

# Commonwealth Human Rights Initiative



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# Newsletter

## Big Challengers Face Heads in Kampala

— Derek Ingram

*Member of CHRI's Executive Committee, UK*

The Commonwealth, as a CHRI report said some years ago, is about human rights and democracy or it is about nothing. In our 53 countries human rights problems abound, but it would be wrong to conclude that Commonwealth countries have a poor record by comparison with non-Commonwealth countries. On the contrary, if analysed region by region, Commonwealth countries come out rather better.

Nonetheless, the Kampala Commonwealth Heads of Government Meeting (CHOGM) is shaping up to be one of the most difficult for many years. Among the major issues that will confront the Heads of Government, the situations in Pakistan, Fiji Islands and Bangladesh are the more disturbing, but to these must be added the Maldives, The Gambia and Sri Lanka, as well as unsettling recent developments in parts of the Pacific such as Solomon Islands, Tonga and Papua New Guinea. Each poses human rights problems, and challenges the basic principles laid down and accepted by all member governments in the Singapore Declaration of Commonwealth Principles of 1971, the Harare Declaration of 1991 and the Millbrook Action Programme of 1995.

Of special concern must be the position of the host country, Uganda, whose President, Yoweri Museveni, will chair the meeting and then automatically become chairperson-in-office of the Commonwealth until the next CHOGM is held in Trinidad in 2009.

When Museveni was sworn in as President after years of turmoil in Uganda he said: "The problem of Africa in general and Uganda in particular is not the people but leaders who want to overstay in power."

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...contd. from cover page

That was 21 years ago and he is still President. The 1995 Uganda constitution laid down for the presidency limits of two terms, but in 2003 the ruling party scrapped that and last year Museveni won an election that was flawed, as Commonwealth observers pointed out, partly because of legal harassment during the campaign of opposition leader Kizza Besigye and his Forum for Democratic Change candidates. At the time of writing, Besigye and some of his colleagues are still on bail on treason charges.

In a speech during his visit to Uganda in June Commonwealth Secretary-General Don McKinnon boldly warned that unless the situation changed, one question bound to be fired at him when CHOGM took place would be : “Where stands the case against Kizza Besigye, and the need to separate politics from justice?”

McKinnon also asked whether the truce with the Lord's Resistance Army, which waged a bitter insurgency for years in northern Uganda, was holding, and “what sort of justice, if any, is due to Joseph Kony,” its leader. McKinnon was obviously not satisfied with what Museveni had told him privately about these matters. Two years ago the International Criminal Court issued arrest warrants for Kony and three of his commanders for the shocking atrocities committed by his fighters and the peace deal has been blocked for months by the Court's demand for him to be handed over.

The decision to hold CHOGM in Uganda was made at the Abuja CHOGM in 2003. Four years later it has turned out to be an uncomfortable venue. Recent practice has been for the CHOGM chairman to become, for the following two years, chair of the Commonwealth Ministerial Action Group (CMAG), the watchdog body of foreign ministers which monitors human rights and democratic breaches by member countries.

Aside from this embarrassment, CHOGM will find itself confronted with the even greater challenge of Zimbabwe. Although that country is not now a member of the Commonwealth, having suddenly walked out at the end of the Abuja CHOGM, pressure has been growing from civil society for the Commonwealth to help the three million Zimbabweans now in exile, mainly in South Africa, Botswana and the UK, many in distressing circumstances. Human rights in Zimbabwe have been trampled for years and the Commonwealth cannot any longer stand aside.

Most importantly, elections are to take place in Zimbabwe next year and the international community sees it as imperative that this time they are free and fair and that the countries of the African Union help to ensure that the process in member countries is properly carried out, as set down in its constitution.

Feeling is strong that after Zimbabwe walked out, the Commonwealth seemed to wash its hands of the problem and, unlike in the case of South Africa, has done nothing to help the people prepare for the day when political change comes and the country has to be rebuilt.

Officially, the Commonwealth cannot get itself involved in the affairs of non-members and Zimbabwe will not be on the agenda of the executive sessions of the Heads in Kampala. It will certainly be discussed at the Retreat where Heads are free to raise informally whatever they like, and at the civil society forums held alongside CHOGM. Whatever the official attempts to downplay the subject it will figure prominently in the media coverage leading up to the meeting.

In the last few months a major initiative on Zimbabwe has been prepared as a result of a consultation convened by the Royal Commonwealth Society in London and attended by more than 100 delegates who included MPs, representatives from many civil society organisations, the media, Commonwealth governments, the Commonwealth

Secretariat, and Commonwealth Foundation as well as many Zimbabweans.

Their objective is to engage the Commonwealth in preparations for the day when political change takes place and the country starts to rebuild. Their recommendations and plan for action will be discussed in Kampala during and around CHOGM and certainly at the Human Rights Forum. Over the years the Commonwealth has been confronted by many dire events - in Abacha's Nigeria, Amin's Uganda, apartheid South Africa, Zia's Pakistan, Speight's Fiji and of course Ian Smith's Rhodesia.

All that said, the issue posed by the fast-moving situation in Pakistan could be one of the most difficult a CHOGM has had to face. Since independence in 1947 its relationship with the Commonwealth has been chequered. The country was abruptly taken out of membership by Zulfikar Ali Bhutto in 1972 and remained outside for 17 years. His daughter Benazir brought it back in 1989 after she became prime minister, but the return of military rule in 1999 led to its being suspended. However, under pressure from Washington and London the Commonwealth restored it to full membership, albeit prematurely, in May 2004 on the understanding that President Pervez Musharraf would step down as head of the army at the end of the year. That did not happen. The Commonwealth holds the firm view that a country can only be seen as truly democratic if the roles of head of state and head of the army are separately held.

Despite this, the suspension has not been reimposed. Pressure within the Commonwealth for the lifting of the suspension came from the West, notably from UK and Australia, because Musharraf is seen as a vital ally in the so-called war on terror and the struggle against the Taliban in neighbouring Afghanistan. A presidential election is due in Pakistan only weeks before the Kampala CHOGM.

The situation in Bangladesh also poses CHOGM with a

conundrum. The delay of the election there for a year and rule by civil servants supported by the army has created a unique situation. Bangladesh is a country without ministers. Dr Iftekhar Ahmed Chowdhury, the Foreign Affairs Adviser, effectively the foreign minister, will represent Bangladesh at CHOGM.

Under the Millbrook rules a country which overthrows an elected leader faces suspension, but Prime Minister Khaleda Zia was not actually ousted. She stepped aside as per the constitution and the country came under a caretaker government pending the imminent election. At that point therefore no elected government was in office. However, the country is now virtually under military rule and 100,000 people are reported to be under arrest. Suspension by the Commonwealth is becoming a real possibility.

Kampala will also see the election of a successor to McKinnon, whose second four-year term as Secretary-General ends on 31 March. It looks like a straight fight between the Foreign Minister of Malta, Michael Frendo, and the Indian High Commissioner to UK, Kamlesh Sharma. A third candidate is Mohan Kaul, Director-General of the Commonwealth Business Council. Malaysia nominated its Culture, Arts and Heritage Minister, Dr Raid Yatim, but within weeks he withdrew, apparently without even informing his own Prime Minister, Abdullah Badawi.

The election of secretary-general is carried out at CHOGM and is personally supervised by its chairman who counts and announces the result. Each Head has one vote in a straight first-past-the-post contest. If Sharma is elected he will be the fifth Secretary-General since the Secretariat was set up in 1965 and the first to come from Asia.

# CHRI Celebrates its 20th Anniversary

Richard Bourne

This year, 2007, the Commonwealth Human Rights Initiative celebrates its 20<sup>th</sup> anniversary. It is now the second largest Commonwealth agency in terms of staffing, after the intergovernmental Commonwealth Secretariat, and has offices in New Delhi, Accra and London. Yet anger that the Commonwealth does not do more for the rights of its citizens, which brought the CHRI into embryonic existence in 1987, is still a driving force for its supporters. And, in spite of gains, it is hard to say that there has been massive progress.

On 14 September, in London, the CHRI will hold a conference which will be more about looking forward than looking back. Don McKinnon, Commonwealth Secretary-General, will look at developments since 2000, and the agenda will cover compliance of member states with international instruments, the relationship between NGOs and national human rights commissions, and the impact of anti-terror laws in restricting liberty. Above all, in the run-up to a Commonwealth summit and election of McKinnon's successor in Kampala, the participants will be asking "Where is the Commonwealth going for human rights?"

That was also the question that people were asking in 1987, when three NGOs – the Commonwealth Journalists Association, Commonwealth Lawyers Association and Commonwealth Trade Union Council – came together to call for a new initiative by the Commonwealth. The background was severe friction between the Thatcher government in the UK and the bulk of Commonwealth states over sanctions against apartheid South Africa. Human rights advocates were worried that the situation in many countries with one-party states, military dictatorships and liberties trampled underfoot, was a gift to the apartheid regime. The positive Commonwealth merits of shared parliamentary, legal and administrative systems were not being harnessed for rights.

The call was brushed aside by the Vancouver summit in 1987 so the three NGOs, then joined by the Commonwealth Medical Association and Commonwealth Legal Education Association, decided to launch their own non-governmental initiative anyway. Again the next leap forward for the Commonwealth, and the CHRI, was stimulated by dissatisfaction.

In 1991, at the famous Harare summit, the Commonwealth leaders adopted a declaration which among other things urged just and accountable government, the rule of law, and

fundamental human rights. But this was far short of what the CHRI, of which I was then director, had called for in its survey report, "Put our world to rights". The CHRI, then more of a network than an organisation, had wanted the leaders to issue a specific human rights declaration, to set up an intergovernmental Human Rights Commission, and to establish a fund to promote the rights of citizens.

So it was a sense of failure – shared by many human rights advocates who were in Harare then — that caused the CHRI to become permanent. The supporting bodies created a proper constitution, moved the office from London to New Delhi, and recognised that the CHRI would henceforth be a separate Commonwealth campaigning organisation, though continuing to work with others.

One of its first achievements, by the way, was to demand implementation of the Harare Declaration. A fact-finding group which visited Nigeria in 1995, whose report was titled "Nigeria – stolen by generals", headed each section with a Harare quotation belied by abuses on the ground. When the Nigerian dictatorship and two other military governments were suspended from the Commonwealth at Auckland later that year, and a rules committee was set up {the Commonwealth Ministerial Action Group (CMAG)} the Harare Declaration was officially rebranded as a foundation document for human rights!

The CHRI, with an inspirational director in Maja Daruwala, and a distinguished international Advisory Commission now chaired by Sam Okudzeto, has achieved much: advocacy documents every two years prior to a summit, practical work on improved policing and the right to information, an electronic Commonwealth Human Rights Network and a Human Rights Forum every two years to enable NGOs to share ideas.

But, with the genocides in Rwanda and former Yugoslavia and the bitter backlash of the "war on terror" eroding much of the human rights optimism of the early 1990s, there is still much to fight for. The voice of the official Commonwealth is muted, and modest contributions by CMAG or in police training, are little known to citizens. If the Commonwealth, with all its layers of contact and practice, its advantages of a common language and history, cannot push forward the human rights of its peoples – what is it good for in the 21<sup>st</sup> century?

*(The writer coordinated the voluntary CHRI from 1987, and was its first director, in London, in 1990-92)*

# Denial of Access to Protection in the Commonwealth

Andrew Galea Debono

*International Advocacy Coordinator, Jesuit Refugee Service*

**T**he notion of refugee protection - the duty to offer refuge to those fleeing from persecution and suffering - has been recognised as a cornerstone of international law for several decades. Yet, a number of Commonwealth governments are increasingly shirking this duty claiming security concerns and the need to control migration flows, often failing to distinguish between economic migrants and those in need of international protection.

Numbers of those seeking asylum are generally decreasing but there is a suspicion that, rather than signifying a lesser need for protection, these numbers are decreasing due to severe restrictions on potential asylum seekers to gain access to territory of protection. Whilst every country has the right to control the flow of migration in its own territory, all actions to exert this right must be compatible with the country's human rights responsibilities.

Many states are fortifying their borders, indiscriminately impeding access to their territory to all migrants, whilst doing nothing to provide refugees with alternatives to using unscrupulous traffickers and smugglers to reach safety. Unfortunately, the consequences of this approach are often tragic.

Malta has been encouraging the European Union to invest millions of Euros to patrol its borders and keep irregular migrants out, without considering that those in need of refuge are often forced to travel without documents. Indiscriminate and inhumane border controls force desperate people to take even greater risks to flee extreme poverty, persecution and war.

In recent years, thousands of migrants have drowned attempting to cross the Mediterranean by boat in desperate conditions, whilst those surviving the journey are often detained for lengthy periods of time. In late May, Malta refused to help 27 stranded people clinging on to tuna nets on the high seas south of its shores. This was not an isolated incident. Malta is one of the Mediterranean countries which are turning the sea between them into a place in which human life has lost its value.

The situation is not much better across the globe, where constant naval patrols off the coast of Australia prevent boats carrying potential asylum seekers from entering Australian

waters. Those few who reach Australian territory are transferred to offshore processing centres where their access to legal and community support is severely limited.

In the first three months of 2007, South Africa deported over 50,000 Zimbabweans back to rapidly degenerating conditions. In view of the crisis in Zimbabwe, a former Commonwealth country, South Africa needs to adopt a more humanitarian approach to those fleeing the poverty and violence. Crossing the border to escape the hardships in Zimbabwe is not an easy task. Some drown or are killed by crocodiles trying to reach South Africa across the river which separates the two countries. Moreover, there is a danger that immigration authorities in their haste to return Zimbabweans will not give due consideration to the claims of those eligible for refugee status.

Kenya has closed its border with Somalia since December 2006 following the escalation in conflict, causing suffering to thousands of Somali refugees - mainly women and children who have fled the capital city of Somalia, Mogadishu. The closure of the border is also impeding cross-border relief, including thousands of tonnes of food, for the several thousands of persons stranded on the Somali side of the border.

Barriers are also being built between Commonwealth countries. For the past seven years, India has been closing itself off from Bangladesh claiming security concerns. So far, India has built about 1,550 miles of a fence studded with spikes and wrapped in barbed wire which will extend all the way around the 2,050-mile border with its much poorer neighbour. With yet another Commonwealth Heads of Government Meeting (CHOGM) just around the corner, it is sad to see such lack of solidarity and trust between two Commonwealth countries.

The cumulative effect of this negative approach on the part of governments is to send the message that refugees are not welcome. It is inconsistent for states to continue denying access to asylum whilst claiming to support refugee protection under international law. It is vital that governments respect their legal obligations towards refugees and seek ways, such as positive migration policies, to help the most vulnerable access territory and procedures of protection without undue hardship.

# Canadian Aboriginal Women Add Subtle Strain to Radicals' Law-breaking Trend in Rights Protests

Murray Burt

Member of CHRI's International Advisory Commission

The entrenched lack of human rights experienced by aboriginal women is a fundamental shortcoming in shaping Canada's objective of a model democratic society. Many of the problems have their roots in the culture and values of the tribal populace, much of it pre-dating European settlement of North America. The dominant male role and subjugation of women, while not universal, is widely ingrained in native bands. But contemporary poverty ancient poverty prevailed among some tribes long before the white man arrived takes its heaviest toll on women, who are usually left with the problem of family-rearing, without resources, when a partner has departed.

Quite generous government munificence to address this is often neutered by unwieldy administration or intervention by a male-dominated tribal power.

The spouse shed by a tribal husband, having no property rights, often loses the communal home and chattels in a tribal reserve and heads for the city's slums. It's not a new world problem.

The resulting homelessness, joblessness, hopelessness in cities frequently leads to dependency on alcohol or drugs and disorganised communities of mothers and children forming pockets of urban poverty. These, despite often generous municipal, welfare and social intervention, contribute to a wider problem of youth gangs and crime which too often negatively shades public opinion.

Public sensitivity has been raised of late by a trial involving horrific serial killing of native women in the urban sex trade. Some reports say as many as 500 women are missing presumed dead in unsolved cases. This has led to accusations that police are less diligent in their handling of native cases.

In the West and North, service to tribal areas where most of Canada's 1.3-million aboriginal people live is not easy. They are generally not productive in Gross Domestic Product terms and cannot sustain themselves. Federal support is often patchy in its distribution and frequently it is the response to natural disaster flooding, fires, pollution or widespread sickness. Remoteness of many "First Nations" communities makes them prone to such dangers and failures, and obvious subjects of media in search of human interest and shock-horror news.

These are old problems, long the frustrating failure of hundreds of programs of wrecked goodwill, and an easy

target for UN HR critics, which find political advantage lambasting human rights standards in an effort to diminish Canada's voice, reputation, and influence on the international stage.

But as most of us have learned, new problems pile easily on old ones that have not been solved. Land treaty settlements, always in the background and long neglected are this year more than most, the subject of very feisty protest. It is likely to get more rancorous as protest leaves the campfires, the boardrooms and the courts and, instead, in noisy and threatening style, faces down police and blocks trans-Canada railways, isolates residential building developments, and stalls work on pipeline projects, electricity, dams and transmission routes.

Often young tribal hotheads, sometimes dressed in camouflage green and showing weapons, and backed by dozens of noisy supporters from disparate communities, are the driving force. They have found that lawbreakers (stopping road and road traffic) can neutralise lawmakers keeping order. And politicians are anxious not to ignite the inflammable. Most of the cases this year have been to press for settlement of some of the 1,954 land claims – which mean cash settlements if not always solutions.

The women's rights issue, however, has taken another route. They are using the chambers of the House of Commons, where this summer they have slammed the revisions to the human rights bill supposedly addressing their concerns, and called politicians back from their summer holidays for some serious jawing. It's a dramatic and clever change of tactics.

As Juliet O'Neill a reporter for *The Ottawa Citizen* newspaper wrote: "For three decades, the Native Women's Association of Canada has been at the forefront of the battle for equal rights for First Nations women."

"Now, on the brink of victory (securing an Act change), the association wants the federal government to slow down."

As lawyer Mary Eberts, legal adviser to the association, says, the Conservative government's proposed Bill C-44 to strengthen certain individual rights could jeopardise the collective rights of First Nations women and men because the bill's focus on individual rights is likely to sap attention and resources away from "a huge, huge collective denial of human rights" in native communities across Canada.

The women's association lawyer also objected to some of the rhetoric around the bill, which has been touted as a long-overdue process to help individuals win redress over mistreatment by Indian band councils.

"It really delights governments to picture First Nations (males) as bullies who are oppressing their people," Ms. Eberts said. "There are some (Indian) bands that don't get it right, but in many, many cases they are doing what they can with insufficient resources."

Ms. Eberts cited inadequate housing, water, education and other resources as examples of collective human rights violations that could be masked by a complaints process geared toward individuals.

"It's very complicated and that's why simply lifting Section 67 and sending it into the courts, or the tribunals, for them to sort out is just not a good idea," she said.

MPs on the Commons Aboriginal Affairs Committee, recalled from their summer recess are faced with a clause-by-clause study of the bill.

The Native Women's Association is among those urging the government to include safeguards in the bill for collective community traditions and treaty rights, and to provide resources to better equip Indian bands to handle anti-discrimination complaints.

The women's organisation appeared before the committee last June to talk about Bill C-44. In an interview, Ms. Eberts recalls a Conservative MP asking a question like this: "Well, don't you want Aboriginal women to have the same rights as all other Canadian women?"

"Yes and no," she replied. "No, if it means that they will lose the essentials of their aboriginal identity and their aboriginal collective existence."

An example she cites is the land-holding provisions of the Indian Act. "It is communal, collective," she said. "All of the lands of a reserve are held for the benefit of all of the people and that runs directly against a highly individualised concept of human rights."

Aboriginal women's lack of rights, while getting attention, faces a lot more talk and action before aboriginal women will stand any acceptable test of fairness. □

## New Zealand Reconsiders its Police Law

Daniel Woods, Coordinator, Police Reforms Programme, CHRI

Earlier this month, the New Zealand police released a report summarising submissions it received to a review of the New Zealand police law, *Public views on policing: An overview of submissions to Policing directions in New Zealand for the 21<sup>st</sup> century*. The report pulls together the views of over 230 representatives of police, government, local government, civil society and private companies, as well as members of the public, on the future direction of New Zealand's police law.

In March 2006, the Minister of Police in New Zealand, Annette King, announced a comprehensive review of the Police Act. New Zealand's police law dates back to 1958. The review recognised that, despite 25 amendments to the law over the last 50 years, both the police organisation and the context in which policing took place had developed beyond the existing legislation. The review aimed to spark a process of recasting the law to meet the challenges of policing in the 21<sup>st</sup> century.

The review was designed to take place in three phases. The first phase of the review focused on beginning a public discussion around policing. In this phase, the police released eight issue papers on particular areas of interest and undertook research to underpin the review. The second phase of the review was public consultation; this is the phase that has just completed. Consultation took place around a police discussion paper, *Policing directions for the 21<sup>st</sup> century*, released by the Minister at the end of May this year. The paper posed five critical questions, looking at guiding principles for policing, effective policing in the New Zealand context, staffing issues, statutory building blocks for the police and future challenges. As well as calling for written submissions, the police held 80 public meetings around New Zealand to gather feedback on the discussion paper. The third phase of the review – which is taking place now – will include the presentation of policy papers to Cabinet. This phase will end with Cabinet directions to draft a new Police Act.

CHRI submitted a response to the *Policing directions* paper. CHRI's submission emphasised that true democratic policing is underpinned by accountability – accountability to executive government, but also to the courts, parliament and to at least one independent, statutory, civilian body. The CHRI submission also focused on the importance of the new law being formed within a human rights framework. CHRI's submission to the review is available on the CHRI website ([www.humanrightsinitiative.org](http://www.humanrightsinitiative.org)). The official website of the Police Act Review is at [www.policeact.govt.nz](http://www.policeact.govt.nz). The overview of public submissions is available on the website. □

# Making Access to Information Law Work in the Carribbeans Part -II

## Saint Vincent and the Grenadines FOI Act

Reshma Mitra

Project Officer, Access to Information Programme, CHRI

**A**s Governments across the world are slowly recognising the fundamental importance of the people's right to access information in a functioning and successful democracy, the number of laws guaranteeing it in practice is rapidly growing. The formidable challenges for securing the people's right to information are primarily of two kinds; drafting thorough and best practice access to information laws, and implementing those laws effectively. Yet while the content of some laws are progressive and based on international best practice, others are just a window dressing. South Africa for example has a very comprehensive law guaranteeing openness even in the private sector, on the other hand Pakistan's Freedom of Information Ordinance 2002 only applies to federal bodies and does not override any existing laws, severely limiting the scope of the Act.

Looking at the Commonwealth Caribbean in this context, many have enacted comprehensive access to information laws. In Part 1 of this article in the last newsletter, we discussed the St Vincent and Grenadines Freedom of Information Act 2003 (the Act). This article will go on further to identify the salient features of this Act and how it does, or does not, comply with international best practice principles for a law implementing the right to information.

### **1. Principle of Maximum Disclosure**

This best practice principle implies that the law should be drafted such that there is a presumption in favour of giving people access to information. A best practice law should provide every person with the right to receive information, and correspondingly provide that bodies have a duty to provide that information. The Act provides for this essential principle by providing all members of the public with a right to access documents in the possession of public authorities.

However, the choice of drafting this provision has resulted in a few limitations. Firstly, it only grants access to information that is recorded in the form of documents. In practice, such wording has often been interpreted so that access is given to recorded information available in *documents*, that is, access is given to information in written form or printed matter, maps, plans, contracts, photograph and sound or visual images. India's Right to Information Act 2005 which is more

progressive uses broad terms like the word 'information' instead of the word 'document' to extend the meaning of the word document and give the right of access materials in any form including taking samples. The term 'information' has enabled people to inspect roads and to take samples revealing corruption and misuse of funds.

The second limitation is that it only grants access to information that is in the possession of the public authorities. Often information request made to public authorities require that public authority to collate information from various other public authorities and provide the requestor with the information. In laws where the wording 'in possession' is used information officers often use it to deny access to such information requests. To avoid such denials by public authorities recent laws use the wording, 'held or under the control of public authorities.'

Another very important indicator of whether the maximum access to information is granted by the law is to see what bodies are covered by the Act. Many laws around the world impose an obligation to provide information on all public bodies at all administrative levels from the Parliament and Cabinet, to state owned enterprises established for a public purpose and local authorities. In fact, many access laws now cover private bodies that carry out public functions or where their activities affect people's rights, recognising the growing role that private bodies play in providing public services. The Act takes a backseat in creating an open regime in two ways. First, it does not impose a duty on any private bodies to provide information, and secondly, the law gives blanket exemptions to the Governor-General and his commission of inquiry, and to the Courts of Appeal and its registries in their judicial capacity. There is no rationale why such a blanket exemption should be necessary.

### **2. Minimum Exceptions**

All right to information laws also exempt some information from being disclosed when it is necessary to protect and promote the public interest. However, exemptions must be

narrowly drawn so as to ensure that only the information that could harm the public interest is withheld, and no more. A right to information law should not allow room for refusal to disclose such information the disclosure of which is in larger public interest. How information affects the public interest, will depend on the specific information and each case will be unique, and therefore no blanket exemptions should be provided in the law. The Act exempts Cabinet documents, information relating to national security, defence or international relations and documents containing personal information. The exemptions include information to which any secrecy provisions apply. If other legislation, such as the old Official Secrets Acts for example, prohibit or restrict disclosure of information, then should be repealed so that as far as possible such other legislation is interpreted in a manner consistent with FOI laws.

### ***3. Simple Access Procedures***

A key test of a right to information law's effectiveness is the ease, cost and promptness with which people seeking information are able to obtain it. The law should include clear and uncomplicated procedures that ensure quick responses at affordable fees. Under the Act information can be sought from public authorities in two ways. It imposes an obligation on the public authorities covered by the Act to proactively publish and disseminate documents of general relevance to the public, for example, on their structure, norms and functioning, the documents they hold, any opportunities for consultation and the procedure to request for access to documents. Under this Act information is openly available as part of the proactive disclosure provisions or it may be available for purchase if another law applies. The other method for accessing information under the FOI Act is by a person making a written request for information, which then places the obligation on the public authority to assist the requestor who is making a request for information while identifying documents. A reasonable opportunity of consultation is required by the law so that all requests are not denied under the pretext that the requestor was unable to identify documents required. Unfortunately the Act does not designate this responsibility to any particular officer within

that public authority, which may frustrate the objective of the provision.

### ***4. Effective Enforcement Mechanisms***

Effective enforcement provisions ensure the success of access legislation by ensuring that public authorities are implementing and administering the law properly. One aspect of this is that any public authority withholding information must provide reasons for that, enabling the requester to appeal the decision and have it reviewed. Under this Act review of the decision is only provided for using the courts of law. This is not ideal as formal court systems tend to be slow, costly and uncertain. Ideally a right to information law would create a powerful, independent and impartial body such as an Information Commission, to review refusals to disclose information and compel release of that information where necessary. There may be reasons why a new body such as this is not realistic given resources, and this may be why Saint Vincent and the Grenadines has not followed this best practice approach.

### ***5. Monitoring and Promotion of Open Governance***

Many access laws now include provisions empowering a specific body, such as the newly-created Information Commission or an existing National Human Rights Commission or Ombudsman, to monitor and support the implementation of the Act. Under the Act, the Minister is responsible for reporting on the operation of the Act to Parliament however there is no independent body charged with ensuring implementation is occurring. As a result, very little has been done to implement the FOI Act by the Minister to date evidencing a disturbing lack of political willingness in creating a new era of open governance.

While a law alone – no matter how good and comprehensive cannot itself ensure information will be accessible to the people, a well drafted law is half the battle won. The Saint Vincent and Grenadines' FOI Act, while not being in line with international best practice in many aspects, does provide all the basics that enable a person to use the law. All that is needed now is for the people to start using the law, forcing the government to change its lax approach to implementation. ☐

### Sierra Leone

Presidential and Parliamentary polls were held in Sierra Leone in August five years after the end of civil war. The elections were largely peaceful with opposition All People's Congress Party (APC) led by Ernest Koroma getting 44.3 per cent of the votes and winning 59 seats. The ruling Sierra Leone People's Party (SLPP) led by Vice President Solomon Berewa could garner only 38.3 per cent of votes winning only 43 seats. Following the election results, the National Electoral Commission announced that there would be presidential election run off on September 8, as none of the candidates won 55 per cent of the votes in the first round. Charles Margai of the People's Movement for Democratic Change who had defected from the SLPP won 13.9 percent of votes has stated that he would back the APC in the second round of polls. In their departure statement, the Commonwealth Observer Group stated that they were "deeply impressed by the quality of performance of the National Electoral Commission"<sup>1</sup> and hoped that their recommendations for improving the electoral process would be considered.

<sup>1</sup> <http://www.thecommonwealth.org/document/168193>

### Cameroon

Legislative and Municipal elections were held in July with the ruling Cameroon People's Democratic Movement led by incumbent President Paul Biya winning 140 seats out of a total of 180 Parliamentary seats. The Opposition Social Democratic Front John Fru Ndimanaged to win only 14 seats. There have been reports of irregularities with the opposition declaring the elections to be 'sham'<sup>1</sup>. It has also been reported that voter turn out was low and there have been allegations of wide spread rigging. In a joint media release issued in August, the embassies of Northern Ireland, United States of America, The Netherlands embassy and the British High Commission have criticised the polls and called for the setting up of an independent Electoral Commission.

<sup>2</sup> [http://en.wikipedia.org/wiki/Cameroonian\\_parliamentary\\_election,\\_2007](http://en.wikipedia.org/wiki/Cameroonian_parliamentary_election,_2007)

### Pakistan

Standoff between the militants and students holed up inside the Lal Masjid (Red Mosque) and the Pakistan Military in Islamabad ended with the latter storming the mosque after attempts at negotiations failed. The Lal Masjid operation was the military's response to a siege that took place at the Red Mosque, known for its radical teaching of Islam between 03 July and 11 July 2007. Newspapers have reported that more than 1000 students surrendered to the security forces before troops stormed in. More than hundred casualties were reported. The non-governmental organisation the Human Rights Commission of Pakistan (HRCP) has called for an independent inquiry into the Lal Masjid operation. HCRP stated its concerns over the high level of force used by the military to secure the mosque, and the consequent high level of casualties and over the allegations that the militants used women and children as human shields.

In another major development the Pakistan Supreme Court reinstated Chief Justice Iftikhar Mohammed Chaudhry. The Government officially accepted the Court decision recalling that the decision to suspend the Chief Justice had been based on various complaints received against him. His dismissal had caused widespread protests by lawyers, advocates and other opposition parties. Human rights groups see this decision as a landmark in the independence of the judiciary from political interference.

### Kenya

The ongoing campaign of the Freedom of Information Network to draft a Freedom of Information (FOI) Bill for Kenya has finally been realised. In May, the FOI Bill 2007 was introduced in parliament by the Honourable Gideon Moi; a milestone in the nation's fight for information. The country's Officials Secret Act has impeded the quest for the right to access information for many years yet the current Bill has the support of many sections of Kenyan society including many government officials, civil society organisations, and a large percentage of the population. Enactment of the Bill will confirm Kenya as a leading democracy in Africa and set an example for the many African countries still to introduce access to information legislation.

### Australia

Australian citizen, David Hicks, was sentenced to seven years in prison, after being held for five years in Guantanamo Bay. All but nine months of his sentence were suspended and will be served in Australia following plea-bargaining. It has been reported that in the plea-bargain Hicks agreed not to report on abuse by US forces during his detention. The Australian government remains dismissive towards protests by civil rights groups on this issue.

### Papua New Guinea

Voters in this south Pacific island state went to polls from 30 June to 14 July. Incumbent Prime Minister Sir Michael Somare of the ruling National Alliance Party (NAP) was re-elected again for the second consecutive five-year term. The year's elections followed the Limited Preferential Voting instead of the First Past the Vote system allowing the voters to number their three most preferred candidates.<sup>1</sup> The First Past the Vote system had led to a volatile situation in the country with large scale violence during 2002 elections. While no party got the absolute majority, a coalition of parties led by NAP secured 86 votes in the 109 seat Parliament. Elections were largely peaceful with few deaths reported. Thousands of police officers and soldiers were deployed throughout the country during the polls.

<sup>3</sup> [http://en.wikipedia.org/wiki/Papua\\_New\\_Guinean\\_parliamentary\\_election,\\_2007](http://en.wikipedia.org/wiki/Papua_New_Guinean_parliamentary_election,_2007)

### India

The European Parliament passed a resolution that urges India to end human rights violations against Dalits. The resolution says that although the caste system is illegal in India, human rights violations in relation to the caste hierarchy are the “best kept secret” of India. The resolution says that the EU will raise these issues during upcoming EU-India summits.

### Ghana

Sam Okudzeto, Chairperson of the International Advisory Commission of the Commonwealth Human Rights Initiative was awarded The Order of the Volta (Member Division) by the President of Ghana, His Excellency John Agyekum Kufour, at a public ceremony on July 6 for distinguished service to the nation. Uncle Sam, as he is universally and affectionately called, is well known for his outspoken nature on national issues, and richly deserves this award.



**Sam Okudzeto**

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### Fiji Islands

The Fiji Human Rights Commission was suspended in April from the International Coordinating Committee of National Institutions for the Protection and Promotion of Human Rights, an international representative body aiming at developing and supporting national human rights institutions in compliance with the international standards on human rights institutions (the Paris Principles). The suspension is a direct result of the Fiji HRC releasing a report in January supporting the military take over.

In another important development, the Pacific Centre for Public Integrity reported to Commonwealth Human Rights Initiative that its Director, Angenette Heffernan was informed on 18 July by Immigration Director Viliane Naupoto of her placement on a travel ban list. This decision followed Ms. Heffernan's lawyers' deportation on 26 June 2007 allegedly in an attempt to interfere in a case filed by Ms. Heffernan against the interim Government following the overthrow of the Fiji democratically elected Government in December 2006. This constituted the third case in July 2007 of an activist placed on the travel ban list. Mr. Graham Leung, former President of the Fiji Law Society, and Ms. Shamina Ali, Coordinator of the Fiji Women's Crisis Centre, were both placed on the list on 16 July 2007.

# Litmus Test for Commonwealth Promises to Promote Civil Society

Iniyang R. Ilango

Consultant, Human Rights Advocacy Programme, CHRI

With the Sixth session of the United Nations Human Rights opening on 10 September 2007 there is an urgent need for Commonwealth members to act together to promote civil society. The Council's first year of work was centred on institution building. The Fifth session held in June 2007 marked the end of this process and concluded with the adoption of resolution 5/1 titled 'Institution Building of the United Nations Human Rights Council'. This resolution details procedures and rules for the functioning of the Council, including the Universal Periodic Review (UPR) mechanism- a system to review human rights records of United Nations (UN) member countries. Resolution 5/1 provides that states' records would be reviewed on the basis of their own documentation of their human rights records and of compilations prepared by the Office of the High Commissioner for Human Rights (OHCHR).

Although resolution 5/1 describes much of the Council's functions, it leaves vague the role of civil society in many crucial areas, including for the preparation of the UPR documentation. When setting out the underlying principles behind the UPR the resolution mentions that participation of all relevant stakeholders including non-governmental organisations and national human rights institutions has to be ensured. However, when describing the UPR documentation process, the resolution merely "encourages" states to hold a broad consultation with all relevant stakeholders before preparing their submission to the Council. Civil society input also seems to have been kept out of a parallel compilation to be prepared by the OHCHR based only on UN reports and documents. The only other process available for civil society is a provision that allows the OHCHR to prepare a second compilation of 'additional, credible and reliable information' provided by other relevant stakeholders.

An important task for the upcoming Sixth session is to decide on guidelines for documentation to be submitted by individual countries prior to their review. The documents to be prepared by the OHCHR are to be elaborated following the structure of the guidelines to be adopted for state submissions.

H.E. Mr. Loullichki, the Moroccan Ambassador and facilitator for deliberations on the UPR released a non-paper on guidelines for the UPR on 10 August 2007. The non-paper

describes states' and OHCHR submissions but remains conspicuously silent on civil society inputs. This climate of vagueness is an indication of dangers that may emanate from the Sixth session.

For the 13 Commonwealth members of the Council (Bangladesh, Cameroon, Canada, Ghana, India, Malaysia, Mauritius, Nigeria, Pakistan, South Africa, Sri Lanka, UK and Zambia), civil society participation in the UPR has been a sensitive area with divided opinions. Negotiations preceding resolution 5/1 were tricky and worrying. One of the most contentious issues was civil society participation, with repeated attempts by some Commonwealth members to undermine civil society's access and role in the Council.

There is an urgent need to adequately include civil society views in all UPR deliberations. The in-country consultation process that resolution 5/1 'encourages' is as important as the summary to be prepared by OHCHR on 'additional, credible and reliable' information provided by other relevant stakeholders. Participating in national consultations prior to the report will give greater space to national non-governmental organisations and human rights institutions. Any such national consultation should be a credible and transparent process and not a mere token gesture or face saving measure. Guidelines to be adopted in the Sixth session should reflect this and propose specific national consultation processes. At the same time it is equally important to clarify the role of OHCHR in the preparation of summary/compilation of additional, credible and reliable information provided by other stakeholders. This neutral channel will provide a standing guarantee for civil society's intervention when national consultations ostensibly fail.

The 13 Commonwealth members of the Council should remember the commitments they undertook in the past four Commonwealth Heads of Government Meetings to promote civil society. Some of them had also promised to support civil society in their pre-election pledges to the Council. Keeping these promises in mind, Commonwealth Council members should act together to not only ensure that civil society input is adequately addressed in the UPR guidelines but also to uphold the value of civil society's participation repeatedly acknowledged by the Commonwealth. Any failure in this regard will only precipitate within the Commonwealth civil society, disenchantment with the Commonwealth and its ability to be an agent of democratic transformation and development. □

# Change in the Air : Uganda Civil Society Supports Review of Policing

Daniel Woods

*Coordinator, Police Reforms Programme, CHRI*

A group of 30 Ugandan civil society organisations, along with the African Police Civilian Oversight Forum and the Commonwealth Human Rights Initiative, has committed to engage with an upcoming review of policing in Uganda and to help build an accountable, democratic and community focused police service for Uganda. The organisations made the commitment at a national training workshop for civil society organisations on policing, organised by Human Rights Network Uganda (HURINET-U), together with the Foundation for Human Rights Initiative (FHTI) and the Uganda Prisoner's Aid Foundation (UPAF) in Entebbe, Uganda, in mid-August.

Uganda's police force is a legacy of the country's colonial past. This means that the police force is heavily militarised, unaccountable and firmly within the control of the ruling government. Policing in the country has been coloured by brutality, impunity, torture, illegal arrest and detention, corruption, partiality and excessive use of force, often in the face of attempts by exemplary police officers to serve the community and provide the Ugandan people with the police that they deserve. Successive regimes have made unashamed use of the police as a political tool, to clamp down on opposition, dissent and the media, while starving the organisation of the resources it needed to fulfill its mandate.

Uganda fell under British control in the late 19<sup>th</sup> century, first as a trading outpost of the British East Africa Company, and later as a British Protectorate. Under colonial rule, the police were a para-military force imposed to protect the political and economic interests of the British and to put down resistance and opposition to colonial policies. The transition to independence in 1962 was relatively peaceful, but within four years, Uganda was plunged into decades of divisive politics, with coups and counter coups marking prolonged periods of instability and dictatorship. This political context shaped the police; the various governments quickly recognised the political use of a partisan police force to secure power. Successive regimes wholeheartedly adopted the colonial model of regime policing as their own and reform of the police was an impossible dream.

Uganda is now firmly on a democratic road, although it is a road marred with cracks and fissures. In a positive development, multi-party elections were held last year for

the first time since 1980, breaking years of one-party politics. On the other hand, the elections were overshadowed by claims of electoral fraud and the high profile arrest and detention of opposition leader Kizza Besigye. The elections returned the incumbent, President Museveni to power, but were an important signal that democracy is evolving and taking hold in the country.

Reform of the police will be a critical part of the realisation of true democracy. Democratic nations need democratic policing.

The police force itself has recognised that the current police laws and systems need to be considered and evaluated, and has embarked on a review of its policies and functions. This process is being led by an internal police steering committee, which is currently consulting within its own ranks, as well as within the community and civil society, to draw up a way to move policing forward.

Civil society will be a critical part of this review process. Discussion and debate around policing has been increasing in Uganda over the past few years; this is largely due to the work of civil society organisations and individuals, who have worked to highlight police misconduct and push for system reform. A successful community-focused review process will require both the involvement and engagement of civil society – and the signs are that the police force will seek and consider community input, and that civil society are ready and able to take up the challenge of police reform. An important first step towards taking up this challenge was the HURINET-U civil society training workshop; the level of attendance and engagement with the issues discussed was a truly heartening sign of what the review process can be. The workshop closed with the participants calling on the Ugandan government to recognise civil society's role in the review, calling on the police to design a time-led, transparent, participatory and consultative review process and calling on civil society to participate fully in the review.

The full text of the final statement, as well as more information on the workshop proceedings, is available on the CHRI website [www.humanrightsinitiative.org](http://www.humanrightsinitiative.org)

# Reconciling Counter-Terrorism & Democracy: A View on President Mbeki's Perspective for Africa

Arnaud Chaltin

Consultant, CHOGM Team, CHRI

In the 38<sup>th</sup> Commonwealth Parliamentary Association (CPA) African regional meeting, held on 27 July 2007, the South Africa President Thabo Mbeki called for all African countries to adopt adequate measures to comply with the Convention for the Prevention and Combating of Terrorism (AU Convention). Believing that enacting such legislation would enormously strengthen the capacity of the African continent to defeat the threat of terrorism, President Mbeki called on his counterparts to ensure that Africa equips itself with adequate tools to counter terrorism. Africa is currently facing intense pressure in this matter, as has been demonstrated by the interest of the United States of America (USA) to fund Kenya's counter-terrorism training. This is also demonstrated through the United Nations meetings between West African countries and donors in an attempt to strengthen the region's counter-terrorism measures.

However, it would be incorrect to say that the continent has failed to react in the current fight against terrorism. Amongst the Commonwealth countries in the African Union, eleven have ratified the AU Convention, while seven more have gone on to sign it. Between these countries, six countries (Mauritius, Seychelles, South Africa, Tanzania, Gambia and Uganda) have adopted anti-terrorism laws while, Malawi has enacted a law focussing on the financing of terrorism. Botswana and Lesotho have relied on their internal security Acts to fight terrorism. Other countries, such as Kenya, Namibia and Nigeria are currently in the process of adopting security legislation. Moreover in Article 2 of the AU Convention, member states are obliged, amongst other things, to "review their national laws and establish criminal offences for terrorist acts", and to "implement the actions, including enactment of legislation and the establishment as criminal offences". This is often done by the enactment of acts modifying the criminal code. There is, however, no obligation

Specific anti-terrorism legislation is undoubtedly a very visible way of demonstrating the country's commitment to counter-terrorism. However, visibility does not always equal efficiency, and other legislative ways ought to be considered first,

beginning with an assessment of the adequacy of already existing norms.

Before considering adopting legislation on this topic, a *sine qua non* condition must be complied with to ensure its adoption as an effective counter-terrorism measure: establishing a clear definition of terrorism. If this first question is not thoroughly and clearly answered, the good intentions of the government will only give birth to a law enhancing its own arbitrary powers. This question of definition has been a concern for national legislators and the international community for the past four decades, and as yet, every attempt to define terrorism has failed to respect the basic principle of legal certainty. In the context of Africa, many groups involved in illegal activities that could be classified as terrorism are traditionally labelled as the opposition, rebels, guerrillas, independent military factions instead of terrorists, therefore showing that concepts are not clear cut and as stated earlier need to be clearly defined.

Like all the others, the definition enshrined in the AU Convention is not an exception and fails to provide an unambiguous meaning of terrorism. It encompasses any criminal act (including those causing death, injuries, damage to property or restriction of freedom) committed in order to intimidate a government, or the general public, to disrupt a public service or to create a state of general insurrection. Breaking a window during a demonstration could fulfil this criterion, leaving the choice of prosecuting the offender as a terrorist or not to the discretion of the government, a good way to crush legitimate dissent. Therefore without fulfilling this fundamental condition, any counter-terrorism law would be in contradiction of the position of President Mbeki, that only through a democratic system of governance can the masses of the African people acquire the space to give free reign to their ingenuity and creativity in an environment liberated from the choking fetters of oppressive, autocratic and dictatorial government systems.<sup>1</sup>

An important step in establishing a model law is to make sure that its contents do not violate human rights, but promote them instead. Human rights are fundamental in the fight against terrorism; it is by respecting and promoting them that a state clearly demonstrates the difference between terrorists and itself. Governments have the duty to counter terrorism, but this cannot be durably achieved if states, by enhancing police discretion and powers whilst reducing the accountability of law enforcement bodies, spread fear as do the terrorists. National security must be guided by the need to protect the physical boundaries, symbols and infrastructure of the state and the ideal of democracy. Democracy requires that national security cannot be achieved unless each and every person in the country feels safe. In other words, national security requires human security. Laws and actions that provide safeguards are necessary for the safety of the state and its people, where they protect life and property as well as liberty and rights. To be effective the powers provided to police, to counter terrorism, must be appropriate, proportionate and humane, complying with the standards set out in international law. If not, they undermine the democratic legitimacy of the state.

Democracy must be promoted. Deep consideration, wide consultation and careful review by experts committees are required for the review and enactment of laws around such sensitive topics that are likely to have an impact on human rights. Pressure to act quickly too often curtails such processes; terrorism is an ongoing issue that must be thoroughly thought through for counter-terrorism not to be counter-productive. This has been illustrated in South Africa, where the Anti-Terrorism Bill (2000), whose provisions extended the powers of the police to stop and search, and allowed a 14-day detention for interrogation, was abandoned after a careful four-year long review process. This expression of democratic principles gave birth to the Protection of Constitutional Democracy against Terrorism and Related Activities Act (2004), whose eloquent name highlights the link between democracy and counter-terrorism.

Pressure on governments to legislate quickly rarely encourages democracy, and enhanced and uncontrolled police powers are unlikely to enhance the security of the citizen. In Kenya, bills to introduce a strong counter-terrorism law have been successively rejected. The government and the international community are, however, still pushing for the adoption of

such a law, very much against the will of Kenyan citizens and therefore against the principles of democracy. Such undue pressure only contributes to alienate a government from its citizens and, in no case enhances effective counter-terrorism practices.

President Mbeki suggested writing a model law for countries who seek help in this difficult process to draft the adequate norms to counter terrorism. Such a task has been completed by the Commonwealth Secretariat, whose Commonwealth Model Legislative Provisions on Measures to Counter Terrorism was used as a reference both by the UN Office on Drugs and Crime and by some Commonwealth countries. However, the model law fails to respect the two steps described previously: the principle of legal certainty and the protection and promotion of human right - although the drafting body considered the human rights obligations of the Commonwealth in their deliberations, there is no evidence of this in the model law. If the CPA undertakes such a task, it should consider as a starting point both the conclusions of the UN Special Rapporteur on the Promotion and Protection of Human Rights while Countering Terrorism and the Security Council Resolution 1566 (2004), which provides a working definition of what constitutes a terrorist act.

The African Union includes a wide range of political systems: some governments are stable and legitimate while others bend more towards autocracy and dictatorship and there are still others that lack legitimacy. Anti-terrorism legislation in countries often seen as models for human rights have led to dramatic abuses. One can therefore imagine how such legislation could be used in countries where corruption, torture and police misconduct are already widespread and civilian freedom and liberty is restricted. Africa must reconcile the fight against terrorism and the promotion of democracy. This can only be done by respecting and promoting the rule of law, democracy and human rights, and should be the basis of the assessment of existing legislation and the adoption of the provisions to fill in the legislative gaps that may be identified.

**(CHRI has written a report titled ‘Stamping Out Rights – The impact of anti-terrorism laws on policing.’ For more information on the report contact the writer at [arnaud@humanrightsinitiative.org](mailto:arnaud@humanrightsinitiative.org))**

# New Police Laws: An Attempt at Genuine Police Reform or Subverting the Supreme Court Directives?

Shobha Sharma

Coordinator, Police Reforms Programme, CHRI

The Supreme Court of India, in its judgment delivered on 22 September 2006 in the *Prakash Singh and Others Vs. Union of India and Others*, issued seven directives to the Central Government, State Governments and Union Territories for immediate compliance until the framing of appropriate legislation.

A number of states are framing new police laws. This could be seen as encouraging, but instead it is a source of grave concern. Legislation which has such critical significance for the community is being drafted in complete secrecy. There has been no public consultation on draft legislation in any

state. The general trend is for a draft police bill to be introduced in the Legislative Assembly, and be passed with little or no debate and discussion. In some states, an Ordinance has been promulgated, and re-promulgated periodically, which is also done in the absence of any debate or discussion.

Furthermore, these new police laws have, in the main, diluted many provisions for systemic reform stipulated by the Supreme Court. Below is a table that highlights some common trends observed in a number of states.

| Supreme Court Directive  | How states may weaken the directive in their legislation   | Implications of straying from the intent of the Court   |
|--|--|---|
| 1 Constitute a State Security Commission to (i) ensure that the state government does not exercise unwarranted influence or pressure on the police, (ii) lay down broad policy guidelines, and (iii) evaluate the performance of the state police; | <ol style="list-style-type: none"><li>1 By excluding the Opposition Leader from the membership.<ul style="list-style-type: none"><li>• By reducing the number of independent non-Government members from 5 to 2</li><li>• By not specifying any selection process for the independent members, instead the government appoints them.</li><li>• By reducing the security of tenure for non-government members “subject to the pleasure of the government”</li><li>• By reducing the role to “advise” and “assist the government to frame policies rather than being the body which frames policy</li><li>• By reducing the role to “advise” and “assist the government to frame policies rather than being the body which frames policy</li></ul></li><li>2 Remove the empanelment by Union Public Service Commission (UPSC) for suitable candidates for Director General of Police (DGP), retain government appointment of DGP</li></ol> | <ol style="list-style-type: none"><li>1 If the membership tilts heavily towards government representatives, the independent members are outnumbered, and there is no Opposition Leader, the checks and balances provided by the Court are removed.<ul style="list-style-type: none"><li>• It is no longer assured then that the SSC will insulate the police from undue political interference.</li><li>• If the role is diluted, once again, the Government retains full control over the police and undue interference is not checked, so no systemic change occurs.</li></ul></li><li>2 Excluding the role of the UPSC in empanelling the names of suitable candidates for DGP takes away an important safeguard laid down by the Court. The State government perpetuates the status quo by maintaining its unilateral power to appoint the head of police.<ul style="list-style-type: none"><li>• Additional clauses for premature removal, particularly where the wording is not “shall record in writing the reasons” but “may”</li></ul></li></ol> |
| 2 Ensure that the Director General of Police is appointed through a merit based, transparent process and enjoys a minimum tenure of two years; and grounds for removal are laid down in law.   |  |   |

|   |   |   |
|---|---|---|
| <p>3 Ensure that other police officers on operational duties (including Superintendents of Police in-charge of a district and Station House Officers in-charge of a police station) also have a minimum tenure of two years.</p>  | <ul style="list-style-type: none"> <li>• Not stipulate any merit based criteria for selection</li> <li>• Use wording such as “may usually enjoy up to 2 years tenure”.</li> <li>• Add an additional clause under grounds for removal such as “in case of an administrative exigency which <b>may</b> be recorded in writing.”</li> <li>• Reduce minimum tenure to 1 year</li> </ul>   | <p>provides loopholes to remove a DGP – exactly what is trying to be prevented.</p>   |
|   | <p>3 Add an additional clause under grounds for removal such as “in case of an administrative exigency which <b>may</b> be recorded in writing</p> <ul style="list-style-type: none"> <li>• Add a clause under grounds for removal such as “on his own request”</li> </ul>  | <p>3 Reducing fixed tenure to 1 year defeats the purpose of providing a stable period of leadership without fear of transfer.</p> <ul style="list-style-type: none"> <li>• Officers at lower ranks may be intimidated into making a request to be transferred.</li> <li>• The Court provided sufficient grounds for premature removal.</li> </ul>   |
| <p>4 Set up a Police Establishment Board, which will decide all transfers, postings, promotions and other service related matters of police officers of and below the rank of Deputy Superintendent of Police and make recommendations on postings and transfers of officers above the rank of Deputy Superintendent of Police.</p> <p>5 Set up independent Police Complaints Authorities at the state and district levels to look into public complaints against police officers in cases of serious misconduct, including custodial death, grievous hurt or rape in police custody.</p> | <p>4 Include non-Police government officers on the Board</p> <ul style="list-style-type: none"> <li>• Give them reduced power to <b>recommend</b> transfers and postings to the government rather than <b>deciding</b> on it</li> <li>• Remove Board’s power to recommend postings of IPS Officers</li> </ul> <p>5 Make the membership of the Authority consist of serving government and police officers – no independent oversight</p> <ul style="list-style-type: none"> <li>• Do not stipulate any selection process for independent members</li> <li>• Reduce the type of complaints that can be received by the Authority</li> <li>• Have only a State Authority, no District Authority</li> <li>• Combine Authority for a number of Districts</li> <li>• Give the Authority merely a monitoring role rather than looking into complaints</li> <li>• Not giving “binding” power to its recommendations</li> </ul> | <p>4 Undue interference in police postings, promotions and transfers is not prevented if non-Police government officers are included on the Board.</p> <ul style="list-style-type: none"> <li>• The power of the Board to recommend, and the Government to accept the recommendations as a matter of course is a safeguard against unilateral government decisions on transfers and postings.</li> </ul> <p>5 Independent, full-time members are important to ensure that the public has confidence in the complaints authority. If there is no accountable, transparent method of appointing members the credibility of the Authority is affected.</p> <ul style="list-style-type: none"> <li>• Having serving police officers on the Authority does not assure no independent oversight as intended by the Court.</li> <li>• Access to complaints is severely restricted if there are no District level authorities or combined authorities for a number of districts.</li> <li>• By not giving the Authority the powers as per the Court, yet another ineffective body may be created similar to so many others that exist.</li> </ul> |

CHRI strongly believes there must be wide public consultation in states. Without it, there is every danger that the Acts will be compromised by the interests of strong lobbies that do not include the poor, the weak, the vulnerable and members of the general public who are the major client group of policing, as well as the victims of police underperformance and abuse.

CHRI urges states to immediately prioritise holding statewide public consultations before passing any Police Bill, and urges civil society’s active participation in the debates and issues involved in Police Acts.

# CHRI Conference Seeks to Build Solidarity for Freedom of Information in Africa

Sean Keogh

*Intern, CHRI, Africa Office*

In the post Cold War era, many African countries have adopted democracy as their political system in a new wave of democratisation processes that are sweeping the continent. Such signs of progress must be qualified by the fact that a democracy is only as strong and legitimate as the degree of transparency and participation that such a government is able to provide. It is for that reason that Right to Information (RTI) or Freedom of Information (FOI) legislation is considered a critical building block for democracy, having the ability to ensure that representative forms of government are not just superficial in nature.

The right to access information has been enumerated not only in the Universal Declaration on Human Rights but also by the African Union Declaration of Principles on Freedom of Expression in Africa. Furthermore, most countries in Africa have this right entrenched in their national constitution, either as a distinct right or as part of a broader interpretation of the right to freedom of expression. Despite this, out of the 54 countries in Africa, only South Africa, Angola and Uganda have laws providing for the right to information.<sup>1</sup> Many countries are also in some stage of the process towards adopting the legislation, but the majority do not have draft bills at all.

It is with that in mind that 47 delegates convened for the Africa Regional Conference on Freedom of Information in Accra, Ghana on July 30<sup>th</sup>. The conference participants represented the Commonwealth Africa countries, as well as the United Kingdom and India. The workshop was a forum for advocates from the region to critically reflect on their own and others' advocacy campaigns, learn from each others' experiences and determine fresh approaches for both domestic and regional advocacy in the future.

Two prominent participants at the Conference were Ghanaian politicians Hon. Alban Bagbin, Minority Leader in Parliament, and Hon. Frank Agyekum, the incoming Deputy Minister of Information. Other notable speakers were Ghanaian members of civil society, experts from Article 19, UK and the Commonwealth Human Rights Initiative, India. They were joined by leading advocates from the ten Commonwealth countries in Africa.

Speaking on the status of "regional advocacy initiatives", the Media Institute of Southern Africa representative, Sampa

Kangwa-Wilkie pointed out the limitations and threats that must be overcome to enact a right to information law. Ms. Kangwa-Wilkie cited the example of Zambia to elucidate four central threats to legislation: 1) indecisive government; 2) a tendency to confuse freedom of information with freedom of expression; 3) a passive culture that does not question government; and 4) ignorance of policy makers, civil society and the general public. To illustrate the fourth point, she referred to a survey conducted in Namibia that found that ninety-two percent of those polled, (which included MPs, legal drafters and journalists) had no clear understanding of the issues the right to information entails.

Considering all of these hurdles and even ignoring the threat of a lack of political will, it is not surprising that governments find it easy to try and justify stalling the passing of such a law. On this issue, the interventions of two powerful Ghanaian politicians brought fireworks to the opening ceremonies as they, along with Professor Kwame Karikari of the Media Institute for West Africa debated the long-awaited Ghanaian FOI Bill. Originally drafted in 2000, and subsequently reviewed in 2003 and 2005, the bill has yet to be passed by Parliament. Concerns were also raised on the watering down of the Ghanaian Bill.

One of the most contentious topics at the Conference was the "extent of legitimate exemptions" and on this subject, Ene Enonche from the Open Society Justice Initiative in Nigeria, argued that because exemptions are a key deal breaker, advocates and the government may have to compromise in their endeavour to get a bill passed, relying on the fact that there is a possibility the law could be amended later. This sparked heated discussion, as Akoto Ampaw of the Akuffo-Addo Chambers in Ghana, and the chair of the session Sam Okudzeto, of CHRI's International Advisory Committee, warned of the dangers of accepting a weak law considering the potentially immense difficulty in advocating for an amendment to a law.

The meet concluded by noting the importance of advocacy campaigns in the implementation phase following the enactment of the law. The final tenet of the Conference's Mission Statement focused on this, by committing all signatories to "monitor the implementation of freedom of information laws at the national level". While it is too early to discuss the impact of the workshop, the participants were hopeful that such meetings would help to "form national and regional freedom of information coalitions to advocate, mobilise support, and lobby for Freedom of Information legislation".

<sup>1</sup> Zimbabwe also has a law which is titled such that it implies it is a right to information law, however it actually restricts the flow of information rather than provides for it.

# Role of Civil Society Organisations in Implementation of RTI in India

Sohini Paul

*Project Officer, Access to Information Programme CHRI*

From 12 October 2005, the Right to Information Act (RTI Act), 2005 became fully operational across India. The Act provides people the right to access government-held information and requires systems to be set up for ensuring transparent and accountable government. The purpose of the Act is to create an informed citizenry capable of participating in the decision-making processes of government at all levels. In this context, the right to information becomes a key tool for ensuring that public authorities more effectively meet their goal of promoting participation and entrenching accountable government at the grassroots level. It has been nearly two years since the RTI act has been enacted, yet its use especially in the rural areas has been very low, mainly due to the fact that there has been hardly any training or orientation or large-scale awareness generation campaigns amongst the rural masses. Lack of awareness and training and public education are the main reasons why people find it difficult to access information from various government bodies. Civil society organisations

(CSOs), especially those working at the grassroots in rural areas need to be aware about this landmark legislation in our country. More importantly they have the specific responsibility to spread awareness about this Act amongst the people and monitor its implementation.

Therefore, in order to strengthen the implementation of the RTI Act and spread awareness about it, the Commonwealth Human Rights Initiative (CHRI) in partnership with the Poorest Area Civil Society programme conducted a series of six cluster level training and capacity building programmes for CSOs on RTI in the eastern states of Bihar and Jharkhand. These workshops were held over a period of three months from May to July 2007.

One of the main outcomes of the workshops was to develop detailed action plans on the roles of the CSOs and identify activities in strengthening the implementation of RTI Act in Bihar and Jharkhand. The main roles of the CSOs and activities as identified by the participants in the workshops have been given in the table below:

| Major Roles                               | Activities  |
|---|---|
| Awareness generation and public education | <ul style="list-style-type: none"><li>Print handbills, posters and pamphlets on RTI for wide-scale distribution</li><li>Spread awareness about RTI through wall writing, group discussions, pamphlet distribution, rallies, street plays, awareness camps etc.</li><li>Inform people about governments duty to proactively disclose information;</li><li>Share successful case studies on use of RTI by ordinary citizens in order to enable people to understand its value and importance;</li></ul> |
| Set up RTI resource centers or help lines | <ul style="list-style-type: none"><li>Set up Information Resource Centres which will provide technical support to people in drafting RTI applications as well as help people to get justice after using the RTI Act;</li></ul>  |
| Centers or helplines                      | <ul style="list-style-type: none"><li>Demonstrate their value and usefulness by helping the poor who are living below the poverty line to file RTI applications.</li><li>Follow-up with applicants and document case studies.</li></ul>   |
| Advocacy                                  | <ul style="list-style-type: none"><li>Organise a workshop on advocacy around RTI issues.</li><li>Use RTI for the effective and successful implementation of National Rural Employment Guarantee Schemes.</li><li>Use RTI to reduce corruption in the public distribution system.</li></ul>  |
| Capacity Building                         | <ul style="list-style-type: none"><li>Organise RTI workshops at village, block and district level with the purpose of increasing awareness and knowledge about RTI.</li><li>Organise RTI workshops for CSOs, media, government officials, women members of Self Help Groups, Gram Pradhans (elected head of village council), retired government officials, teachers, media.</li></ul>  |

It must be borne in mind that awareness generation in citizens and capacity building of government officials need to be done side-by-side in order to strengthen the demand side for accessing information as well as the supply side for giving

information. As a follow-up to these workshops CHRI will continue to provide educational support to CSOs throughout India with a particular focus in the states of Bihar and Jharkhand in order to continue the momentum generated as a result of these workshops. □

# CHRI Calendar : April - June 2007

## CHRI Headquarters

- Maja Daruwala, Director, Commonwealth Human Rights Initiative was elected in May 2007 to the Board of Directors of CIVICUS: World Alliance for Citizen Participation. The Board of Directors is the organisation's governing body and comprises 13 directors who are elected to serve a three-year term.
- CHRI was accepted as an associate member of Des Ligues Des Droits De L'homme (International Federation for Human Rights) at their triennial global networking meeting at Lisbon, Portugal, which the Director attended.
- Daniel Woods resourced a workshop and made presentations on issues in Uganda at a conference on policing in post-conflict Africa the conference was held in pretoria.
- CHRI presented a workshop on the Right to Information with PCPI and Amnesty International at the CIVICUS World Assembly in Glasgow. The Director represented CHRI.
- Daniel Woods resourced a police accountability workshop at the CIVICUS World Assembly in Glasgow.
- CHRI organised a national workshop for a 'People's Campaign for Better Policing' inviting nearly 60 participants from several states across India.
- CHRI conducted a series of regional workshops in the Indian states of Kerala, Karnataka, Chhattisgarh and Tamil Nadu around compliance with the Supreme Court of India directives on Police Reforms.
- CHRI conducted regional workshops with the Church's Auxiliary for Social Action

(CASA) and the DFID supported Poorest Areas Civil Society (PACS) partners. CHRI has developed collaborative relationships with both to extend awareness of RTI in several Indian states.

- Maja Daruwala was on the panel at the Indian People's Tribunal on Untouchability organized by the National Campaign for Dalit Human Rights in Delhi.
- Cecilia Burgman represented CHRI at the Pacific Island News Agency conference held in the Solomon Islands
- Venkatesh Nayak presented at the Jakarta workshop organised by the World Bank Institute to discuss the Indonesian FOI Bill.
- CHRI co-facilitated a conference on police accountability and effectiveness in Eastern Africa with the Kenya National Commission on Human Rights and the African Police Civilian Oversight Forum. Daniel Woods, Tessa Boyd-Caine and Kelly Gwyn represented CHRI at the conference.
- Maja Daruwala gave the key note address at the Access and Privacy conference, University of Alberta, Edmonton, Canada

## CHRI Africa Office

- CHRI staff met with delegates of the Joint ACP/EU Parliamentary Assembly (JPA) led by Honorable Gladys Kinnock. The meeting was organised by the European Commission.
- CHRI organised activities for the commemoration of Commonwealth week in Accra.
- CHRI organised a Public Hearing in Koforidua under the theme 'Improving the relationship between the police and the public in Ghana.'

- CHRI in collaboration African Commission on Human and Peoples with the Right and the Ministry of Justice held an Africa March on Women's Reproductive Health Rights. This was organised to launch the 41<sup>st</sup> Ordinary Session of the African Commission on Human and Peoples' Rights (ACHPR) held in Accra.

- Nana Oye Lithur, Florence Nakazibwe, Wilhelmina Mensah, Edmund Acquaye attended the Opening Ceremony of the 41<sup>st</sup> Ordinary Session of the African Commission on Human and Peoples' Rights held in Accra.
- CHRI organised the National Jubilee Lectures on Policing in Ghana. The lecture was under the theme, 'Reflections on 50 years of post independence policing in Ghana: Assessing its impact on Democratic Governance, the rule of law and protection of Human Rights.'
- CHRI led a delegation of the RTI Coalition members to a meeting with Mr Kwame Osei Premeh the Deputy Attorney General to discuss the status of Freedom of Information in Ghana.

- CHRI embarked on a Fact Finding Mission to investigate the forced eviction of the residents of Sodom and Gomorrah a slum within the Kumasi Metropolis in the Ashanti Region of Ghana.

## CHRI Executive Committee Office (UK)

- Stephanie presented on 'Ensuring compliance Aiyajari with human rights commitments in the Commonwealth' at a conference organized for the Commonwealth Scholarship Commission.

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