



CHRI

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NEWSLETTER



Will Ghana's Oil and Gas Sector step out of the trap?

Find out how the Access to Information Legislation is crucial to the security of Ghana's oil and gas sector

Drilling rig, Port of Takoradi, Ghana
Photograph by Christiane Badgley

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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 with 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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Access to Information Legislation is Fundamental to Ghana's Oil and Gas Sector

Adwoa Adu Ampofo, Commonwealth Human Rights Initiative, Africa Office



Oil City of Takoradi, Ghana.
Photograph by Christiane Badgley

In 2009, the Integrated Social Development Centre (ISODEC) and OXFAM America commended the Ghanaian President, John Evans Atta Mills, for his efforts towards an open and transparent government. They said his recognition of the need for the right institutions and transparent policies, could help Ghana avoid the corruption, underdevelopment, social conflict and environmental damage brought on by too many oil booms.¹ However,

in spite of these genuine efforts there is still a lot to be done to create a transparent and accountable oil economy in Ghana.

This year, the International Revenue Watch Index ranked Ghana as having a scant revenue transparency and being only 32.3 per cent transparent. The index is based on an assessment and comparison of information published by government agencies on Internet

websites about revenues, contract terms, and other key data. The test is about the amount of data governments make publicly available through channels easily accessible to citizens. On this test, countries such as Iraq, Nigeria and Sudan scored higher than Ghana with 63.8, 46.5 and 37.4 per cent respectively.² For most oil-rich West African countries, the development of a transparent operating environment is slow because of the political and

financial constraints that need to be overcome by all the various bodies and agencies involved. In order to ensure that there is sustainable development in an oil-producing country where all citizens benefit from well-managed revenues, it is imperative that a national transparency agenda is adopted.³

Recently, however, steps have been initiated to remove transparency clauses in Ghana's national petroleum laws, making across-the-board alternative transparency legislation more urgent. On 11 November, Parliament commenced debates that may lead to the removal of provisions on transparency from the Petroleum Revenue Management Bill. This would remove the two clauses which actualise transparency in the Bill and promote public trust within the revenue management system. These two clauses demonstrate a commitment to a transparent and accountable petroleum sector and are in line with international best practice. As the Petroleum Export and Production Bill has no similar provisions, all national petroleum legislation will lack openness and public oversight of their workings.

The Right to Information Bill will bridge this gap as the provisions not provided for under the Petroleum Bills would still be accessible under the Right to Information Bill. Investment in oil and gas sectors is known to be a risky and hostile environment and one of the ways to maintain

its attractiveness is by focusing on issues of governance, transparency, community consultation or public participation and the redistribution of revenues.⁴ In order to improve government levels of transparency and accountability, it is crucial that the Right to Information Bill is passed alongside the Petroleum Management Bills. The founding principle of the Right to Information Bill is maximum disclosure, which requires that government makes non-exempt information on governance available to the public without the need of an application, so as to equip the public with the information that they require to make a meaningful contribution to national development. Further, it is broadly recognised that transparency and free flow of information reduce corruption and play a vital role in empowering people to demand their rights and public services. The advantage of the Right to Information Bill is that it is not just exclusive to the petroleum and natural resource sectors but that it spans all sectors.

However, the Bill as it currently sits before Parliament is in need of review. It creates a number of lacunae which must be addressed before it is passed. One of the major lacunae in the law is the exempted information from disclosure—blanket exemptions are provided under Sections 5 and 6 for information from the Office of the President, Vice President and Cabinet which are too broad. Exempt information should only be in accordance with Section

135 of the 1992 Constitution, would prejudice state security if it is disclosed and that information should be subject to a sufficient public interest harms test.

Further, Section 13 exempts internal working documents of public agencies, which is not in line with international best practice. Usually such documents are essential for the people to be informed on the internal operations of public agencies and to monitor the conduct of public businesses. Making such a blanket exemption, which keeps internal documents secret, is against the principle of right to information. Also, under Section 8, disclosure of information affecting international relations is subject to approval by the President. This is not in line with international best practice because it subjects people's rights to access official information to executive fiats. This is against the rationale of the Bill and various international transparency measures to check executive action in the interest of the public. Such international transparency measures include the Extractive Industries Transparency Initiative (EITI), a coalition of governments, companies and civil society, who regularly publish all material oil and gas payments by governments from companies in a manner that is accessible to citizens. Ghana is a party to EITI and showed promise towards transparency when the Ministry of Finance published its first EITI report in 2006 and opened the Petroleum Revenue Management Bill for discussion before its finalisation in April 2010.⁵

In addition, the USA passed the Energy Sector Through Transparency (ESTT) law last year to support developing economies, like Ghana, with extractive industries. ESTT

sanctions. Ghana is party to this Agreement and thus bound by its provisions.

Further, the Right to Information

Endnotes

1 Public Agenda, "Ghana: ISODEC, Oxfam Commend Country's Steps Towards Oil Transparency", AllAfrica.com, 23 March 2009.

The Right to Information Bill will create the kind of democratic accountability that could help prevent Ghana from falling into the trap that many of its less fortunate oil producing predecessors have fallen into.

requires extractive companies listed on the US Stock Exchange, which comprises about 90 per cent of all internationally operating oil companies and many of the top mining companies, to disclose their Security Exchange Commission filings. These include payments made to governments on a country-by-country and project-by-project basis.⁶ ESTT is expected to add stability to the markets through greater information and predictability as well as to help protect investors from undue risks associated with corrupt or unstable governments. It is hoped that this law would be a tool that helps developing countries hold their leaders accountable for the money made in the oil and gas industries. Further, under the General Agreement on Tariffs and Trade (GATT) 1994, Article X lays down good governance principles for its Members. As such, the expectation of the fundamental values of good governance and accountability in international trade are becoming more established.⁷ GATT is a multilateral trade agreement monitored by WTO. It is binding upon its members, subject to trade

Bill does not extend to private bodies, requiring them to make their transactions transparent. This is a problem because today the private sector performs many functions that were previously the domain of the public sector. These loopholes in the law make it difficult for effective public participation, particularly in the oil and gas sector where the public has a right to know and have a say in how the revenues are used.

In conclusion, Ghana's discovery of oil could prove to be a gift or a burden depending on how the revenues are handled. Ghana must enact laws that will deal with possible corruption and mismanagement of the revenues before and during the production of oil. The Right to Information Bill will create the kind of democratic accountability that could help prevent Ghana from falling into the trap that many of its less fortunate oil producing predecessors have fallen into. As others have often said, insufficient transparency in the oil and gas industry could result in "oil nationalism", a phenomenon similar to that in the Niger Delta.⁸

2 Revenue Watch, "Revenue Watch Country Index Rankings", www.revenuwatch.org, 2010, accessed 14 November 2010.

3 Leon Moller, "Governance of Oil and Gas Operations in Hostile But Attractive Regions: West Africa," *International Energy Law Review*, 2010, pg 120.

4 Leon Moller, "Governance of Oil and Gas Operations in Hostile But Attractive Regions: West Africa", *International Energy Law Review*, 2010, pg 113.

5 Publish what you Pay Ghana, "Civil Society Organizations Welcome Government Disclosure of Petroleum Revenue Management Bill", 7 April 2010, www.publishwhatyoupay.org, accessed 8 November 2010.

6 Steve Manteaw, "U.S Passes Law to End Secrecy in Oil, Gas and Mining Industry", *Public Agenda*, pg 1 & 8.

7 Ala'I Padideh, "From the Periphery to the Center? The Evolving WTO Jurisprudence on Transparency and Good Governance", *Journal International Economic Law*, 2008, pg 801.

8 Frederick Asiamah, "CSOs Bare Teeth at Parliament as Transparency Provisions in Petroleum Bill face Removal" *Public Agenda*, 8 November 2010, pg 1 & 4.

Price of Justice: Freedom from Jail after Seven Years of Judicial Delay and Official Apathy

Pujya Pascal, Programme Officer, CHRI



Roy Varghese a.k.a. Baba Khan on the night of his release from prison on 25 January 2011 with Pujya Pascal (CHRI).

For seven years Roy Varghese alias Baba Khan lived in Ward No. 10 of the Jaipur Central Jail in Rajasthan, India waiting for his trial to commence. Neglected, forgotten and stripped of all hope of getting any justice, he was resigned to a life of insanity and blindness till January 2011...

I met Baba Khan in 2009 and heard him complain to his sister about his deteriorating eyesight and diminishing supply of jam and pickles, in between fictitious tales of victory and escape from battlefields. By now Baba Khan had already undergone eighteen years of imprisonment, the last seven having been spent waiting for his trial to begin.

On 22 September 1992, Baba Khan was first sent to jail on being convicted of drug trafficking under the stringent

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS). The Act sets out statutory framework for drug law enforcement in India and entails a non-bailable, rigorous imprisonment of a minimum of ten years with fine for most offences, where there is no suspension, remission or commutation of sentence. He was sentenced to ten years of rigorous imprisonment by the District and Sessions Judge, Udaipur (Rajasthan). After eight years of incarceration, Baba began showing signs of mental instability and had to undergo psychiatric treatment. He was admitted at the District Psychiatric Hospital in Jaipur in 2001 where he was diagnosed with paranoid schizophrenia and kept in the general ward with other mentally ill patients. But by the time Baba Khan completed his ten-year sentence, his condition had

worsened and hence he could not be discharged from the hospital.

Two years later, while continuing at the hospital, Baba Khan allegedly set two mentally ill patients on fire causing their death. The bodies of Kalu and Souvik, 35 and 38 years respectively, were found in the hospital store room, charred and tied together with pieces of cloth. The hospital staff squarely blamed Baba Khan for the casualties. He was arrested on the basis of a First Information Report (FIR) and was accused of murder and culpable homicide under Sections 302 and 301 of the Indian Penal Code, 1860. The theory that Baba Khan, being of unsound mind, carefully carried out the killings of two other mentally ill patients within the hospital premises without anyone noticing or hearing anything, appears flimsy. Not to mention that the witnesses named in the FIR were all mental patients and it seems, on the night of the incident, there evidently was absence of supervision over the movement and security of inmates. Nonetheless, Baba Khan was taken into police custody and was produced in the court the next day as per law. After his appearance before the magistrate on 3 July 2003, he was removed from the mental asylum and sent to prison for fifteen days.

His case files reveal that the subsequent dates of hearing were

all ineffective because Baba Khan did not have a lawyer and there was always the ready excuse that it was too difficult to escort him to court, given his mental condition. Besides, his chargesheet was not filed within the stipulated time-frame. In fact, there were only two court productions during the seven years that he waited for his trial to begin. Gradually, with the passage of time, amidst all the shuffling of court papers and the corridors of Jaipur Central Jail, Baba Khan was reduced to a helpless and hopeless man. Born on 9 July 1957 in a humble family

“Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.” However, it seems no one took a closer look at Baba Khan’s files before sending him back to jail in 2003.

Despite provisions in the law that protect the rights of persons suffering from mental illness, Baba Khan’s proceedings were repeatedly delayed. Perhaps this would have

CHRI managed to seek a conditional release for the man on 25 January 2011. Baba Khan stepped out of jail free after spending over eighteen years behind the iron bars of the jail and mental asylum. He is now at a charitable hospital in Kerala receiving the much needed treatment and medicines for his various illnesses, including chronic backache and a rapidly failing eyesight.

Was justice delivered? One may wonder. Baba Khan’s release is conditional and has come after undue delay. Yet freedom from jail

According to the 2001 statistics by the National Crime Records Bureau there are 1634 pre-trial prisoners and 1756 convicts in India who are mentally ill.

of Thiruvalla, Kerala, Roy Varghese was, as his youngest sister Vinita (name changed) recalls, “hyper-intelligent”. Sadly, the family failed to gather any information about his whereabouts from the time he ran away from home when he was thirteen. They thought he was dead when all their efforts to find him turned futile. It was only when Vinita fell upon a hurriedly written postcard addressed to their father in 2005 by Roy from Jaipur Central Jail that she discovered her brother was alive.

Meanwhile, the jail authorities brought to the court’s notice that the accused was of unsound mind and therefore had not been produced in court in the past. Baba Khan was unable to defend himself which validates the fact that he fell within the purview of Section 84 of the Indian Penal Code which says:

gone on without end had his sister Vinita not shown up at the jail in 2005 along with two missionaries from Rajasthan Prison Ministry and a retired senior prison official, who ultimately helped identify Baba Khan as Roy Varghese. CHRI’s timely intervention in 2009 directed the media and the High Court’s attention to the deplorable and deteriorating condition of Baba Khan’s mental and physical health and began pushing for speedy justice.

Together with supporters and well-wishers from human rights organisations, Vinita hired a lawyer to restart the proceedings. After six years of battling with the court system and challenging every provision in the law that negates the rights of mentally ill prisoners, Baba Khan’s lawyer, Vinita, and her team of human rights advocates from

is a reward in itself. In this instance, CHRI’s experience in prison reforms came in handy to catalyse the efforts of all those who wanted relief for Baba Khan and to pull him out of jail where he should not have been for so long.

The Indian criminal justice system is rife with bottlenecks and inefficiencies. It is all too easy for someone like Baba Khan, without fiscal, political or family support, to fall through the cracks. But as Winston Churchill once said, “All great things are simple and many can be expressed in a single word: freedom, justice, honour, duty, mercy, hope.” I believe there is hope for the thousand six hundred or so mentally ill prisoners in jails across India, as long as those in power and authority honour their duty, and work to promote liberty and justice for all.

UPR: Human Rights Lobbying in Geneva – Lessons Learnt?

Dr Carolyn Gomes, Executive Director, Jamaicans for Justice



Jamaica’s human rights record was reviewed several times at the United Nations in 2010. In November 2010, it was Jamaica’s first time at the Universal Periodic Review (UPR) forum of the Human Rights Council. Also in 2010, Jamaica submitted its third periodic report on its implementation of the International Covenant on Civil and Political Rights (ICCPR) and the state’s overdue reports on its implementation of the Covenant on the Rights of the Child should be submitted in the course of the next twelve months.

With the knowledge that the UPR process welcomes input from civil society, Jamaicans For Justice (JFJ) began work to engage other stakeholders and prepare a report in February 2010. With input from seven other non-governmental organisations a report was submitted to the Human Rights Council in April 2010.

The review process includes the fielding of questions and recommendations to the Jamaican government by members of the Human Rights Council and observer countries. Recommendations are put forward by the other participating states and are intended to improve the human rights in the state under review. The November review was the first time Jamaica was assessed under the UPR process.

As well as providing a stakeholder’s report, JFJ seized the opportunity of

Jamaica’s appearance at the UPR to try its hand at lobbying in Geneva with various missions to the United Nations. It was an unexpected but fruitful addition to the strings in the advocacy “bow” of the organisation. The value of face-to-face lobbying of representatives and members of the Human Rights Commission as to the actual human rights situation in Jamaica and to press for appropriate and pertinent questions and recommendations to be presented at the UPR was evident. So, in October 2010, a delegation from JFJ travelled to Geneva.

THE PROCESS

For our intervention and lobbying to be efficient and worthwhile, it was critical that they be made to the most appropriate and interested actors on the UPR scene. To do this, we used the UPR.info database and were able to identify which countries had been most active, in terms of questions and recommendations, in the areas of human rights which most acutely preoccupy Jamaican civil society. We sent information to those countries identified as most likely to be interested and requested meetings. We also made contact with the relevant embassies and consulates in Jamaica in an attempt to ensure our credibility with their missions in Geneva. We further set up meetings with various NGOs in Geneva whose work could assist us

in understanding the process and engaging most usefully.

During the trip, JFJ was able to meet the targeted foreign missions and other missions as well as the Human Rights Officer responsible for the Latin America and the Caribbean Unit at the Office of the High Commissioner for Human Rights. We also met the officers responsible for preparing questions and recommendations and interacting with Jamaica at the UPR.

The documents prepared for these meetings included a synthesis document, summarising in chart-form, all the existing human rights information on Jamaica, comparing:

The Jamaican government's official report

Comments by Jamaicans for Justice

Recommendations already made by UN Special Procedures and Treaty Bodies

Suggested Questions and Suggested Recommendations.

All those we met commented on how helpful they found this layout of the information.

LESSONS LEARNT

The human rights situation in Jamaica is not well known internationally. Presently, Jamaica is a “non-subject, a non-issue” at the international human rights level in Geneva. Indeed, almost all those we met or shared information with stressed the fact that what we revealed in terms of the scope

and complexity of human rights violations in Jamaica was previously unknown to them.

Face-to-face interaction is critical. This personal contact permitted us to fully emphasise the seriousness of the human rights violations in Jamaica and to describe the lack of effective governmental action in ways that were much more effective than written submissions alone. This interaction also allowed us to stress the importance of the role of the international community in providing pressure for change.

Wider lobbying and better timing. We learnt that many missions were prepared to receive information on Jamaica and are graciously willing to interact with civil society. In the future, we would look to expand the number and variety of missions, delegations and NGOs to meet. In addition, we would try to ensure (with the help of NGOs based in Geneva if necessary) that we are lobbying at the right time. The right time would be slightly earlier, when the missions are not so busy and the reports they are preparing are not so far advanced

Networking with NGOs. International NGOs in Geneva were, for the most part, very willing to share their knowledge and contacts in order to maximise the impact of such visits. With the connections forged in this instance, we will be better prepared for the future.

Pre-contact with embassies in the home country was important. Most of the missions that we met

in Geneva underlined how heavily they rely on their embassies or delegations abroad to obtain the preliminary information to draw up questions and recommendations for the UPR.

This type of mission is critical to strengthen the organisation's understanding of the UN and the UPR process as well as building its capacity to interact effectively at the international level.

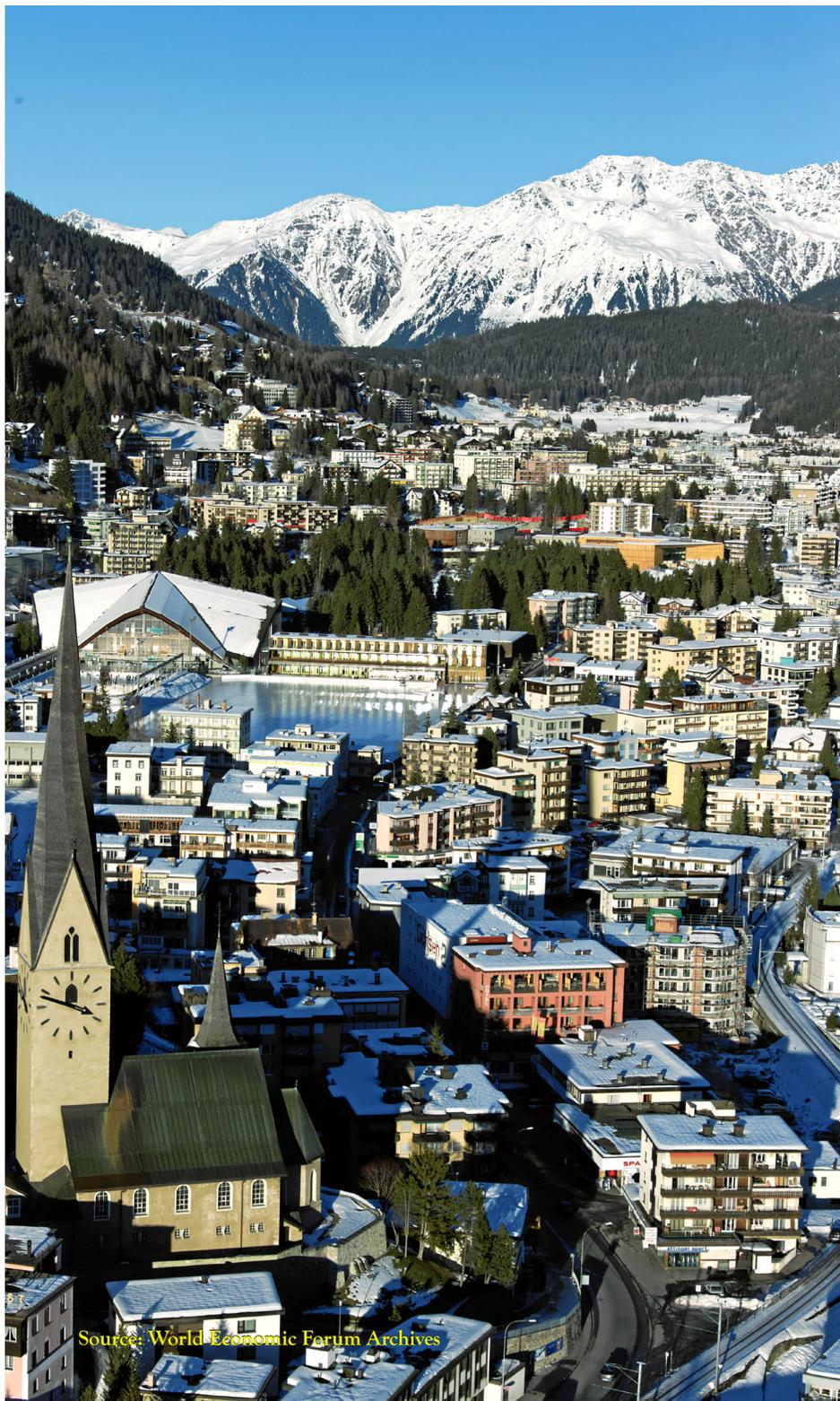
PRELIMINARY OUTCOMES

The UPR webcast of Jamaica's review was on the 8 November. At that hearing, 43 countries spoke on Jamaica and made a total of 119 recommendations. Study of the recommendations made by various states confirms that our lobbying in Geneva was very effective. Thirty-six of the recommendations made to Jamaica were around the issues we submitted to the foreign mission members we met in Geneva. Several of them were, in their text and scope, direct recommendations we had made to these delegates.

What happens to these recommendations, what follow-up, what publicity and what accountability will depend heavily on the pressure brought to bear by civil society and its vigilance in insisting that governments actually implement the recommendations. To that end, it is clear that lobbying the international community smartly and vigorously, both at home and at the United Nations, can be very useful.

Davos 2011: The View from the Magic Mountain

Ingrid Srinath, Secretary General of CIVICUS: World Alliance for Citizen Participation



Source: World Economic Forum Archives

For civil society organisations, participation in the annual meeting of the World Economic Forum (WEF) in Davos, Switzerland inevitably provokes two questions. Is the trip up the Magic Mountain worthwhile? And, what is the view from up there?

As one would expect with a gathering that includes over 2,500 participants from a wide range of sectors and industries in over 100 countries, experiences can vary a great deal. From a civil society point of view, the event presents three key opportunities. First, greater access to policymakers in government and business than any other forum. Second, a snapshot of emergent thinking among these groups. Combined, these permit some space to influence the direction of those ideas.

It is hardly surprising, therefore, that each year sees increasing levels of civil society representation as well as greater visibility in mainstream sessions. Partially, I'm sure, this reflects a push towards political correctness by WEF, especially at a time when levels of trust in business are at historic lows. In part, no doubt, it is a consequence of years of civil society advocacy with WEF. Equally though, it represents growing interest among business leaders in themes that have become less peripheral as the private sector confronts the new

realities - climate change, disease, education, health, corporate social responsibility and governance have all become standard agenda items over the years.

This year's WEF Risk Report identified two overarching

Doctor Doom, who first used the term G-0 at Davos this year to describe the vacuum in global governance. With the USA and Europe pre-occupied and hamstrung by local compulsions and constraints, emerging economies unwilling or unable to

This world-view is strengthened by the fiscal and political constraints most governments are currently confronting and is reinforced by persistent myths about the market being the sole source of innovation and growth. Citizens will, in effect, be expected to either adapt and

In the tradition of corporate slogans, there are always many attempts at Davos to affix a pithy label to each year. The Year of Uncertainty seemed to be the consensus description of 2010.

threats - growing disparities and global governance. These are perceived to amplify all the other risks - those posed by climate change, fiscal pressures, food and energy price volatility, geopolitical conflict, natural disasters, disease and terrorism, for instance - and to prevent their successful amelioration.

In the face of fervent efforts by many corporate chieftains and government representatives to talk up the "recovery" and prospects for the year ahead, it fell largely to economists, academics, labour and NGO leaders to point out the glaring gaps - the composition of the so-called recovery, the failure to remedy the causes of the economic implosion and the unsustainability of recovering to the pre-2008 economic model. Events occurring as far afield as Queensland, Moscow, Tunisia and Egypt helped to reinforce these messages.

It was Nouriel Roubini, the economist often described as

accept significant global leadership responsibilities, growing global imbalances and tensions and international institutions that lack legitimacy, effectiveness or both, it seems improbable that any of the complex and intertwined crises confronting humanity will find resolution any time soon.

Of particular interest are the emerging ideas around new social contracts. I thought Prime Minister Abhisit Vejjajiva of Thailand provided the most succinct description of twenty-first century societies as envisaged by "Davos Man". In this conception, government's primary role is to promote market-friendly policies and facilitate flexibility, mobility and adaptability for its citizens to cope with the changing economic landscape while incentivising business models that integrate social and environmental goals. Perhaps compassionate, climate-friendly market fundamentalism might be an appropriate summary!

thrive or settle for some minimalist levels of social protection designed to prevent large-scale social or political unrest. Even more disheartening were the ringing endorsements of authoritarian regimes by prominent business leaders accompanied by pleas from unrepentant bankers to forgive, forget and return to business as usual.

The shallowness of the optimism on display was matched, in my view, by lack of both courage and vision. In the tradition of corporate slogans, there are always many attempts at Davos to affix a pithy label to each year. The Year of Uncertainty seemed to be the consensus description of 2010. Most participants seemed to let hope prevail over realism in their projection of 2011 as The Year of Recovery. Putting the pieces together - growing disparity, dysfunctional global governance and simulated optimism as a substitute for coherent action - it appeared to me that 2011 would more likely be a Year of Reckoning.

The Commonwealth as a Human Rights Organisation? – Easier Said than Done

Zach Abugov, Programme Officer, Strategic Initiatives Programme, CHRI



Photograph by Jeinny Solis S.

“The modern Commonwealth is, without a doubt, a human rights organisation.” Nearly four years ago, former Commonwealth Secretary-General Don McKinnon made this statement before the United Nations Human Rights Council – the body which has the foremost responsibility for the promotion and protection of human rights at the UN. Whether or not the former Secretary-General meant his words, their emptiness is apparent from the conduct of the Commonwealth’s member countries at the Council, since they were spoken.

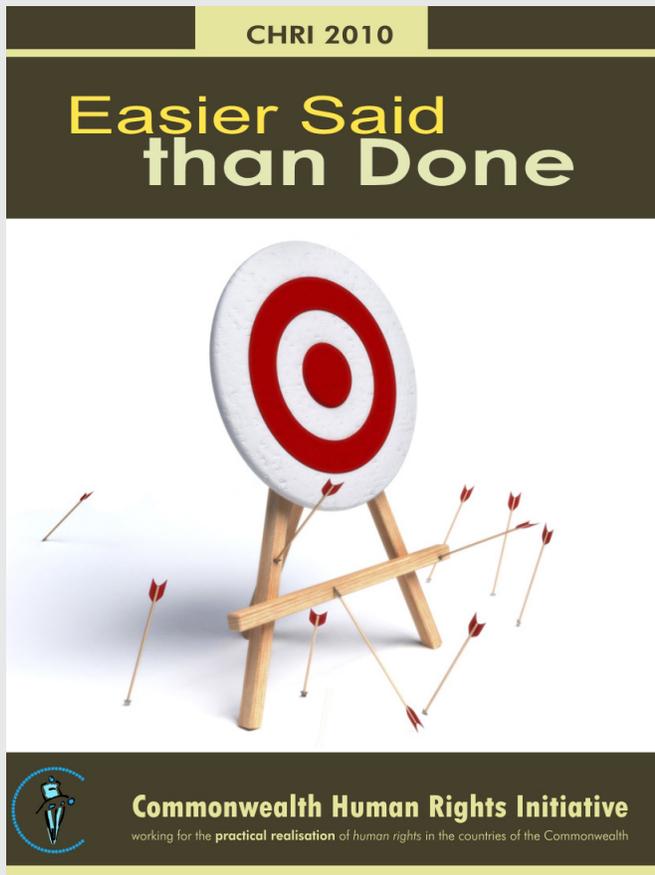
CHRI has closely monitored the conduct of the Commonwealth countries at the UN Human Rights Council since its inception in 2006. From this monitoring, CHRI periodically releases *Easier Said than Done*, a series of reports which measures the compliance of Commonwealth countries at the Council with the human-rights related pledge that each makes before its election. Most countries pledges include commitments to strengthen the Council and to promote the highest standards of human rights at home. This month, CHRI released the third report in

the *Easier Said than Done* series – the findings of which show that, for the twelve Commonwealth countries that sat on the Council from 2008-2010, these commitments have yet to be borne out.

Three specific findings are detailed in the current edition of the report. Firstly, no Commonwealth country entirely lived up to the high standard of domestic human rights promotion and protection to which it committed itself before its election to the Council. Many Commonwealth countries harboured human rights situations of serious concern which did not improve during the reporting period, despite pledges committing to human rights-related reforms. Secondly, Commonwealth countries were at the forefront of efforts to dilute the functioning of the Council and its affiliated mechanisms. Through negative voting on country-specific and thematic resolutions, and vocal positions to limit the scope and activities of Council mechanisms, such as Special Procedures, many Commonwealth countries showed that political expedience outweighed human rights considerations in their conduct at the Council. Thirdly,

Commonwealth countries at the Council almost never voted together. Of 41 votes that took place during the reporting period, Commonwealth countries voted together only once. The lack of consensus was stark, especially given a statement by the Commonwealth Heads of Government in their 2007 communiqué that the Commonwealth Secretariat should promote dialogue at the Council.

continued on page 23...



“Our members account for one-fifth of the seats in this Council today ... and all are united by their shared perspective and commitment to fundamental values.”

Commonwealth Secretary-General Kamallesh Sharma, speaking to the UN Human Rights Council on the opening day of its 13th Session – 1 March 2010.

Despite the Secretary-General’s assertion that the Commonwealth Council members were “united”, their Council voting records told a very different story. During a two-year period, Commonwealth countries at the Council reached a consensus only 2.5 per cent of the time!

This is just one of the findings of the newly released third edition of *Easier Said than Done*, a report which summarises and analyses the human rights performance of Commonwealth countries sitting on the United Nations Human Rights Council. The report, which covers a two-year period from mid-2008 to mid-2010, calls on the Commonwealth to translate the soaring rhetoric of its periodic statements into action through the deeds of its member countries at the Council.

For a copy of the report visit: www.humanrightsinitiative.org. For further information please contact Zachary Abugov at zach@humanrightsinitiative.org or R. Iniyan Ilango at iniyan@humanrightsinitiative.org.

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Photograph by Jerry Riley

Conveners: **Yash Pal Ghai, John Githongo, George Kegoro and Davinder Lamba**

By way of partnerships throughout civil society, CHRI has become a part of the dynamic and ever-shifting process of reform taking place in Kenya – in the context of both the broader constitutional reform and the particular area of security sector reform. Such partnerships are an example of the ways in which CHRI is able to reach out to citizens across the Commonwealth, as well as to gain vital local knowledge and connections, and develop valuable collaborations.

CHRI is fortunate to have a wealth of experience amongst its various board and committee members from across the Commonwealth, - including in Africa. One example

of the assistance that such a connection can bring is found in the work of a member of CHRI’s Advisory Committee, Professor Yashpal Ghai, a Kenyan whose expertise and involvement in constitutional reform is both extensive and influential. He has been involved in the process of constitutional reform in Kenya for many years, and most recently is a convener of the “Kenya Yetu • Katiba Yetu • Maisha Yetu Campaign”.

The Campaign “is a call to all Kenyans to organise resistance to all attempts at undermining the New Constitution and to speak up against and oppose

impunity, injustice and corruption that is perpetrated in their counties and localities across the country.” As the country moves forward to implement the new Constitution, involvement by, and pressure from, Kenyan citizens will be vital in keeping the government accountable.



At the launch of the Kenya Yetu • Katiba Yetu • Maisha Yetu Campaign on 9 January 2011, in Nairobi, the following statement was delivered:

Those of us gathered here are Kenyan citizens from different ethnic, religious, racial, regional, gender, professional and generational backgrounds.

We are all convinced that Kenya is ripe to realise the promise of the new Constitution. Having assessed the situation in our beloved country we are, like most Kenyans, dismayed by a range of issues that persist: a national tragedy of successive waves of IDPs; the persistence of impunity and corruption; the entrenchment of a culture of drug dealing with the connivance of top leaders; the deliberate manipulation of our ethnic diversity by some leaders creating for a society that is divided dangerously along ethnic and increasingly religious lines – the list is depressingly long.

We express our alarm too at the deepening structural economic inequalities in our society, creating a gigantic class of youthful-have-nothings ruled by a tiny self-preserving elite making every effort to keep everything. These are among a host of other pressing injustices in Kenya.

To this end, we pledge ourselves and call upon all other Kenyans to take responsibility for the new Constitution, resist all attempts at undermining the new Constitution, and speak up and organise against the impunity, injustice and corruption that is perpetrated in counties and localities across this great land. The time has come to say, “Enough is enough!” and to take Kenya back.

So we say: Kenya Yetu • Katiba Yetu • Maisha Yetu – Kenya belongs to all of us!

This campaign will be followed up by a series of specific actions across Kenya beginning with meetings, rallies, country gatherings all over the country and culminating in a People’s Convention later this year.

CALL TO ACTION

To this end we are assembled today to seize the moment; to comprise a movement of likeminded Kenyans committed to ending impunity and ushering a spirit of Constitutionalism in Kenya. We pledge to work together to defend the Constitution; to fight corruption; to promote reconciliation among our diversity of peoples. We pledge to vigorously oppose – by every constitutional means available – those who would undermine the Constitution. We similarly pledge to directly resist those who steal from us; those who actively work to ruin the future of our youth; we pledge to oppose those who stand before us as leaders but are, in reality, agents of confusion, division and destruction!

We are willing to work together with all those who are genuinely committed to reform, including those in government and parliament. But we also recognise that there are many vested interests in government, parliament, and business who are opposed to reform. Their network is extensive and their capacity to sabotage the Constitution is formidable. They will oppose the transformation with their enormous resources, including brutal violence. So we call upon those in these sectors to stand up to be counted. We challenge those who have not traditionally been involved in reform processes, such as the business community and the police service, to join with other Kenyans in this initiative.

In the immediate:

1. We call upon the People of Kenya to take on the responsibility of facilitating the full realisation of the Constitution which we gave ourselves: by respecting it, by insisting on our own rights and those of others, and holding those in positions of power and responsibility to account on the oaths they have sworn to fully respect and carry forward this Constitution and its values.
2. We call on the entire government to give the implementation of the Constitution the utmost priority, developing the necessary laws, institutions and processes
3. We call upon the government to take seriously its constitutional obligations to respect, protect and fulfil the rights of the people, including freedom of expression, the right to education, to housing and the right to food.
4. We call on the President and Prime Minister to work together towards marshalling their followers behind the Constitution and desist from contradictory and confusing statements that cause the public to doubt their commitment to the Constitution and the overall reform process in Kenya.
5. If the President and Prime Minister persist in undermining the Constitution by, for example, working to pull us out of the Rome Statute this early after promulgation, then we call on them to cease trying to fool Kenyans and set in motion the process of holding new elections so Kenyans can make decisions with regard to their leadership sooner rather than later.
6. We call on the President and Prime Minister to immediately remove from public office all those named as suspects by competent authorities, be they local or international. To be thus named undermines their legitimacy, credibility and effectiveness and that of the Kenyan government itself.
7. We call upon the Speaker and Members of the National Assembly to speedily fulfil their responsibilities for the implementation of the Constitution.
8. We welcome the Independent Commission on the Implementation of the Constitution and the Independent Commission on Revenue Allocation and look forward to the timely and proper constitution of all the other remaining commissions. We note that several other existing commissions need to be brought into line with the new Constitution. We remind all the Commissioners of the sacred oath they have taken, and urge them to be judicious in their use of time and all other resources entrusted to them in ensuring the full implementation of the Constitution.
9. We call upon all the above authorities to perform their responsibilities and tasks for the fulfilment of the Constitution, after consultation with and the participation of the people, as the Constitution itself requires, and in the spirit of the sovereignty of the people as acknowledged in the Constitution. In the pursuit of this objective, we pledge our full cooperation.

Thank you and God Bless Kenya...

Kenya Yetu • Katiba Yetu • Maisha Yetu Campaign

The Usalama Reforms Forum

Statement on Police Killings in Nairobi

Tennille Duffy, Commonwealth Programme Officer, Access to Justice (East Africa) CHRI

TURF: The Usalama Reform Forum seeks to inform and involve the Kenyan public in the reform process. As one of the founding members of TURF, CHRI recognised the need for local, national and international civil society actors to come together and present a strong and forceful presence in security sector reform – including police, military and private security actors. As such, TURF was established with a view to promote popular, incisive and effective citizen engagement with the ongoing security reform process in Kenya.

The Forum has developed today into a group that has positive, working relationships with stakeholders such as the police, the Police Reforms Implementation Commission, politicians, policymakers and grassroots citizens groups. It is developing a public profile through the media in Kenya, and is involved with the reform process by way of legislative comment and analysis, policy comment and support – as well as commenting on critical developments. In that vein, the Forum saw the need to release a statement to the media in January 2011, following the execution of three suspects by the police in broad daylight in a busy Nairobi street. The statement below, demonstrates that TURF is both a fearless commentator and a constructive partner as the struggle for police reform continues.



Kenyan riot police walk in formation
Photo by Abayomi Azikiwe



The Usalama Reforms Forum

The Usalama Reforms Forum is alarmed by the increasing spate of violence involving uniformed officers and civilians. Recent shocking actions involving assault of police officers by civilians and extrajudicial killings by the police are particularly concerning.

The execution of three people by police officers last week has shown the world what Kenyans know is still happening all too often in their country – that police are taking the law into their own hands, obviously secure in the impunity that still seems to reign in Kenya. It has shown that the arrival of the new Constitution and the moves made so far toward police reform are not nearly enough to put a stop to extrajudicial killings and the system that allows police to act outside the law. It has shown that, even since the call from the UN's Philip Alston in 2009 for moves to bring an end to these kinds of actions by security forces in Kenya, not much has changed on the ground. Certainly not enough to make sure that police do not behave like this, and that if they do, certainly not enough to make sure that there are swift and definite processes and consequences.

The results are all evident. When police officers are increasingly conducting their affairs outside of the law, demand bribes and block the public's quest for fair

administrative action, restiveness and violent reaction towards the police become the norm rather than the exception.

The Usalama Reform Forum condemns all acts of unlawful violence and extrajudicial killings by police officers in this country the same way it condemns violence by citizens directed at officers on duty.

Usalama supports the actions of the police service and the government in ensuring that the officers in question in this incident were immediately identified and suspended from duty. This is however not sufficient. Usalama demands that an immediate and open inquiry be launched and these officers be immediately arrested pending further investigations.

Usalama will be watching this case and urges the government to follow through on its promises to properly and promptly investigate this slaying and prosecute those responsible.

Further, Usalama calls on the government to immediately and urgently work with the Police Reform Implementation Commission and Parliament to ensure that the Independent Policing Oversight Authority is brought into being.

These latest killings bring into sharp focus the dire need for a mechanism in Kenya that is responsible for investigating such incidents. Such an Authority is needed to ensure that an incident like this is immediately reported

and investigated by a statutory body independent of government, the police and any other interest groups. These kinds of situations demand transparency and a process that Kenyans can be certain of.

The legislation for an Independent Policing Oversight Authority is in draft form. Stakeholders including the police, human rights organisations, government and civil society have been consulted and their inputs given. Now is the time, more than ever, for the government, Parliament and the Committee to work together to pass the legislation and establish the Authority.

Usalama calls on those responsible to make this the absolute priority of the police reform process, and to recognise that the only way to bring an end to this barbaric practice and to start building trust with the community is to create and support a robust, fully-independent and powerful Police Oversight Authority.

Meanwhile, Usalama urges the public to desist from preventing, obstructing, assaulting or attacking any officer carrying out their lawful duties under whatever circumstances.

On its own motion, and in the intervening period before the IPOA is established, Usalama Reforms Forum has launched a "Policing Accountability Monitor" to track how police and members of the public are being held accountable for the violence they subject Kenyans to.

South Asia Police Reforms

Devyani Srivastava, Consultant, Police Reforms South Asia

CHRI 2010

FEUDAL FORCES: REFORM DELAYED

Moving from Force to Service in South Asian Policing



Commonwealth Human Rights Initiative

working for the practical realisation of human rights in the countries of the Commonwealth

Policing in Commonwealth South Asian countries, namely Bangladesh, Maldives, India, Pakistan and Sri Lanka, suffers from many common ills – excessive use of force, corruption, lack of accountability, and little respect for human rights. Each of these countries are affected by long-running security issues, insurgencies and/or ethnic strife;

and the police suffer from extremely low credibility and are widely distrusted. Post-independence, the region retained the police as a “force” rather than a “service”. The Maldives, in fact, did not even have a separate police organisation till 2004. Lack of political will, weak governance, ineffective leadership and political rivalry have variously

hampered any effort at police reform in the region.

The past decade witnessed a flurry of activity on police reform in the region but no country has been able to achieve the radical changes needed on policing in the region. In the last decade, landmark police legislation was passed in each country (except Sri Lanka), to replace the colonial-era police act. But every attempt was then made to either dilute the progressive elements of the legislation or blatantly ignore them. The decade began with Pakistan passing the Police Order in 2002, the first law in the region to incorporate some norms of democratic policing. Despite a promising start, its provisions were subsequently diluted in 2004, and worse still, many of its provisions remain to be implemented eight years after its passing. The story is similar in India, where 2006 witnessed a landmark judgement by the Supreme Court on police reforms. In the *Prakash Singh v. Union of India* case, the Apex Court put forward seven directives (six for the states and one for the union government) in order to bring about transformation of the police into a professional, efficient and accountable organisation. Five years on, not a single state, out of a total of 28, has fully complied with the directives. Success stories are too few and far between, while constant attempts are made to dilute the essence, if not the letter itself, of the reforms. The Caretaker Government (CTG) in Bangladesh came up with a draft

Police Ordinance in 2007 but the Awami League government, elected in December 2008, is yet to pass the legislation. Sri Lanka on the other hand, continues to be governed by the 1865 Police Ordinance; the positive changes towards improving governance introduced by the 17th constitutional amendment in 2001 were removed by the 18th constitutional amendment in 2010 following the end of the military war against the LTTE.

Evidently, there is little political commitment in the region towards transforming the police into an efficient, professional and accountable organisation.

The Maldives stands out as a rare exception. The country has witnessed historic changes in the past decade with the thirty-year autocratic rule of President Gayoom giving way to a multiparty democratic system under current President Mohamed Nasheed who was elected in October 2008. Since then, the country has adopted a new Constitution guaranteeing fundamental human rights, elected a new parliament, decentralised its administration through elections of local councils, and strengthened its judiciary and independent commissions. Since President Nasheed was at the forefront of the protest against Gayoom's rule, and because his campaign rested on principles of human rights, the transition has brought about tremendous scope in the Maldives to strengthen democratic principles and values. Police reforms too

received an impetus with the passing of the Police Act in 2008 and several other attempts by the Maldives Police Service to reform from within.

Evidently, there is little political commitment in the region towards transforming the police into an efficient, professional, and accountable organisation. Various factors can be held responsible for this. In Pakistan and Sri Lanka, for instance, a powerful military well

entrenched in the political and security set up has contributed to the sidelining of police reforms. In India, on the other hand, the federal structure has led to a jurisdictional tussle over policing between the union and the states, affecting the pace of reforms in turn. Further, the burst of terrorist attacks and violence has also affected the process of police reforms. While in Pakistan, the failure of the police has contributed to the expansion of militancy, in India, increasing violence in the form of terrorist attacks has served as one of the greatest catalysts for police reforms, albeit those focusing more on infrastructural and operational reforms rather than the standards of policing.

Underlining these various factors is the failure to recognise the value of democratic policing, an approach

of policing committed to rule of law and human rights, for peace and security. In 2007, CHRI conducted a study assessing the desirability of democratic policing for the region in light of the abysmal state of policing across much of Commonwealth South Asia. Taking this as the starting point, an assessment of the pace and direction of police reforms was conducted in 2008, resulting in a publication titled *Feudal Forces: Reform Delayed – Moving from Force to Service in South Asian Policing*. Since then, the region has undergone significant changes: a democratically-elected government came to power in Bangladesh in December 2008 ending the two-year rule of the CTG; Sri Lanka recorded a military victory in the decades-old war against the LTTE; Maldives held its first mutiparty democratic elections that saw the defeat of President Gayoom in power since 1978; and Pakistan and India have witnessed some of the worst terrorist attacks and extremist violence.

The present update, *Feudal Forces: Reform Delayed, 2010* provides an assessment of how these political developments have affected the scope of police reforms in the region. Among its core findings is that democratic policing is at best in its nascent form in the region and requires firm commitment from the political leadership. Based on its assessment, the report lists out concrete steps that need to be taken to push forth the agenda of police reforms and transform the police from a force into a service.

The Network Turns One

Sumant Balakrishnan, Consultant, Police Reforms Programme

Not to be confused with the North Ireland association bearing the same acronym, the Network for Improved Policing in South Asia (NIPSA) successfully completed a year of functioning as of October 2010. Launched formally in October 2009 following the South Asian Regional Roundtable (organised by CHRI in New Delhi, October 2009) where the idea was mooted and

serve as a resource on the subject. NIPSA's approach has been to work closely with regional partners to help secure important national documents and relevant research on policing from respective countries. The resource base built over the past year is intended to help spread awareness and knowledge about policing across the region, and serves as a launching pad upon

helped in the ultimate objective of making the newsletters truly regional. The newsletters are available on the website and are widely circulated to the government, civil society, media, legal professionals and academics in these countries.

Social networking has also proved to be an invaluable tool to the network in terms of outreach. NIPSA has employed Facebook heavily as a tool for advocacy since the middle of 2010 and, through



supported unanimously, NIPSA has since grown tremendously in its reach and scope. Created with the intention of bringing together like-minded individuals and organisations to catalyse interest in, understanding of, and demand for, police reforms, NIPSA has over the year developed a sound knowledge platform on policing in the region. It has further provided a platform for practitioners and civil society alike to interact with each other in a bid to better understand the challenges facing democratic policing. It achieved this through the dogged efforts of its member organisations in the region (Bangladesh, Maldives, Pakistan, Sri Lanka and India), giving NIPSA a truly regional character.

To begin with, NIPSA developed a dynamic, user-friendly website to

which NIPSA hopes to build in the coming years.

Another noted achievement of NIPSA has been the monthly newsletters that seek to review topical issues relating to police as well as critique the existing legal framework governing policing from a human rights perspective. Since its launch in October 2009, NIPSA has issued thirteen newsletters covering a range of topics including laws governing preventive detention across South Asia, the practice of encounter killings, registration of FIRs, prevention of torture legislations, police response to marginalised communities, experiments with community policing and so on. Inviting writings from the region has once again encouraged varied perspectives on the subject and

it, has come in touch with several people who actively work on the issue. The swell in the number of participants/members of NIPSA can in part be attributed to social networking.

Bolstered by the support of, and interest among, its partners, NIPSA successfully conducted two events in 2010 – an online conference from 5-10 July, and its second South Asia Visiting Programme from 14-19 November 2010. The theme of the online conference was “Community Policing,” and the portal was kept open 24 hours as a result of which registered users could post comments and initiate discussions at any given time. Through CHRI's moderation, discussions were initiated on different themes drawing on experiences from the

region as well as best practices internationally. Low costs and convenience for participants meant that the online conference proved to be quite successful. Even serving public officials, who are typically very busy and unable to travel easily, were able to participate and thereby enrich the discussions. Several international experts further added to the quality of the discussions. Although such online conferences do tend to limit participation to only a particular section of society with access to the Internet, the advantage is that it allows every person wishing to share something the space to do so without any time constraints or the pressures of public speaking. Ultimately, the organisers felt that the range of voices and perspectives brought forth was truly noteworthy.

The second South Asia Visiting Programme was one of our flagship events in 2010. The programme sought to expose participants to police reform efforts and programmes in India with a view to furthering the learning of professionals engaged in the field. The participants included Dr Hala Hameed, Member, Police Integrity Commission, the Maldives; Advocate Sipra Goswami, Member, Bangladesh Legal Aid and Services Trust (Bangladesh); Mr Nash'ath Mohamed, Member, Maldivian Detainee Network (Maldives); and Mr Amit Ranjan Dey, Member, Nagorik Uddyog (Bangladesh).¹

1. Participants from Pakistan were unable to secure a visa to travel to India

Activities included a number of meetings in Delhi, such as with the National Human Rights Commission and a human rights lawyer. In addition, participants were taken to Kochi to interact with the Kerala police and learn in depth about its community policing programme, Janamaithri Suraksha Samithi.

Perhaps the most pleasing outcome from NIPSA is that it has facilitated interactions with new organisations and persons working on issues relating to policing. While it attracts many Western experts looking to gain a regional perspective, it also enables exchange of ideas on a myriad issues and has benefited CHRI in furthering its own understanding of contentious issues in the region such as policing, accountability, rule of law and human rights. Tremendous challenges lie ahead for NIPSA in terms of structure and organisation. Going forward, NIPSA would like to improve its website, punctuality of newsletters, follow-up with social networks and instant news delivery to its users. Moreover, it also seeks to activate its discussion forum in order to invite and encourage active debates on topical issues round the year.

NIPSA content has been managed by Mr Sumant Balakrishnan (CHRI) since 2009 and the editor is Devyani Srivastava (CHRI). NIPSA is funded by the Friedrich Naumann Foundation.

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The current Commonwealth Secretary-General during a speech to the Human Rights Council one year ago claimed that Commonwealth countries at the Council were united by their “shared perspective and commitment to fundamental values”. Considering the disparate voting patterns of Commonwealth members, one must wonder whether the fundamental values referred to by the Secretary-General include “agreeing to disagree”.

Specifically, in this case, the disagreement seems to be about whether the Council should be a forum in which the world’s most serious human rights issues are debated and practically addressed, or a forum used by countries to deflect attention from their own poor human rights situations, and those of their allies.

CHRI calls on the Commonwealth and its member countries to choose the former view over the latter, and to use the Council as a vehicle through which the fundamental human rights principles enshrined in multiple Commonwealth declarations can be translated into action. Only with such changes the conduct of members at the Human Rights Council, the world’s most representative and global human rights body, could the Commonwealth begin to truly refer to itself as “without a doubt” a human rights organisation.

Opportunities with CHRI



Interns and Stipendary Positions in Research and Advocacy

There are frequent opportunities at CHRI to work with us at our headquarters in Delhi, our Africa office in Accra, Ghana and liaison office in London.

- Students reading law or social sciences may intern with us at any of our three offices for short-term or long-term internships of up to a year.
- Graduates in law, social sciences or other relevant disciplines are welcomed on a volunteer basis to intern with us for periods ranging from three months to a year.
- Graduates in law, social sciences or other relevant disciplines, willing to commit for up to one year at headquarters may apply for a stipendiary position as programme assistants and researchers.
- Graduates with a minimum of two years work experience may apply for programme officer positions, if willing to commit for two years or more. Salaries are local and shared accommodation (at headquarters only) may be provided to candidates from abroad, if available.
- Mid-career or senior professionals wishing to take time off from their mainstream work to do meaningful work in a new setting are also welcome to explore working on issues of accountability and transparency, as well as assisting with fund-raising as associates or consultants on mutually agreeable terms.

We are an independent, non-partisan, international non-governmental organisation, working for the practical realisation of human rights of ordinary people in the Commonwealth. CHRI promotes awareness of, and adherence to, the Harare Principles, the Universal Declaration of Human Rights, and

other internationally recognised human rights instruments and declarations made by Commonwealth Heads of Governments, as well as other instruments supporting human rights in the Commonwealth. CHRI believes that the promotion and protection of human rights is the responsibility of governments, but that the active informed participation of civil society is also vital to ensuring rule of law and the realisation of human rights.

There are four programme areas at CHRI – Access to Justice, Access to Information, Human Rights Advocacy and Prison Reforms Programmes. As such, our present work focuses on police reforms, prison reforms and promoting access to information. We also overview the human rights situation in all 54 countries of the Commonwealth, looking especially at the situation of human rights defenders, compliance with international treaty obligations and monitoring the performance of Commonwealth members of the United Nations Human Rights Council.

CHRI's work is based on relevant legal knowledge, strong research, and dissemination of information to both civil society and governments. Policy-level dialogue, capacity building of stakeholders, and broad public education are standard activities.

As an organisation, our endeavour is to be one of the best South-based resources on policing and access to information.

Please inquire about specific current vacancies or send job applications with a CV, statement of purpose, references and a short original writing sample to info@humanrightsinitiative.org. To know more about us visit us at www.humanrightsinitiative.org.

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