRC, said in his welcoming remarks that the conference represented a potential watershed in the renewal of the relationship between the Kenyan government and civil society.

The conference was bookended by professions of commitment to institutional reform by both the Kenyan government and the Kenya Police Force itself. Hon. Chris Murungaru, Minister for Provincial Administration and National Security, stated in opening remarks that the government intends to “make democratic ideals of accountability a reality” and to move Kenyan law enforcement “from regime policing to democratic policing.”

“We would like to change the name of the Police Force to the Police Service,” Commissioner Edwin J. Nyaseda, the newly appointed head of the Kenya Police Force (KPF), told conference participants in his closing address. “The change of name depicts our willingness to change.”

Along with the government’s profession of commitment to police reform came recognition of the KPF’s past record of corruption and human rights abuse. Prof. Yash Pal Ghai, chairman of the Constitution of Kenya Review Commission, described in detail the citizen testimony received by the CKRC concerning torture, arbitrary arrest and detention, bribe solicitation, and police involvement in criminal activity. One could conclude from this testimony, Prof. Ghai said, that the police had “become a lawless force unto themselves quite apart from acting under an oppressive regime.”

Prof. Ghai’s remarks were echoed in a remarkably candid presentation by Superintendent Gideon Kibunja Mwangi of KPF, who said that citizens have complained

of police brutality, torture, assault, rape, “trigger-happiness,” illegitimate arrest, harassment, incivility, disregard for human rights, disregard of political freedoms, corruption, and extortion, among other things. Superintendent Mwangi said that citizens also complain about police inaction, about police giving excuses for doing nothing in the face of crime and victimization. With the qualification that many of these shortcomings are attributable to the scarcity of resources with which the police must contend, Superintendent Mwangi acknowledged that these citizen complaints are “often justified.”

Although the causes of KPF’s past failings are numerous and complex, two received particular attention at the conference. One, as mentioned by Superintendent Mwangi among many others, is the scarcity of resources that KPF has at its disposal. Like its institutional counterparts in Uganda and Tanzania, KPF does not have sufficient personnel. Its facilities are antiquated. It lacks modern forensic facilities and is insufficiently computerized. Low-ranking police officers are among the most poorly paid civil servants in the Kenyan government, making them particularly prone to corruption.

The second cause of poor policing that received particular attention at the conference is the lack of institutional accountability within the KPF, and the KPF’s lack of accountability to other organs of government and to the people of Kenya. Police participants acknowledged that, in the past, the Commissioner of Police had to prioritize maintaining the patronage of the President and the ruling party above all other tasks if he wished to remain in office. Police participants also acknowledged that the mechanism by which citizens make complaints about police misconduct has not been properly implemented, and that citizens have rarely gotten to learn anything about the results of complaints that they have made. A consensus emerged at the conference for the creation of a new accountability mechanism, a Police Service Commission, with supervisory authority over certain

aspects of police functioning, and with a measure of legally-guaranteed independence from both the government and the police force.

Justice Julie Sebutinde of the Uganda High Court, Commissioner Laurean Tibasana of the Tanzania Police Force, Commissioner Fred Yiga of the Uganda Police Force, Prof. Andrew Goldsmith of Flinders University in Australia, Mr. David Bruce of the Center for the Study of Violence and Reconciliation in South Africa, and Chief Simon Okeke of the Nigeria Police Service Commission, each made important contributions to the discussions about the structure and functioning of internal and external mechanisms of accountability.

Because Kenya is in the midst of rewriting its constitution, the conference closed by developing a set of recommendations to be presented to the National Constitutional Conference. The conference recommended that the new constitution make it an obligation of the state to establish a police force that provides security to the people of Kenya, that protects the fundamental rights recognized in this Constitution, and that adheres to the rule of law at all times. The conference recommended that Parliament be afforded a formal role in the appointment of the Commissioner of Police and that, once appointed, the Commissioner should be allowed security of tenure during a fixed term of office. The conference also recommended the creation of an independent Police Service Commission.

If implemented, these institutional changes would represent a mere beginning. What is needed is a wholesale revision in the management and culture of the police force. Commissioner Nyaseda described the task ahead as follows:

“What we are envisaging is a change of attitude of police officers toward their duties. The Police Service will be oriented towards meeting the needs of civilians and institutions of a democratic society for policing services of a high standard guided by the principles of integrity and respect for human rights, non-discrimination, impartiality and fairness.” ■

CHRI Seminar:

Anti Terror Legislation in the Commonwealth

Dominic Bascombe

Research Consultant, CHRI London Office

“**I**n war, whichever side may call itself the victor,” said Neville Chamberlain in a 1938 speech, “there are no winners, but all are losers”.

Perhaps today more than ever, the world has to face the reality that the ‘war on terror’ is making losers of us all.

As the global community strives to prevent terrorist acts and to fight terrorist networks, we all in turn lose out on the civil liberties and human rights that were once taken for granted.

On June 5th and 6th, the London offices of the Commonwealth Human Rights Initiative hosted a two day seminar on Anti terror Legislation in the Commonwealth to examine and address the impact of such anti terror laws on human rights. The seminar brought together representatives from the various regions of the Commonwealth, including the United Kingdom, Zimbabwe, India, Australia, Ghana, Canada, and the Caribbean. The audience and participants included parliamentarians, lawyers, human rights activists, and members of civil society. Armed with a brief of anti terror laws implemented across the Commonwealth, they were charged with the task of examining the limits and threats that these laws presented to the community.

Recurring Themes

In examining the raft of anti terror laws introduced across the Commonwealth, it quickly became apparent that there were a number of recurring themes to face.

How does one define terrorism? Should terrorism be defined by the act itself or by the intention behind attacks? If the international community is unable to arrive at a unanimous definition, how are individual states supposed to do so?

Besides problems of definition, attention needs to be paid to other practical considerations.

Should a proportion of resources be geared towards tackling the root causes of terrorism? Or should the focus be solely upon dealing with the present day difficulties? And what about international human rights standards? Should there be a balance between implementing security measures and still maintaining international human rights standards?

Or does the all- pervasive and rapidly evolving nature of terrorism provide governments with the legitimate right to use ‘all necessary means’ in this indefinable war?

While the answers to these questions remain open for discussion, some extremely valuable reminders were raised as to the role of the Commonwealth in tackling terrorism.

Discussion

Following the adoption of United Nations Security Council Resolution 1373, the **Commonwealth Secretariat** presented member countries with a model form of legislation towards implementing anti terror laws. This was further enhanced with a series of workshops designed to assist states in determining the extent to which they wanted to implement anti terror laws and the specific aspects- whether it be financing or the actual causing of harm- of terrorism that they wished to tackle.

Kim Prost, of the Commonwealth Secretariat, expounded on the difficulties involved in doing this, pointing out that even though it was impossible for member states to adopt a ‘one size to fit all’ approach, members were facing a situation where they had to implement legislation to fulfil the demands of UN Security Council resolution 1373. Implementing

legislation was therefore becoming not a choice of the individual state, but an international obligation that had to be fulfilled even as an international definition could not be reached.

A key concern was the ambiguous nature and far-reaching scope of the anti-terror legislation introduced by “advanced” democracies such as the United Kingdom (UK) and Canada.

The discriminatory nature of the Anti-Terrorism, Crime and Security Act 2001, introduced by the UK, also raises serious moral and legal questions. While the UK government would have found it difficult to justify interning UK nationals, they have had no problems in detaining foreigners.

According to **Dr Rhiannon Talbot** of the University of Newcastle upon Tyne, this discrimination is becoming increasingly evident in the international community’s attempts to tackle terrorism.

A list of UN resolutions from 1989 onwards highlighted the shift in attitudes as the international community no longer addressed the possible root causes of terrorism- racism, colonialism, human rights abuses- but instead focused on a more repressive system of anti terror enforcement.

While the specific cases of Ghana and India were taken up for a detailed discussion, the political situation in Zimbabwe provided the backdrop for the final Commonwealth case study.

Brian Kagoro, Co-ordinator of the Crisis in Zimbabwe Coalition brought to life the repressive aspects of the human rights situation in Zimbabwe.

Placing Zimbabwe within a historical context, he pointed to the devices used in the days of colonial Zimbabwe to repress dissent- the criminalization of speech and protest, the brutal use of force, and the co-option of “compliant and obedient” citizens to become spies, reporting suspicious activities to the authorities.

This use of brutality and despotism have come full circle, and are prevalent in modern day Zimbabwe with

repressive laws masquerading under the banner of anti terrorism.

Following Mr Kagoro’s contribution, participants were invited to sign a prepared statement of solidarity with members of civil society in Zimbabwe, in recognition of their struggle.

Future Action

The final discussion amongst participants focused on the need to determine the next step.

As the war on terrorism is increased, it was felt that it was also vital for the Commonwealth to increase its own activities in monitoring anti terror laws and their effects. ■

Some Good News...

Alarmed at the unprecedented rate at which concern with terrorism has been used as an excuse to claw back on civil liberties in too many jurisdictions, the United Nations Office of the High

Commissioner for Human Rights (OHCHR) has recently brought out a compilation of findings designed to assist “policy makers and other concerned parties in developing a vision of counter-terrorism strategies that are fully respectful of human rights.” States have both a right and a duty to protect individuals from harm whether from terrorism or ordinary acts of violence and to bring perpetrators to justice. Too often this duty is seen as license to gather state power against the individual citizen and make laws that do not follow internationally recognized standards of fair trial and due process or human rights law. Yet human rights law, that has become increasingly a red flag to many state actors and denigration of which has had a fillip from the cavalier treatment afforded it recently by the United States, does provide a framework within which to harmonize arrangements. Furthermore, it can reduce the risk of terrorism and provide punishments that fit the crime, that are lawful and do not overstep the boundaries. The framework is laid out in the document to be found at www.unhcr.ch, and is a welcome tool to activists struggling to maintain civil liberties standards.

Indigenous Rights in the Commonwealth Caribbean and Americas

Dr. Helena Whall

Project Officer, Commonwealth Policy Studies Unit, London

On 23rd-25th June, 2003, the Indigenous Rights in the Commonwealth Project held an expert regional meeting on 'Indigenous Rights in the Commonwealth Caribbean and Americas', in association with the Amerindian Peoples Association (APA) in Georgetown, Guyana.

The meeting brought together approximately 35 Indigenous peoples' organisations and human rights experts from Guyana, Belize, Dominica and Canada, to discuss the issue of Commonwealth responsibility to Indigenous Peoples in the Commonwealth Caribbean and Americas.

At this historic meeting, delegates emphasised the survival of the region's Indigenous peoples, notwithstanding efforts to exterminate them over a period of 500 years.

Indigenous Rights in the Commonwealth Project

Based at the Commonwealth Policy Studies Unit (CPSU), the Indigenous Rights in the Commonwealth Project is a three-year research/advocacy programme, designed to encourage the Commonwealth to include in its human rights programme a commitment to Indigenous rights.

As part of its commitment to conducting research on Indigenous rights issues in the Commonwealth, and in order to support and strengthen the pan-Commonwealth network of Indigenous peoples' organisations, the project has held four regional expert meetings. The meetings have brought together Indigenous peoples' organisations and specialists from the South Pacific, South and South East Asia, Commonwealth Africa, and the Caribbean and the Americas respectively, to discuss issues of particular concern to Indigenous peoples in the Commonwealth, such as: land rights, constitutional issues, environmental and development issues, cultural issues and socio-

economic rights. The meeting held in Georgetown, Guyana, in June 2003, was the fourth and final meeting.

A case for Commonwealth Interest in Indigenous Rights

Over the past two decades, indigenous issues have at last found their rightful place on the international agenda. However, the Commonwealth is one of the last inter-governmental agencies to acknowledge and address the problems facing its Indigenous peoples. There are approximately 150 million Indigenous peoples living in the Commonwealth, however, there is currently no Commonwealth consensus or policy as such on the rights of its Indigenous citizens. While some member countries have policies that recognise and protect their Indigenous peoples, an examination of the situation of Indigenous peoples across the Commonwealth, reveals that Indigenous peoples often suffer from policies of discrimination, exclusion and assimilation.

Given the commitment by Commonwealth states to the promotion and protection of human rights (Commonwealth Harare Declaration, 1991, Commonwealth Coolum Declaration 2002), the absence of a Commonwealth position on Indigenous rights is, by its own standards, unacceptable.

Looking ahead - Abuja CHOGM, December 2003

In order to raise awareness at CHOGM, the project, in association with CAIP, CHRI, the Movement for the Survival of the Ogoni People (MOSOP), Nigeria, and the Centre for Constitutional Governance (CCG), Nigeria, will hold a 'Dialogue on Indigenous Rights in the Commonwealth' on December 5th, as part of the Commonwealth People's Forum.

For further information on the Indigenous Rights in Commonwealth Project contact: Dr Helena Whall, CPSU, at hwhall@sas.ac.uk ■

RTI: Losing ground in the US

Joshua Auerbach

Former Project Officer, Police, Prisons and Human Rights Unit, CHRI

An influential appellate court dealt a blow to the right to information in the United States this June when it upheld the U.S. government's rejection of a Freedom of Information Act (FOIA) request for basic information pertaining to persons who were detained in the investigation of the September 11 attacks.

In a split decision in *Center for National Security Studies v. U.S. Department of Justice*, a three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit deemed reasonable "the government's expectation that disclosure of the detainees' names would enable al Qaeda or other terrorist groups to map the course of the investigation and thus develop means to impede it." The D.C. Circuit reversed the decision of the trial court, which had ordered the release of the names of the detainees and their attorneys, and ordered dismissal of the case, which had been brought by a group of American NGO's.

Since its enactment in 1966 and amendment in 1974, FOIA has served as an international model of right to information legislation. As the U.S. Supreme Court recognized in a 1978 opinion, FOIA embodies the notion that an informed citizenry is "vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to the governed." The D.C. Circuit's decision in *Center for National Security Studies* demonstrates the extent to which the compulsions of the fight against terrorism are eroding even the most venerable and carefully articulated legislative protections of the right to information.

"America faces an enemy just as real as its former Cold War foes," Judge David Sentelle, an appointee of President Ronald Reagan, wrote for the court. "The judiciary is in an extremely poor position to second-guess the executive's judgment in this area of national

security." Judge Karen LeCraft Henderson, an appointee of George Bush, Sr., joined Judge Sentelle's opinion.

The court's opinion elicited a sharp dissent. "The court's uncritical deference to the government's vague, poorly explained arguments for withholding broad categories of information about the detainees . . . eviscerates both FOIA itself and the principles of openness in government that FOIA embodies," Judge David Tatel wrote. FOIA does not "authorize the court to invoke the phrase 'national security' to relieve the government of its burden of justifying its refusal to release information" under the statute. Judge Tatel was appointed to the court by Bill Clinton.

In the dissent's view, the majority had not merely deferred to the government's judgment about the national security implications of disclosing the names of the detainees: it had altogether acquiesced. Moreover, the dissent wrote, the majority overlooked "another compelling interest at stake in this case: the public's interest in knowing whether the government, in responding to the attacks, is in violation of the constitutional rights of the hundreds of persons whom it has detained in connection with its terrorism investigation – by, as the plaintiffs allege, detaining them mainly because of their religion or ethnicity, holding them in custody for extended periods without charge, or preventing them from seeking or communicating with legal counsel."

The dissent observed that "this case is not just about September 11." The principles of law enunciated in *Center for National Security Studies*, and in similar decisions being issued worldwide, will apply "whenever the government's need for confidentiality in a law enforcement investigation runs up against the public's right to know "what its government is up to." ■

Right to Information Implementation Audit

- Testing the extent of real access to information in Bangalore

Swasti Rana

Research Assistant, Right to Information Programme, CHRI

“To provide right of access to information to the citizens of the state which will promote openness, transparency, accountability in administration and ensure effective participation of the people in the administration.”

- Karnataka Right to Information Act (KRIA)

The Right to Information has gained considerable importance in recent years in India, with initiatives being taken by a number of states to enact specific legislations to provide for access to information. These legislations are seen as vital tools to ensure effective participation in governance and to counter corruption by increasing transparency in government functioning. Karnataka, one of the six states¹ in India to have enacted its own right to information legislation has taken a monumental step towards empowering citizens with the right to access information from the government. While the law was enacted in 2000, it was only in July 2002 that the rules were notified and the Act came into effect. On paper, the Karnataka Right to Information Act is seen as one of the better laws in the country. However, its real value and effectiveness will be only tested through analysing the practical implementation of the law.

In order to test effective implementation of the Act, Commonwealth Human Rights Initiative (CHRI) in New Delhi and Public Affairs Center (PAC) in Bangalore, embarked on a joint effort to conduct an “Implementation Audit” of the Act in November 2002. The intention was to see if various government departments were implementing the law and also to identify barriers to effective implementation. In the first phase, CHRI and PAC brought together a cross-section of volunteers from across Bangalore to participate in the implementation audit. The Audit sought to answer the simple question of whether the Right to Information was working in Bangalore or not. It was hoped that the findings of the Audit would stimulate the various public

authorities to put in place systems to implement the Act more effectively.

The methodology followed was fairly simple - volunteers were oriented on the working of the Act and the various procedures involved in seeking information. Once trained, the volunteers identified their information needs and filed applications to various agencies in terms of the Act. Over a five-month period, 100 applications were filed to 20 public authorities. To ensure full documentation of experience each volunteer was given a Field Assessment Observation Schedule (one for every application submitted), which would serve as a record sheet of observation for each agency visited. The experiences of the volunteers were varied - very often their applications were not accepted and even if accepted they often did not receive a response. In many cases where information was finally provided, the volunteers found this information incomplete. In all cases, the volunteers had to constantly follow up and visit the public authorities before receiving a response to their applications. From the twenty public authorities approached, eleven did not even respond to the applications and to add to government apathy, most of the public authorities approached at that time had not even appointed their competent authorities. Except for one public authority, the suo moto disclosure provisions which puts an obligation on all public authorities to display relevant information on notice boards outside their offices was not being fulfilled.

The audit clearly revealed a lack of general awareness of the law among the government officials as also a

¹ Tamil Nadu, Rajasthan, Goa, Karnataka, Maharashtra and Delhi

lack of clarity on how to go about implementing the law.

These findings were communicated in an open public meeting held at the City Mayo Hall (Bangalore) on 16th May 2003, attended by key officials of various government agencies, media persons and a cross-section of civil society. The meeting provided an opportunity for the public to interact with the concerned officials and raise questions on the lack of implementation of the Act. Once the findings of the implementation audit were presented, PAC and CHRI put forth some recommendations to ensure the effective implementation of the Act. Particular emphasis was placed on the work of the Department of Personnel and Administrative Reforms, the nodal agency for implementation. It was suggested that they should conduct training sessions for all officers, especially for Competent and Appellate authorities. Also on the front burner was the need for strict adherence to prescribed time limits for disclosure and the necessity for the imposition of penalties for lack of response to appeals against delays and the refusal to provide information.

Responding to feedback generated by the implementation audit, the Municipal Commissioner affirmed that he will shortly put up all BMP Councils' Resolutions on the agency's website and that while there is nothing to hide there is a, "mindset not to divulge information and this needs to be overcome". He further said, "having gone through the quality of responses, as a citizen I would have sought more information."

The implementation audit served its purpose in that: (a) one of the key agencies, the municipal corporation conducted training programmes for their offices and also set up information centres across the city in order to effectively implement the Act; (b) it helped generate valuable feedback and showed the lack of implementation of the law, where previously the government has no record on the status of implementation of the Act; and (c) the process created awareness not just among citizens who participated in the implementation audit but also among government officials, because in many cases the volunteers attached copies of the law in order to inform ignorant government officials of their duties.

An implementation audit of this nature is easily replicable in any jurisdiction and can be a useful methodology through which citizens can monitor the implementation of their access to information laws. ■

The Commonwealth Human Rights Initiative is welcoming Volunteers from Across the Commonwealth

CHRI is looking for volunteers, (long or short term) interns, research assistants, and project officers from across the Commonwealth to work on a long term basis with a small, very committed and busy office. Human rights education and advocacy are core elements of CHRI's approach to engendering a culture of human rights in the Commonwealth. CHRI promotes two interrelated areas of human rights work: access to justice and access to information.

The work entails writing for various audiences, researching – especially comparative research and analysis, working in the field to train and motivate groups and organizations, and advocating issues to governments, media and other audiences.

CHRI invites applications from India and internationally, especially from across the Commonwealth. We seek applications from candidates who have a strong commitment to human rights and social justice; demonstrable writing skills; are fully proficient in the English language (both oral and written); computer literate; have experience in or ability to do comparative research and analysis; are able to do work on their own with minimum supervision; enjoy multiple-tasking and a fast pace of work.

Qualifications in Law/Criminology/Social Sciences/ International Relations/Public Policy/ development or NGO-sector or equivalent related experience required.

Candidates who are interested in working with CHRI at its Headquarter in New Delhi, India should send their curriculum vitae and writing sample to: chriall@nda.vsnl.net.in

CHRI Calendar

CHRI New Delhi Office

April 24 - 25, 2003

Round Table Conference on Police Reforms in Kenya.

June 2, 2003

Workshop on RTI for Journalists, in Bangalore, Karnataka.

July 1, 2003

Meeting on 'Chhattisgarh Citizens Initiative' in Bilaspur, Chhattisgarh.

May 3, 2003

Workshop on RTI in collaboration with PAC in Bangalore, Karnataka.

June 8, 2003

Workshop on Delhi RTI Act at Gandhi Peace Foundation, New Delhi.

July 5, 2003

Meeting on 'Electoral Reforms' in Jagdalpur, Chhattisgarh.

May 16, 2003

Open Public Meeting to discuss the Implementation Audit in Bangalore, Karnataka.

June 25, 2003

Meeting on 'Delhi Election Watch' at India International Centre, New Delhi.

July 8, 2003

Discussion on "Police Reform Initiatives in India" at the South Asia Partnership, Canada.

May 18, 2003

Workshop on RTI Laws and Strategies in Mysore, Karnataka.

June 26 - 27, 2003

Round Table on Police Reforms in Trivandrum, Kerala.

July 8, 19 & 20, 2003

Workshop on Delhi RTI Act at Gandhi Peace Foundation, New Delhi.

CHRI London Office

June 5 - 6, 2003

Seminar on Anti Terror Legislation in the Commonwealth.

CHRI Ghana Office

June - August 2003

Launched an 8 month project on Violence against Women and Children in Ghana.

Organised Radio Discussions to increase public awareness about the Commonwealth.

The Commonwealth Human Rights Initiative (CHRI) is an independent international NGO mandated to ensure the practical realisation of human rights in the Commonwealth. It was launched in 1987 and is currently constituted by the Commonwealth Journalists Association, Commonwealth Trade Union Council, Commonwealth Lawyers Association, Commonwealth Legal Education Association, Commonwealth Medical Association, Commonwealth Parliamentary Association, Commonwealth Press Union and the Commonwealth Broadcasting Association. The funding 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.

Editors : Maja Daruwala & Deepti Kapoor; **Design :** Chenthilkumar Paramasivam, CHRI
Acknowledgement : Many thanks to Clare Doube and all contributors.

Executive Committee: Leila Seth - Chairperson; B.G. Verghese - Treasurer

Members : T. Ananthachari, Vasudha Dhagamwar, N.R. Madhava Menon, Ashis Nandy, P.H. Parekh, P.P. Rao,
Jagdish C. Sobti, R.V. Pillai



Published by CHRI, N-8 IInd Floor, Green Park (Main), New Delhi - 110 016, INDIA
Tel.: 91-11-2685 0523, 2686 4678 Fax: 91-11-2686 4688 Email: chriall@nda.vsnl.net.in

Visit our website at www.humanrightsinitiative.org
for information on activities, publications, CHRI News, links and more.
Printed by Ajanta Publishing Technology Centre