

Commonwealth Human Rights Initiative



Newsletter

Volume 13 Number 4
New Delhi, Winter 2006-2007

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▫ Zimbabwe: Solidarity in a Time of Need

- Clare Doube

Manager - Civil Society Watch Programme (CIVICUS)

It is a tragic irony that the principles of democracy, human rights and the rule of law that all Commonwealth countries must follow are called the *Harare Commonwealth Principles*. While these principles were largely respected by the host government when they were agreed to at the 1991 Commonwealth Heads of Government Meeting in Zimbabwe's capital; sadly, that is no longer the case.

Following its suspension and then withdrawal in 2003, Zimbabwe may no longer be a member of the Commonwealth but the plight of the country and its people remains in the hearts of many in the association as well as in the region and around the world.

It is for this reason that in November 2006 CIVICUS: World Alliance for Citizen Participation facilitated an African Solidarity Mission to Zimbabwe, in collaboration with the Crisis in Zimbabwe Coalition. CIVICUS, a Johannesburg-based international alliance dedicated to strengthening civil society and citizen participation throughout the world, runs a number of programmes, including Civil Society Watch (CSW) which organised this mission. In line with CSW's focus on responding to situations where citizen action and civil society rights and freedoms are being threatened, the November mission to Zimbabwe focused on the challenges faced by civil society in Zimbabwe and the obstacles they must overcome in order to do their work.

The Mission brought together senior and highly respected representatives from a diverse range of civil society groups from across Africa. The members of the team were: Don Mattera, South African writer and community activist; Don Deya, the Executive Director of the East African Law Society based in Tanzania; Luckson Chipare, former Regional Director of Media Institute of South Africa based in Namibia; John Kapito, a Commissioner at the Malawian Human Rights Commission; Hannah Forster, Executive Director of the African Centre for Democracy and Human Rights Studies in the Gambia; Jeremias Langa, News Director of SOICO, the only independent broadcaster in Mozambique; and Fatoumata Toure, of the Global Pan African Movement, based in Kampala.

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Travelling to Harare and Bulawayo from 27 November to 1 December, the team met with representatives of civil society including those from non-governmental organisations, women, students, business, trade unions and faith-based groups, as well as individuals in government and opposition parties. This provided an opportunity for regional civil society to offer solidarity to Zimbabwean civil society during the country's humanitarian and human rights crisis. The mission also sought to discuss with various stakeholders ways and means in which civil society can effectively react to the repressive environment, and practical assistance that can be provided from abroad, particularly from the countries represented on the mission.

The existence of a strong and vibrant civil society, alongside a robust state with a prevalent rule of law, are key factors for the stability and health of a country and underpin its ability to avoid and effectively respond to crises. Tragically, the manner in which the Zimbabwean government has recently exercised power has compromised the functioning of its civil society. The Zimbabwean legislative architecture comprising the Access to Information and Protection of Privacy Act (AIPPA), Public Order and Security Act (POSA), Constitutional Amendment No. 17, and the Criminal Law (Codification and Reform) Act - among others - has severely narrowed space for civil society to exist and engage. The pending NGO Bill threatens to further hamper the legitimate work of civil society.

Tragically, the narrow legal framework is not the only limitation placed on civil society organisations that were raised with the African Solidarity Mission. Others included attacks on human rights defenders and other activists, with both physical violence and propaganda used to undermine the individuals and their work; and control of communications and resource flow. It was noted by the team that despite these and other considerable challenges, ongoing intimidation and threats, there are countless organisations and individuals continuing to courageously work on improving the situation in Zimbabwe.

The Mission observed how it is not just those who criticise the government who are under attack, but that everyday life is a struggle for many. As one person explained in a public meeting in a high-density suburb of Harare, "There is no respect for human rights. There are very high levels of corruption, very low levels of service delivery while prices of these same services are increased considerably and no accountability from those in authority". The Mission observed that life was

particularly tough for those affected by Operation Murambatsvina. While being denied entry to some Operation sites, elsewhere the Mission members met with informal settlers who indicated that their shacks, made out of motor vehicle scrap metal and black plastic sheets, had been destroyed more than five times, but they cannot leave as they have nowhere else to go.

Following their visit the African Solidarity Mission made the following recommendations, that the Government of Zimbabwe should:

- ◆ "Begin building, along with the people of Zimbabwe, the spirit of dialogue, tolerance and peace in order for them to enjoy and realise basic freedoms and socio-economic development.
- ◆ Be accountable to its nationals by ensuring that it promotes and protects the human rights of its people through the establishment of an enabling democratic environment.
- ◆ Heed the recommendations of the 2005 UN Fact-Finding Mission to Zimbabwe by Mrs. Anna Tibaijuka regarding Operation Murambatsvina, and ensure the housing promised to those whose homes were destroyed is made available.
- ◆ Repeal all the repressive laws that impinge on the enjoyment of fundamental human rights - such as the Access to Information and Protection of Privacy Act, the Public Order and Security Act, Constitutional Amendment No. 17, and the Criminal Law (Codification and Reform) Act, as well as the pending NGO Bill.
- ◆ Work with the people of Zimbabwe to review the current constitution to make it conform with accepted standards and best practice.
- ◆ Establish independent democratic governance institutions such as a Human Rights Commission and Anti-Corruption Commission that will, in a transparent manner, promote and protect the enjoyment of human rights."

One of the main aims of the Mission was to also consider action that could be taken across the region to improve the situation in Zimbabwe. Therefore, in their communiqué, the team urged "international partners to support the democratic reform of governance institutions in Zimbabwe" and committed themselves as well as further urging "regional governments and civil society institutions, to continue to offer practical solidarity and tangible assistance to the government and people of Zimbabwe".

The Commonwealth countries of Africa have an opportunity and a responsibility to be at the forefront of this assistance. The struggles against colonialism that they all have faced give a shared understanding of the urgent need for solidarity in shaking off the shackles of a dictatorial regime. Zimbabwe has previously offered support to its neighbours in times of need most notably during the anti-apartheid struggle in South Africa and now is the time for all of

us to reciprocate and offer tangible support to our brothers and sisters in Zimbabwe, fighting once again for democracy and human rights to be a reality in their country.

For more information on CIVICUS' Civil Society Watch programme, mission or for a copy of the mission's report, visit www.civicus.org and www.civilsocietywatch.org or email: clare.doube@civicus.org ■

Voting Patterns of Commonwealth Nations in UN

R. Iniyan Ilango, Consultant, CHRI

If actions speak louder than words, human rights protection in the 53 countries of the Commonwealth is treading on thin ice. An analysis of voting patterns at the UN's Third Committee done by the Washington based Democracy Coalition Project shows big gaps between the Commonwealth's rhetoric and reality. The Democracy Coalition Project analysed six recent resolutions connected to human rights and democracy. Five are related to human rights violations in Iran, North Korea, Myanmar, Belarus and Uzbekistan. The sixth resolution sought a blanket ban on "preventing politically motivated and biased country specific resolutions and confrontational approaches".

The Third Committee focuses on human rights issues and on the reports of the "special procedures of the newly established human rights council." Among its 192 members are members of the Commonwealth who have a special mandate to promote and protect human rights because 13 sit on the Human Rights Council, and the nine sit on the Commonwealth's own watchdog mechanism - in the Commonwealth Ministerial Action Group (CMAG). These members have dual mandates to protect human rights. Their voting record however did little to bolster faith that this responsibility weighed heavily on them.

Of those on the Human Rights Council, Canada and the UK opposed this dilution of human rights accountability. However, India, Malaysia, Pakistan South Africa and Sri Lanka voted to weaken human rights accountability. Bangladesh, Ghana, Mauritius and Nigeria abstained, while Cameroon and Zambia were absent. Of the CMAG members only Canada, Malta and the UK voted against any dilution of this process while Lesotho, Malaysia, St Lucia and Sri Lanka voted to get rid of country specific criticisms. Papua New Guinea and the United Republic of Tanzania abstained.

Standards should matter, or they have no meaning. Protection of human rights is one of the core aspects of the Harare Declaration which proclaims the Commonwealth's fundamental political values. Member states who persistently violate its standards face suspension or expulsion. Suspect states are kept on a CMAG watch list. Pakistan and Nigeria have both had spells of suspension. UN mechanisms for *examining* human rights records are stronger than those of the Commonwealth, but few consequences flow even when reports are grim. At best, violating governments get rapped on the knuckles when they are specifically named for really bad behaviour.

Such behaviour puts in doubt whether there is indeed any Commonwealth standard on human rights and if there is, should there not be mechanisms that insist it be demonstrated globally?

If the guardians of state accountability sleep on their watch it does not bode well for the UN either. The present voting also betrays the promise that "members elected to the Council shall uphold the highest standards in the promotion and protection of human rights" and lends validity to fears that like its predecessor, the new Council may fail to keep countries that are insensitive to human rights out of its membership. At the UN, human rights is much the hand maiden of foreign policy imperatives. Resolution and voting patterns are guided by more *realpolitik* concerns and bloc alliances than by any genuine commitment to an international gold standard on human rights. The Commonwealth members' voting records just lends a few more nails to the coffin of the burgeoning hope that the new Human Rights Council would be able to hold violating countries effectively to account for inflicting pain and suffering on their peoples. Perhaps the next round will nail it down. (Source : Published in the Jamaica Observer and other papers in the Commonwealth in December '06 & January '07)

David Hicks - Where to Next?

Alison Duxbury

Member of CHRI's International Advisory Commission

On a recent visit to Australia, Bono, the lead singer of U2, joined the chorus of voices calling for the release of David Hicks from Guantanamo Bay. Following the return of Mamdouh Habib to Australia in early 2005, Hicks remains the only Australian detained in Guantanamo Bay, a United States' naval base in Cuba. Unlike the British Government, which has successfully called for the release of British nationals from the naval base, the Australian Government has not asked for Hicks to be returned to Australia. Instead, it continues to rely upon assurances given by the Bush administration concerning the fairness and legality of the United States military commission process.

Background

David Hicks, a 30 year old South Australian, was captured in Afghanistan by the Northern Alliance in November 2001 and transferred to US custody as a result of the United States' war on terror. In early 2002, he arrived at Guantanamo Bay where he has remained in detention without trial for the last five years. As is the case with the other detainees at the naval base, Hicks has been denied the status of a prisoner of war pursuant to *Geneva Convention III*. Instead he has been classified by the US as an 'unlawful enemy combatant' - a term that is defined in US legislation, although it has no specific meaning in international humanitarian law.

Pursuant to *Geneva Convention III*, a combatant that has been captured in an international armed conflict is entitled to the status of prisoner of war – a status that enables a person to be repatriated to their home country at the end of a conflict. At the very least, in case of doubt, the person will be entitled to the protections of *Geneva Convention III* until his or her status has been determined by a competent tribunal. Although the US has held Combatant Status Review Tribunal hearings, this procedure would not satisfy the relevant provision of *Geneva Convention III*.

Following the establishment of the Military Commission process in the United States, it was alleged that Hicks had undertaken military training in Pakistan and Afghanistan with terrorist groups, including al Qaeda. In June 2004, two and half years after he was captured, he was charged with three separate crimes: (1) conspiracy to commit murder, attack civilians and civilian objects, destroy property and terrorism; (2) attempted murder by an unprivileged belligerent; and (3) aiding the enemy. Of the approximately 460 detainees held at Guantanamo Bay at that time, only

ten were formally charged. However, as a result of the decision of the Supreme Court in *Hamdan v Rumsfeld* in June 2006, the military commission process was ruled unlawful, resulting in the suspension of the trials. The charges against Hicks also appear to have fallen into abeyance. In *Hamdan*, the Supreme Court recognised that Common Article 3 of the *Geneva Conventions*, a provision which guarantees basic standards of treatment, including the right to a fair trial, applies to those detained in US custody. It is the right to fair trial which is at the crux of the case.

Current Status

Since the decision in *Hamdan*, the United States Congress has passed new legislation, the *Military Commissions Act of 2006*. Many believe that this legislation suffers from similar defects as the regulations that have already been ruled invalid by the US Supreme Court. Thus, it would appear that further challenges can be expected.

Other legal strategies have also been pursued. For example, lawyers in the United Kingdom invoked Hicks' right to British citizenship by virtue of the fact that his mother was born in the UK and has retained her British passport. However, hours after it was conferred, the British Government informed Hicks that they were revoking his citizenship. Lawyers in Australia have written an open letter to the Prime Minister calling on the Australian Government to condemn the military commission process as a violation of international law. Recently, a group of Australian lawyers have opined that not only would the new military commission process violate fair trial procedures according to international law, but it would also contravene certain provisions of the *Criminal Code Act 1995* (Cth) that implement the *Rome Statute of the International Criminal Court* in Australia. In their view, Australian officials who urge or counsel that such a trial should take place could be in violation of domestic law. In spite of these objections, the Australian Government continues to urge that Hicks' trial should take place as quickly as possible.

Politicians throughout Australia have echoed the words of international human rights groups and lawyers, calling for the release of David Hicks given the inherent flaws in the future trial process. With the fifth anniversary of David Hicks' detention approaching, rallies are being organised around the country to protest for justice in the Hicks' case. It remains to be seen whether such calls will be effective. ■

Canadian Media Audits

Government's Access to Information Practices

Murray Burt

Member of CHRI's International Advisory Commission

Eighty-nine reporters from 45 Canadian newspapers teamed up to audit various Canadian governments' access and transparency practices — and found them sadly wanting. It's a model worldwide media could emulate in the interests of every honest citizen's human rights and advantage.

The shortcomings the Canadian papers found were less a problem of law, long entrenched, than of bureaucratic arrogance. But the project unmasked the fact that progressive Canada has nothing to be smug about, and sent a message to politicians and officialdom alike that they should take the matter seriously if they expect to be re-elected or keep their jobs.

Access to public information is fundamental to good governance. It is a keystone of government transparency and democracy. And human rights suffer, often piteously, where it is not in place and tended conscientiously. Alas, among the 53 nation members of the Commonwealth, few have a good record and none can be considered even approaching perfection.

Thus, in human rights terms, the pressure to achieve acceptable performance by governments in making available public information they accumulate is a fight that must be waged at all levels. Pressure for access must be continuous and unrelenting on those officials and organization we, as citizens, pay to serve us. In Canada, one of the most progressive Commonwealth members in this regard, all levels of governments are always under pressure to open their books to the public. And the media, as the public's surrogate, makes constant demands, which frequently unveil political shortcomings and even malfeasance.

Usually these pressures come from individual reporters and papers. The concerted effort mounted in this examination had the clout of numbers. It produced withering anecdotes and statistics that shamed performances by the federal, provincial and municipal government and even agencies like the police, specially charged with serving the interests of individuals.

"The public's right to government information that has impact on our lives is in failing health, and will get worse unless we start fixing it," said Anne Kothawala, president and CEO of the Canadian Newspapers Association, which launched the project. "This is documentary evidence of something that newspapers have long suspected to be a fact."

Over a two-month period, the 89 writers, acting as interested citizens and following an agreed-upon format, made several in-person and phone requests of government offices to determine how well officialdom was obeying the law that enshrines the Canadians' right to know. The questions ranged through school classroom sizes, to drinking water testing results, to restaurant hygiene, to police complaints records and data on sick leave statistics by federal employees.

They discovered an unsavory patchwork of policies on compliance across the country. They ranged from poor, zero per cent, disclosure in the provinces of Prince Edward Island (PEI) and New Brunswick to a surprising 98 per cent compliance in Alberta. The federal government's performance rated a disturbingly low 25 per cent.

As an example, New Brunswick police refused to turn over copies of records showing how many officers had been suspended for misconduct. In PEI, a school board official wanted to know why someone wanted records on class size. In Toronto, an inquiry about budgets for parks, which had been poorly maintained, would only be supplied for a payment of \$12,960.

No national secrets here to threaten the public interest. Just data any interested taxpaying citizen has a right to know — a human right. The problem in most cases is not the law, which allows appropriate transparency; it is the culture of those who are gatekeepers on facts. Obstinate, arrogant they assume a "Who-the-hell-are-you?" attitude and too infrequently those in authority over them are too timid or lazy to jerk their chain.

Federal Information Commissioner John Reid's observation was revealing on shortcoming in senior government. Nothing, he said has undermined the right of access more, in the past 20 years, than the "disdain" shown by prime ministers (he named two), a disdain that spread through their offices and those of the senior bureaucracy.

Stonewalling by school boards, city halls and police departments are harder to explain. They need correcting, however, by stronger leadership and firm attention by elected officials and senior civil servants. This is an exercise, which could be duplicated to advantage in every Commonwealth country.

Canada's national paper, *The Globe and Mail*, summed up the situation succinctly: "It's shameful, really, the way Canadians are expected to plead for information that rightfully belongs to them." ■

State of Access to Information and Related Challenges in Pakistan

Mukhtar Ahmad Ali

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The unfortunate state of governance in Pakistan, especially with regard to protection of rights and delivery of public services, can be significantly attributed to lack of citizens' access to information and transparency. Lack of access to information gravely undermines the ability of citizens, civil society groups and public representatives to efficiently monitor the performance of government functionaries and departments, and hold them accountable.

It is noteworthy that right of access to information is recognised in no less than seventy four countries as the first step towards opening government institutions for public accountability at various levels; while its absence or lack of it often results in arbitrary and non-participatory decision-making,¹ weak monitoring, inefficient project execution, human rights violations and rampant financial corruption in public bodies.² Contrary to the spirit of public participation in a democratic society, the hurdles to provide information to the masses continuously contribute toward sustaining excessive bureaucratic controls and weakening of democratic institutions. Thus access to information is decisive for establishment of a pluralistic culture that ensures transparency, accountability and equal opportunities for all.

At present, in Pakistan, almost all government activity in the country takes place in a culture of official secrecy, which is manifested in both official attitudes and various pieces of legislation (e.g. *Official Secrets Act 1923*). Any disclosure or sharing of information, if and when it takes place, is on a 'need to know' basis, as determined by official authorities, and not in recognition of the 'right to know' as one of the fundamental human rights.³ As a result, what

information is made accessible or not and at what time or in what manner it is disclosed is determined by the government. Citizens have hardly any say or control of it, even though the information and records held by various government departments may have direct implications for their environment, health, safety and well-being as well as their ability to make political or economic choices. This particularly affects the weaker sections, as the powerful people find it easier to access the required information by using their contacts and influence.

The culture of secrecy is so predominant in this country that it has failed or seriously undermined almost all mechanisms created for providing access to government information. Official statements and press releases often provide one-sided information and lack credibility. Annual reports are either not published or lack details and appropriate analysis, which could help in determining the credibility of data presented and assessing the year-wise performance of related departments. Parliamentary questions lead to disclosure of some information but complaints about delayed or misleading replies and summary dismissal of many questions, especially the ones relating to any aspect of security establishment, are common.

One may argue that court proceedings take place in the open and, therefore, can result in the disclosure of useful official information, especially when the case involves one or more government departments. However, the amount of information thus disclosed is very small and may not automatically become available to a large number of people unless a particular case attracted substantial media attention. Information could also be made accessible through websites but most government websites provide very little useful information. Similarly, the archives are not properly maintained and updated and, hence, it is difficult to even access old records. All of this is, partly or wholly, because of the absence of a comprehensive policy that recognises the right to information as a fundamental human right and provides an efficient legislative and institutional framework for its implementation.

The Constitution of Pakistan does not explicitly talk of right to information. However, the Supreme Court

¹ This point was illustrated in 1999 by Mr. Abid Hussain, UN Special Rapporteur, who said: "Implicit in freedom of expression is the public's right to open access to information and to know what governments are doing on their behalf, without which truth would languish and people's participation in government would remain fragmented."

² Pakistan ranked at 146th on the Corruption Perception Index (CPI) of Transparency International in 2006.

³ "Freedom of information is a fundamental human right and is the touchstone for all freedoms to which the United Nations is consecrated" — United Nations General Assembly, 1946.

of Pakistan has interpreted Article 19 of the Constitution, which is about freedom of speech and expression, to be inclusive of right to information as well.⁴ Despite this, the Government of Pakistan preferred not to refer to it as a constitutional right in the Freedom of Information Ordinance (FOIO) 2002 which is currently in force. The Government of Pakistan has notified the required rules (i.e. Freedom of Information Rules 2004) for its implementation. Following this, about forty ministries have designated officers, who are responsible to deal with information requests. However, the FOIO 2002 is extremely flawed, and offers little help in changing the culture of secrecy in government.

The Government of Pakistan needs to take urgent steps to provide a comprehensive legislative and institutional framework for maximum access to information. This must conform to the international best practices including: maximum disclosure; obligation to publish; promotion of open government; limited scope of exceptions; minimum costs; processes that facilitate access; open meetings; precedence of disclosure; and protection of whistleblowers. The FOIO 2002 does not conform to any of these best practices. It is applicable only to the federal departments and, hence, leaves out of its scope the provincial and local departments as well as private organisations including the ones funded by the government. It does not provide a comprehensive definition of information or records; nor does it provide an efficient mechanism for its implementation and handling complaints. It puts very limited demands on the government departments to proactively disclose maximum information through publications, notice boards and websites. Most importantly, it includes too many exceptions and restrictions, which leaves only a few records as accessible.

The decades' old culture of secrecy, as practised by government officials, combined with repeated military interventions that caused the weakening of civil society movements from student unions to trade and labour associations have had a multiplier effect to frustrate and downcast public. Consequently, people in Pakistan are suffering from an acute indifference and apathy, and believe that their voice and participation makes little impact on the way government functions. This is evident from the absence of any vibrant social

movements as well as the weak membership base of civil society organisations and political parties. Against this background, people are neither substantially aware, nor are involved in the law-making processes that have direct implications for their rights. Not many people are even aware of the FOIO 2002, and even fewer have used it to address the problems they are often faced with. Since it came as an Ordinance, it has never been debated in the Parliament, which partly explains its lack of ownership by any political party.

The FOI Rules 2004 have imposed further restrictions on public access to information by prescribing an inappropriate information request format and higher fee and photocopying charges. The designated officers, who have been assigned responsibility of processing public's information requests, are insensitive to the importance of the same due to decades long legacy of a secretive culture as inherited from the colonial rule. In this context, civil society organisations, like the Centre for Peace and Development Initiatives, Pakistan (CPDI-Pakistan), are working hard to sensitise civil society about the importance of this law and advocating with the Government to bring about changes in the FOI Rules that would help facilitate access. These efforts have contributed to a number of parliamentary initiatives aimed at improving the existing legislation in line with international best practices, as well as the positive response of the Cabinet Division for revising the FOI Rules and capacity building of designated officials. Most importantly, more and more people are gradually becoming aware of its importance, and are joining hands to benefit from the existing laws and demand its improvement.

A comprehensive policy on right to access information is a pre-requisite for transparent and accountable governance. It is also crucial for creating an 'information-endowed' society in Pakistan, which is a hallmark of established democracies and developed economies. In such an endeavor, information technologies can help as an enabling tool but it is possible only when the Government is willing and able to make a critical shift from the culture of secrecy to proactive information disclosure and maximum access to government information as a matter of fundamental human right. Such a shift, however, is unlikely to become a reality in the absence of a more strengthened civil society initiatives aimed at public awareness, advocacy and lobbying with all stakeholders. ■

⁴ See PLD 1993 SC 473 and 746.

Non-government Organisation Law Restricts Powers of Civil Society in Uganda

Patrick Tumwine

Advocacy, Information & Research Officer, Human Rights Network-Uganda.

In April 2006 the Uganda Parliament passed the NGO Registration Amendment Bill, 2001 into law. The law has serious implications for the operation of non-government organisations in Uganda, both in terms of human rights and administration and, if actively implemented by the state, then non-government organisations in Uganda - and their employees - will be the victims of a repressive law and regime.

The law was passed at a time when non-government organisations working in various fields were becoming more aggressive in demanding accountability and engaging in civic education, election monitoring and human rights reporting and documentation. When a critical view of these developments is taken and development of the civil society movement in Uganda examined, the conclusion is that the state is afraid of the growth of civil society and the immense power and hold it is beginning to wield over the lives of the people whom it serves.

Constitutionalism and the rule of law dictate that each law in Uganda be guided by the Constitution of the Republic of Uganda, which is the supreme law of the land. The Constitution [Article 290 (e)] guarantees every person the right to freedom of association, which includes the right to join and form civic organisations. The Constitution also expressly provides that “every Ugandan has the right to participate in peaceful activities to influence the policies of government through civic organisations.”

Further to this, the Constitution states categorically that “civic organisations shall retain their autonomy in pursuit of their declared objectives,” [Principle II (iv) of the National Objectives and Directive Principles of State Policy] and, that “the state shall guarantee and respect the independence of non-governmental organisations which protect and promote human rights” [Principle V (ii)]. The newly enacted legislation not only lacks all these rights and freedoms but also undermines them.

The Act contravenes Article 22 of the International Covenant on Civil and Political Rights (ICCPR). Article

22 guarantees every person the right to freedom of association. No restrictions may be imposed on the exercise of this right, other than those that are prescribed in international human rights law. Uganda is a party to both the ICCPR and the African Charter on Human and Peoples’ Rights and is therefore committed to protect and promote the enjoyment of all rights contained in the ICCPR and African Charter.

The salient features of the Act fall far short of fundamental legislative principles, such as partnership, mutual recognition and dialogue, which should inform civil society legislation. It is contended that the retrogressive nature of the law is inconsistent with the autonomy of civic organisation and the constitutional guarantees of freedom and liberty embedded under the 1995 Constitution. Another challenging feature is the nature of the restrictions imposed by the Act, which are grossly inconsistent with Uganda’s commitments under the Treaty Establishing the East African Community (EAC) and as such will impact negatively on the current efforts to fast track the East African Political Federation.

Adding to the draconian features of the Act, it makes it an offense for an organisation to operate without having registered or for operating after its permit has expired. In addition, the individual officers or directors of the organisations who are held responsible for the commission of these offenses are also liable and would suffer terms of imprisonment or fines as the case may be. These provisions ignore standard company practice where officers or directors of a company are protected under the “corporate veil” and the veil can only be lifted in exceptional circumstances (such as cases of fraud).

The Act has come under fire, not only from within but also from outside bodies, that have asked the Government of Uganda to consider withdrawing the law. Even though it has been made into a law, civil society still needs to be on its guard and watchful so that the law - while still being dangerous - is not misused to prevent non-government organisations from operating. ■

Addressing Torture in Kenya

Victor Bwire

Communication and Advocacy Officer, Independent Medico-Legal Unit

The nature and character of state perpetrated torture in Kenya has acquired a new dimension under the National Alliance for Rainbow Coalition (NARC) Government that took over the reign of power four years ago. Unlike during the Kenya African National Union regime, where the main targets of torture were rival politicians, civil society activists, and academicians who were perceived as enemies of the state, the NARC regime has witnessed an increasing in the number of cases of human rights violations targeting the poor – living mostly in rural areas – as well as persecution of minorities including women and children. To date, the average number of people reporting cases of torture is 400 people for the year 2005-2006.

Poverty and ignorance acts a double-edged sword for victims of torture. While on one hand it makes victims more vulnerable to such atrocities, on the other hand they have to wait for years should they decide to seek justice through the courts. But the most worrying trend is the delay in delivering judgments (especially where victims do seek justice through the courts) and the reluctance by the government to compensate survivors should the courts award compensation. This is very frustrating, not only for the judicial officers, but more so for the survivors and human rights defenders who spend thousands of shillings and time to have the state admit liability. Indeed in the last 10 years, the Independent Medico Legal Unit has only been able to secure compensation for three survivors, out of the more than 3000 cases handled.

The reluctance by the government to compensate torture survivors is a violation of several international conventions to which Kenya is a signatory. Despite Kenya's membership of the United Nations, the Commonwealth and the African Union, which mandate the right for torture survivors and their families to obtain reparations, Kenya's domestic courts have been reluctant to invoke these international legal instruments, because Kenya is yet to domesticate any of the treaties on torture.

Adding to this problem is the fact that section 74 of Kenya's Constitution outlaws torture, though it falls short of defining torture. Instead, it considers torture

as an assault offence. This then means that torture is not considered a serious crime in Kenya and this has impacts on how perpetrators are disciplined and awards arrived at in courts. Suffice to say that the existing legal provisions guiding the prosecution of torture perpetrators are flawed because any criminal charge brought against a public official must receive formal consent from the Attorney General, which often takes years. Although there exists legal procedures for investigating and prosecuting perpetrators, it is ultimately civil society that pushes many of the cases, despite lacking the professional capacity to properly investigate as well as to document such cases.

The difficulties faced by civil society in taking up cases is made worse by the reluctance of torture survivors and their families to pursue the cases for fear of retribution in the absence of protective laws in the country. Torture is solely investigated by police officers who are often the perpetrators, who prepare files for the Attorney General to give consent to prosecute and eventually are the prosecutors in cases against their colleagues.

In short, the lack of access to courts of justice, ignorance of basic human rights laws, fear of retribution, lack of resources to pursue justice, ineffective legal systems and insufficient evidence coupled with by poor police investigations hamper the finalisation of the criminal justice process.

This is not only the case in Kenya -a similar pattern exists in the rest of East Africa. This is largely because most of East Africa are in a period of transitional justice. In this context, both international organisations and civil society organisations need to exert pressure on their governments to domesticate international instruments relating to torture and human rights to which they are a party. The culture of impunity and lack of respect for the rule of law as exhibited by government officers is a recipe for political instability in these countries. Despite the fact that the domestication of this law into national laws has stalled, all of East Africa – including Kenya - has made modest progress by putting in place national human rights bodies to help curb abuses. However, much remains to be done. ■

FOI Update in Tanzania, Malaysia, St Vincent and Grenadines

President Jakaya M. Kikwete of Tanzania announced that his Government was developing a law that will guarantee access to information. He stated that consultation is currently being undertaken on the draft legislation, which he intends to table before the National Assembly in April 2007.

Elsewhere in Malaysia a Freedom of Information (FOI) campaign was launched on International Right to Know Day on 28 September by the local FOI coalition in 2005. The campaign aims to lobby for the drafting and enactment of a national FOI Act. Two years ago, the coalition had agreed on ten principles that were required to make access to information meaningful for the public. FOI Coalition secretariat spokesman Sonia Randhawa said she was optimistic about the campaign's prospects because of the Government's commitment to fighting corruption and increasing transparency and openness.

St. Vincent and Grenadines had an access law since 2003, yet nobody knew about it. This was disclosed by the Minister for Information Mr. Selmon Walters in the recently held Workshop on Freedom of Information Implementation in the Caribbean hosted by the Commonwealth Parliamentary Association and Canadian International Development Agency, held in Dominica in November. It is the fifth country in the Caribbean to have an FOI law, but unfortunately very little has been done by the Government to publicise and implement the Act

Meanwhile in Africa, Uganda's Ugandan Access to Information Act 2005, came into operation on April 2006. Uganda is the fourth country in the Africa Commonwealth to have an access law in place.

Maldives

The opposition Maldivian Democratic Party (MDP) had to call off its mass anti-government rally in November following large-scale arrests of its supporters. The protests were called to speed up the process of constitutional reforms in the country that has been led by President Gayoom for more than two decades. The Government claimed that the MDP planned the demonstration to stage a coup. The European Union (EU) reacted by expressing concerns to the developments. In a declaration made on behalf of the EU, it called upon the Maldivian Government and the MDP to 'act responsibly and to exercise utmost restraint in order to avoid further civil unrest, violence and arrests'.¹

<http://www.minivannews.com/news/news.php?id=2615>

Dominica

Dominica hosted a three day FOI workshop organised by the Commonwealth Parliamentary Association and CIDA from 28 November to first December. The workshop was supported by CHRI, the Organisation of American States and the Carter Centre. The Dominican Parliament was the host. The conference brought together Parliamentarians, public officials, media and civil society representatives from Commonwealth Caribbean, Americas and Atlantic jurisdictions.

India

The Union Government has introduced the Foreign Contribution (Regulation) Bill, 2006 which if enacted would repeal the Foreign Contribution Regulation Act 1976. The Bill has now been sent to the Standing Committee on Home Affairs for further deliberations. The proposed Bill is draconian and is going to affect the working of civil society under the guise of regulating the flow of foreign money. The Bill's main objective ostensibly is to stop the inflow of overseas funds purportedly intended to destabilize the nation.

The salient features of the bill is that there is blanket prohibition against foreign contribution to 'organisation of political nature, not being political parties'. A second provision of the Bill grants the Central Government the authority to determine whether such an organisation is "of a political nature" based on its activities, ideology, programmes or association "with activities of any political party". Thirdly, the Bill requires recipients of foreign funds to renew their registration every five years, and introduces fees for registration, renewal and prior approval. Presently, registration under the FCRA is permanent and free. Voluntary organisations are up in arms protesting against the bill which if enacted would choke the NGO community.

Commonwealth

Elections in Nigeria, Kenya, Bangladesh

Nigeria will hold its Presidential and Parliamentary elections in April this year. The current President Olesegun Obsanjo would be stepping down after eight years in power. The polls mark an important watershed in Nigeria's history, as it will set the transition from one democratically elected civilian administration to another.

Presidential and Parliamentary elections will also be held in Kenya later this year. The ruling National Rainbow Coalition (NARC) led by President Mwai Kibaki would seek re election although there are other parties that may shape the poll outcomes. The ruling NARC regime have been much criticised for its failure to check corruption and for having failed to rewrite the constitution as promised in their 2002 election campaign.

Political uncertainty continues in Bangladesh as 19 political leaders arrested under the Emergency powers have been sent to jail for a month. Elections were slated for January 22 but Fakhruddin Ahmed, the interim caretaker Government declared a state of emergency on January 11 amidst protests by the opposition Awami League Party (ALP) led by Shaikh Hasina Wazed calling for a boycott of the elections. The new interim government has vowed to root out corruption before holding free and fair polls.

CHOGM

The next Commonwealth Heads of Government Meeting (CHOGM) will be held in Kampala, Uganda from 23-25 November, 2007. The theme for the meeting is 'Transforming Commonwealth Societies to achieve political, economic and human development'. Every two years, Commonwealth leaders meet for a few days to discuss global and Commonwealth issues, and to agree to collective policies and initiatives. These summits provide a unique forum for consultation at the highest level of government. They are organised by the host nation in collaboration with the Commonwealth Secretariat. The last CHOGM was held in Valletta, Malta in 2005.

New UN Secretary General

The new Secretary General Ban Ki-moon took charge as UN head succeeding Kofi Annan on 1 January, 2007. In his address made during the oath taking ceremony in December, he said "I will do everything in my power to ensure that our United Nations can live up to its name, and be truly united, so that we can live up to the hopes that so many people around the world place in this institution, which is unique in the annals of human history."² Ban Ki-moon is a former South Korea Foreign Minister and the second Asian to hold this post.

² <http://www.un.org/News/Press/docs//2006/sg2119.doc.htm>

New CHRI Publications

CHRI's *Implementing Access to Information: A Practical guide for operationalising freedom of information* provides a step by step guide on how to overcome these hurdles and ensure effective implementation through crafting a supportive legislative regime; putting in place strong and effective administrative systems; and ensuring proper monitoring.

The book *Police Malpractices* attempts to give an account of the citizen's rights in India's criminal justice system. The book is designed to be a useful resource tool for citizen's who wish to familiarize themselves with the justice system as well as citizen's who are frequently encountered with the functioning of the police.

Maintenance of Public Order and Police Preparedness draws attention to the clearly laid down roles and responsibilities of duty holders in the administration, in particular, the police in dealing with maintenance of law and order in India. Drawing from several legal regimes and the rules and guidelines that bind the police, CHRI believes that the book could be a valuable tool for civil society, the legal fraternity, the media and the public at large acting as a compilation of standards against which to measure police performance.

Nigerian Parliament passes Freedom of Information Bill

Aditi Datta & Cecelia Burgman

Media & Communication Officer & Consultant, CHRI

In November 2006 the Nigerian Senate finally passed the much awaited Freedom of Information Bill 2005 – more than six years after it was introduced in the House of Representatives. The Bill now needs to go through the final hurdles of concurrence between the chambers of the National Assembly and then receive Presidential assent to become law. If enacted, Nigeria will be the fifth country in Africa after South Africa, Angola, Uganda and Zimbabwe to have a freedom of information (FOI) law and the 13th country in the Commonwealth to have passed legislation of this kind.

Importance of a FOI law

Transparency, participation and accountability are key principles in bringing about good governance and one of the primary tools for achieving these objectives is freedom of information - allowing people access to government held information. Freedom of information is a fundamental human right enshrined in Article 19 of the Universal Declaration of Human Rights - adopted by nearly all countries worldwide, including Nigeria.

The importance of FOI laws (otherwise known as access laws) cannot be overstated for a developing nation like Nigeria which was governed by a military dictatorship for more than decade after independence in 1960. It is in transitional environments such as this that access laws can serve to make democracy more meaningful by encouraging the active participation of the electorate in state decision-making processes. An underlying foundation of a democratic state is the existence of an informed population able to thoughtfully choose its representatives and hold governments accountable.

An access regime helps to speed up the eradication of poverty by making development a participatory process. It is a well-known fact that many aid agencies and development programmes funded by Governments do not reach the people they are designed to target. In fact, funds meant for various development and anti-poverty schemes are siphoned off without a penny spent on the intended recipients. This has serious ramifications especially when we consider the fact that many nations are still striving to meet the Millennium Development Goals (MDG). Access laws seek to change this equation by opening up channels of communication between the Government and the

people, thereby improving the effectiveness of development and poverty alleviation strategies and strengthening efforts to meet the MDGs. A Freedom of Information law is also a proven anti-corruption tool and it has been observed that countries with an FOI law are generally perceived to be much less corrupt than those without one. According to Transparency International's 2006 Corruption Perceptions Index, Nigeria is way down the ladder, ranking 146th most corrupt country in a list of 163¹ countries. It is hoped that the enactment of a FOI law would finally provide an effective mechanism to check corruption in this oil rich nation.

Key features of the Bill

Now that the Freedom of Information Bill has been passed by both Houses of Nigeria's Parliament, further procedures have to be satisfied before the Bill becomes law. According to the constitution, both the houses of the National Assembly have to sit together and harmonise the different versions of the Bill as passed by the House of the Representatives and the Senate and then send it to the President for his final assent. The text of the final FOI Bill that will be assented to by the President is not yet publicly available. However, newspaper reports have stated that one of the most important features of the Bill as passed by the Senate will be the penalty clause that states that "anyone who destroys or falsifies public records can be sentenced to jail for up to three years"² - a very positive clause indeed. However it would be too early to comment on the final text of the Bill - as stated earlier, both the Houses have yet to sit and bring both the versions into line.

Conclusion

Nigeria will hold its Presidential and Parliamentary elections in April this year and it is in this context that Freedom of Information advocates all over the world, especially those in Nigeria, are urgently pressing to have the concurrence process undertaken as soon as possible, enabling President Olusegun Obasanjo to give his assent before Parliament retires. Civil society and the media, especially the Media Rights Agenda, have played a significant role in pushing for such a law. The people of Nigeria too have waited long enough and it is time the Nigerian Parliamentarians as well as the President gives its citizens a New Year gift by enacting and setting firm dates for implementation. ■

¹ <http://www.infoplease.com/ipa/A0781359.html>

² <http://www.ifex.org/eng/content/view/full/79671/>

Access to Information: A Tool to Fight Corruption

Laura Neuman

The Carter Center

Corruption persists as a worldwide problem. In 2004, the World Bank Institute estimated that more than \$1 trillion US dollars is paid in bribes each year. Over a decade of concerted work to fight the scourge of corruption has not translated into universal reduction. Perhaps even more troubling is the fact that, the 12th International Anti-Corruption Conference suggested that “public expectations about the likelihood of corruption are more pessimistic now than five years ago.”¹

Generally defined as “an act of doing something with intent to give some advantage inconsistent with official duty and the rights of others, corrupt acts include government official who accepts a bribe, absconds with public monies, or play favorites providing contracts to his family or friends.”² Equally deleterious to public confidence may be acts that do not carry the intent of corruption, but that nonetheless adversely impact society and the efficient functioning of the state. For all of these forms of corruption or failure to perform appropriately, an access to information regime could serve as an effective counterbalance.

Inadequate public access to information allows corruption to flourish, and back-room deals to determine spending in the interests of the few rather than many. Through an established access to information act (otherwise known as a freedom of information act), a more knowledgeable citizenry may participate more fully in public life, help determine priorities for public spending, and hold their public officials accountable. Access to information clearly provides the rules of the game for individuals, civil society organisations, private sector businesses and media as they seek to uncover and understand government policy and decisions. It addresses the perception of corruption, providing the government with a standard, uniform means to disseminate information, thus increasing trust in its policies. An ATI law helps people to follow the money from supply to demand in an effort to root out corruption.

¹ Executive Summary, *Towards a Fairer world” What is corruption still blocking the way?*, 12th International Anti-Corruption Conference, Guatemala 2006.

² Black’s Law Dictionary, Seventh Edition, West Group, 1999.

An increasing number of countries have identified the benefits of an access to information regime, and nowhere is this clearer than in the English-speaking Caribbean. The first country to count on an ATI law in this region was Belize in 1994. Unfortunately however, the Freedom of Information Act of Belize was established with little debate and no civil society input, reducing its credibility, implementation and its impact. Some five years later, Trinidad and Tobago passed its own legislation, and Jamaica followed closely with the *Access to Information Act of 2002*. More recently Antigua and Barbuda passed a law and other states like Guyana, Bermuda, British Virgin Islands and Cayman Islands are seeking to establish their own access to information regime. But the passage of a law alone is insufficient redress to the pernicious problem of corruption. It is only in the law’s application that corruption may be combated.

For instance, the *Access to Information Act 2002* went into effect in Jamaica in 2004 and since that time over a thousand requests for information have been made, many of them related to suspected corruption. In one case, an individual noted that the Governor-General (and his wife) were using a state helicopter to travel from Kingston to Montego Bay some 100 kilometers away, but that only groceries were being transported. This citizen requested the log book that contained the details of the trips undertaken to identify whether these expensive publicly funded flights were truly necessary for state purposes. A second set of requests for information was submitted in response to concern over the salary of the Director of the National Railways, his staff and the costs for rental and maintaining his luxury offices. The information sought and received was particularly fascinating as Jamaica no longer has a functioning national railway.

Although there are a number of examples of the valuable use of transparency tools to understand government policies and hold its decision-makers accountable, without publication of the findings, and then subsequent policy reform or prosecution the access to information law alone will be insufficient to reach the goal of diminished corruption. The influence of ATI laws, when coupled with a vibrant media and effective enforcement tools, will serve as a crucial element in reducing the influence of money on public officials, the seepage of critical development funds, the skepticism of the public in their government, and ultimately ensure a more successful international struggle against corruption. ■

Childhood Behind Bars

Andrew Galea Debono

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The imprisonment of children is inhumane and is a clear breach of international law. Nevertheless, this practice, aimed at migrant and forcibly displaced children, is occurring in many Commonwealth countries including India, Malaysia, the United Kingdom, Canada and South Africa. In the past few years, those working with such children have witnessed how the detention of children forced to flee persecution and extreme poverty has aggravated the psychological harm caused by exile.

On 20 November 1980, the international community adopted the Convention on the Rights of the Child (CRC), specifically to recognise the inherent vulnerability and rights of children, identifying the best interests of children as a guiding principle. Twenty-six years later, many of the nearly 200 states signatories still fail to respect the norms of this convention.

Governments are increasingly relying on detention as a means of dealing with the irregular movement of people. While states have the right to manage the flow of migrants across their borders, this right is not absolute. Freedom from arbitrary detention is a fundamental human right, and states are obliged to follow the norms and principles of international law when adopting detention policies. States are not entitled to use detention as a deterrent as is so often the case but are actually obliged to protect vulnerable groups.

Children are psychologically vulnerable – and their detention increases the risk of further trauma difficult to remedy in the future. States actually have a duty to help children who are victims of traumatic experiences to recover both physically and psychologically. Detention not only goes against this duty but actually worsens their situation, sometimes leading to depression and even suicide attempts. Keeping this in mind, states are obliged to seek alternatives to detention, such as the establishment of child-friendly reception centres and the identification of foster families. In fact, in August 2006, a UN study urged the prioritisation of community-based alternatives to

general detention of children and stated that detention should only be reserved, when no other solution is possible, for children posing a real danger to others. Yet in many countries this is not happening.

A report in 2006 for the ‘No Place for a Child’ campaign estimated that more than 2,000 children are locked up in UK immigration centres every year. Though the authorities try to keep children, together with their families, detained for as short a time as possible, the actual length of time in detention varies and there has been at least one recent known case of a child being detained for over 9 months. Alternatives to detention are already being practiced in a number of cases in the UK and, with some serious effort, could be the norm in all cases. Families with children are often detained out of fear that they will abscond – despite the fact that families with children are the least likely to do so.

Malta has recently developed a policy of releasing children from detention, housing them instead in professionally run care facilities. However, as current procedures for release are often lengthy and inefficient, children remain in detention for unnecessarily long periods. There are currently over 15 children in detention centres in Malta, including newborn babies and unaccompanied children. The policy of detaining migrant children in the European Union countries might soon change after the recent European Court of Human Rights decision to condemn Belgium for the detention of a 5 year old Congolese girl - which was deemed inhuman treatment and an unlawful deprivation of liberty.

In Canada, both accompanied and unaccompanied minors are detained - mostly in the immigration detention centres run by the Canada Border Services Agency. In 2002, a new law introduced a provision stating that detention of children should be “a measure of last resort” and outlining in the regulations particular considerations to be taken into account when detaining children. While this marked a step forward, there are still concerns about how the regulations are applied in

practice. Despite an increased awareness among immigration officials regarding the detention of children, there is no consistent or coherent application of the principle of detaining children as a last resort. Nor is the law necessarily being interpreted in a manner that gives priority to children's rights.

In India, all refugees - including children - are detained on arrival for varying periods of time until their identities are established. Unspecified numbers of children are also held in 'special camps', meant for refugees suspected of links with militant groups. They are detained for indefinite periods of time and not released unless they return to their countries of origin. Similarly in Sri Lanka, displaced children in the Tamil areas of the north and east of the country are often arrested on suspicion of being informers, aides or militants. Exact numbers are impossible to ascertain as access to the places of detention is severely restricted.

In Malaysia, undocumented children are arrested and held in detention centres and prisons. Non Government Organisations working in this field are aware of some cases of detention of new-born babies, arrested along with their mothers who have approached government hospitals for medical assistance during childbirth, as well as of asylum-seeking children.

In Zambia, children are detained with adults - mainly due to a lack of resources which do not allow for alternatives to detention. In 2005, a large group of Congolese children who were victims of human trafficking were discovered in Zambia. They were kept in detention for a brief period because the Government had no other way of protecting them. Poorer countries require assistance to be able to protect the rights of the most vulnerable. On the other hand, as members of the Commonwealth, countries such as Zambia, also have a role in ensuring that their richer partners cease this unjustifiable practice of detaining children.

In South Africa, a 2004 High Court decision that no unaccompanied foreign child may be detained at the Lindela Repatriation Centre has brought positive changes. Nevertheless, despite this High Court decision, the detention of children in South African immigration facilities is still a concern. Access to the detention centres for monitoring is hampered by too many

regulations and the authorities are unwilling to give information about the age of detainees, leading to failures in the system and cases of children still being detained.

The practice of detaining children has been more successfully challenged in some countries. The Australian experience demonstrates that detention policy need not impact on the most vulnerable - children. Between 1992 and 2005, thousands of children were detained in Australia's immigration detention centres for periods averaging 15 months. While in detention, children routinely witnessed acts of violence and self harm. In a number of cases, their mental health deteriorated to the point where they themselves committed acts of self harm.

In June 2005, after a successful civil society campaign, the Australian Government announced that children would no longer be held in detention centres but would instead be placed in residential accommodation with their families while their immigration status was being determined. This policy has been operating successfully for more than a year and currently allows 55 children, who would otherwise be in detention, to live in residential accommodation with their families and freely attend school. Where the will exists, it is not difficult for governments to find humane alternatives to detention. Given Australia's experience, there is absolutely no justification for any nation to lock up children in immigration detention.

Detention centres cannot offer children an environment conducive to their healthy development. On the contrary, held with adults, separated from their parents, denied access to education and places to play, the detention of children is never in their best interest. States are morally obliged to seek alternatives which are in the best interests of children. Intergovernmental organisations, such as the Commonwealth, together with civil society should urge states to respect without reservation all the rights laid out in the Convention on the Rights of the Child - particularly their duty of protection to children, and the obligation only to detain as a last resort and for the shortest appropriate period of time.

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Police Reform in India: The Supreme Court Takes a Decisive Step

Caroline Avanzo

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On 22 September 2006, the Supreme Court of India delivered a historic judgment in *Prakash Singh vs. Union of India* instructing central and state governments to comply with a set of seven directives laying down practical mechanisms to kick-start police reform. The Court's directives seek to achieve two main objectives: *functional autonomy for the police* – through security of tenure, streamlined appointment and transfer processes, and the creation of a “buffer body” between the police and the government – and *enhanced police accountability*, both for organisational performance and individual misconduct. After decades of public pressure, lack of political will and continued poor policing, a police reform process is finally budding.

An acute need for police reform

The need for reform is particularly acute as the archaic Police Act of 1861 continues to govern policing, despite far reaching changes in governance. Even though policing is a state subject under the Constitution and states are supposed to enact their own Police Acts, most states have chosen to adopt the 1861 Act or an Act that closely resembles it. The 1861 Act and the kind of policing culture that has been allowed to flourish in independent India have led to countless abuses by police officers. In fact, the need for police reform has been acknowledged by successive governments, though never tackled on the ground. Since 1979, a number of commissions and committees have been set up to suggest ways to reform the police. Yet, the recommendations of these bodies have not been implemented and the reports largely ignored.

In 1996, two former Directors General of Police took the issue to the Supreme Court, requesting the Court to direct central and state governments to address the most glaring gaps and bad practice in the functioning of the police. Given the “*gravity of the problem*” and “*total uncertainty as to when police reforms would be introduced*”, the Supreme Court considered in September 2006 that it could not “*further wait for governments to take suitable steps for police reforms*” and had to issue “*appropriate directions for immediate compliance*”. These directions are binding upon governments until they frame “*appropriate legislation*”.

¹ The report was submitted on 30 October 2006.

A sound legislative template at hand

Meanwhile, as the Supreme Court was considering the matter, the central government set up a “Police Act Drafting Committee” (PADC) in 2005 to draft a new Model Police Act that could guide states in adopting their own legislation. Very shortly after the Supreme Court delivered its judgment, the PADC submitted its “Model Police Act, 2006” to the Union Home Minister¹. The Model Police Act complements the Supreme Court judgment in that it provides the detailed nuts and bolts through which the directions of the Supreme Court can be most effectively implemented. The final version of the Model Police Act has been shared with state governments but is not yet available for the public in its final form.

A wide range of reactions by state governments

The Supreme Court required all governments, at centre and state levels, to comply with the seven directives by 31 December 2006 and to file affidavits of compliance by the 3rd of January 2007. State government responses have varied tremendously, ranging from complying in time with the directives through executive orders, to expressing strong objections to the directives and asking the Court to review them. Others have requested the Court to grant them more time to comply with the judgment.

On 11 January 2007, the Supreme Court cast away the objections raised and stated that its directions had to be complied with without any modification. The Court granted a three month extension to comply with four of its directives, while stating that the others had to be complied with immediately. A number of states have taken the initiative to put in place special committees to draft a new Police Bill and committed to introducing it in the legislature in the coming months. It is hoped that these new pieces of legislation will be openly debated and ultimately reflect the essence of the Supreme Court judgment.

The judgment is the first tangible step towards police reform in a long time but also only an initial step. What is now required is strong political will to introduce long-lasting reform and not merely cosmetic changes. ■

Political Crisis Rocks Fiji Islands

Aditi Datta & Daniel Woods

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Less than a year after free and fair elections that returned Laisenai Qarase and his Soqosoqo Duavata Ni Lewenivanua party to power, Fiji's military commander, Frank Bainimarama, staged a coup that toppled the democratically elected government and usurped power, ostensibly to clean up the Qarase Government. Prime Minister Bainimarama justified the coup by accusing the Qarase Government of corruption and for supporting a legislation that proposed amnesty for those responsible for a 2000 coup he helped put down. This was the fourth coup in the Pacific Islands nation's twenty-year history.

Following the coup, Frank Bainimarama was sworn in as Prime Minister and formed an interim government with eight ministers. The ministers were sworn in by President Ratu Josefa Iloilo who was reinstated as President following the coup and who immediately endorsed the overthrow of the Qarase government, giving blanket immunity to the military. The newly appointed Prime Minister has promised that the new government will pave the way for the return of democracy in Fiji, although he has not set a date for elections to be held.

Reactions from the international community

The international community reacted strongly, condemning the coup by imposing economic and military sanctions. The Commonwealth Secretary General Don McKinnon deplored the military takeover saying that the coup was a 'serious violation of shared Commonwealth values and principles.' Following a meeting of the Commonwealth Ministerial Action Group on 8 December, the Fiji military regime was suspended from the Councils of the Commonwealth. The Australian and the New Zealand Government quickly imposed sanctions, while also giving travel advisory to its citizens regarding traveling to Fiji. The Australian Prime Minister described the coup as a 'tragic setback to democracy', while the United Kingdom immediately suspended bilateral military aid. The European Union condemned it, urging all parties to engage in a dialogue to resolve the crisis. The EU has also said that it would review all planned aid

programme to Fiji. The Fijian Government meanwhile has banned Prime Minister Helen Clark of New Zealand and Prime Minister Howard of Australia from traveling to Fiji.

Reactions on the formation of interim government

There have been mixed response to the formation of the interim government. The New Zealand government in its press note noted that the nation's "interim prime minister" inspires no confidence that Fiji is moving quickly back to democratic rule". While ousted Prime Minister Qarase said the appointment amounted to a dictatorial rule, the Fiji Human Rights Commission endorsed the coup and responded sharply to New Zealand's reactions to the coup. Fiji Labour Party leader Mahendra Chaudhry said that the takeover did not come as a surprise and reserved his comments, while others like the National Alliance Party, the Fiji Chamber of Commerce and Fiji Trade Union Council welcomed the coup. Others, like the United People's Party and the General Secretary of the National Federation Party opposed it.

Economic, social and political impact of coup

While the 2006 military takeover has by and large been peaceful, there have been some incidents of violence reported in the media. On the whole, the military takeover will have far reaching consequences for this small nation, which is dependent on overseas aid, especially from its neighbours Australia and New Zealand. The coup is going to impact the island nation's tourism and sugar industry, with many leading nations imposing sanctions and giving travel advisories. While an interim government has been formed, there is still political uncertainty over its future, as the new Prime Minister has not set a date for new elections. One of the hallmarks of full democracy is the freedom of the press and the press in Fiji is censored. More importantly, four coups in less than twenty years – including December 2006 – may exacerbate ethnic tensions amongst the citizens in the coming future. Indigenous Fijians constitute nearly fifty percent of the population, while nearly forty percent are ethnic Indians. ■

The Global Transparency Initiative: Bringing International Financial Institutions to Account

Indra Jeet Mistry

Former Consultant, CHRI

In a speech made in May 2006, World Bank President Paul Wolfowitz outlined plans to shift the emphasis of the Bank's work towards assisting developing countries to combating corruption by supporting them to develop and reform institutions that hold governments accountable. The speech came at a time of growing disillusionment among developing countries with the lending practices of the Bank and its sister body, the International Monetary Fund (IMF), which were blamed for the series of economic meltdowns that culminated in the 1997-98 Asian financial crisis.

Almost a decade on since the Asian crisis, many developing countries have turned their backs on both the Bank and the Fund and have sought loans and funding elsewhere. Both the Bank and the Fund, along with a host of other regional donor and international financial institutions (IFIs), such as the United Nations Development Programme and the Asian Development Bank, have now had to take a long hard look at their lending policies and strategies. One area in particular in which there has been increasing calls for reform is in improving their operational transparency. For decades, international financial institutions (IFIs) had been negotiating loan agreements and projects exclusively with recipient governments, while elected parliaments and the public were entirely excluded from these processes. On many occasions, agreements have been made with governments who have a dubious governance record, where funds have often been siphoned off into the pockets of corrupt leaders. The most extreme example being the regime of Indonesian President Suharto, who, during his three decade rule from the mid-sixties to the mid-nineties, had allegedly skimmed off one out of every three dollars lent by the World Bank.

A new focus on more accountable funding to help countries attain the Millennium Development Goals has led some of the major donor organisations to revise disclosure policies as a means to combat graft and improve their lending credibility. However, many of these policies remain deficient in a number of ways. The deficiencies mean that stories still abound of donor-funded projects that have either served no public purpose or required the uprooting of local populations who have had no say over the design, tendering and implementation processes for such projects.

Most significantly, in September, a group of freedom of information advocates, the Global Transparency Initiative, launched its Transparency Charter for IFIs to coincide with the annual Bank and Fund meetings in Singapore. The Charter, based on international law and best practice freedom of information laws and policies, sets out standards of transparency that IFIs such as the World Bank, IMF, World Trade Organisation and other similar organisations should conform to.

The Charter comprises nine principles, similar to best practice freedom of information principles adopted by national governments. The one crucial principle of the Charter concerns the need to provide access to decision-making processes. The provision requires organisations to disseminate information that facilitates informed public participation in decision-making in a timely fashion, including draft documents, and that it is done in a manner to assist affected and interested stakeholders to effectively access and understand the information. By providing a mechanism to involve public participation in decisions, the Charter will help to ensure that decisions are taken as much as possible with the aim of benefiting the public and, in particular, giving a voice to those whose livelihoods are affected by development strategies and infrastructure projects, such as the building of dams and highways. The Charter also provides a means to prevent corruption by governments that previously were able to siphon off funding for projects in the safe knowledge that the decisions and execution of these projects or strategies would remain out of public view.

The Global Transparency Initiative is now seeking endorsements for its Charter from NGOs, civil society groups, academics and even the IFIs themselves. In this way it hopes to raise awareness of the significant influence that IFIs and donors have over the livelihoods of people the world over, and increase the pressure on IFIs and donor organisations to adopt the best practice principles set out in the Charter. It is hoped that the Charter may finally attract the attention of Wolfowitz and his peers among the donor and IFI community and help them to realise that adopting the Charter's principles of transparency and accountability can provide a crucial opportunity to reverse public disillusionment with their organisations.

(This article is based on the paper 'Promoting Public Accountability in Overseas Development Assistance, written by Ms Charmaine Rodrigues, April 2006.) ■

Making of Ab To Hum Janenge – Radio Series Phase 2

Swati Kapoor

Media and Communication Officer, CHRI

The autumn issue of the Newsletter discussed the conceptualisation of CHRI's in house radio production on Right to Information (RTI) called *Ab To Hum Janenge -Now We Will Know*. The programme was first on air on Vividha Bharati Network covering 29 stations in the Hindi belt. CHRI got good responses from its listeners and the feedback encouraged us to undertake an intensive campaign in two Hindi speaking states where CHRI has a network and strategic presence. The second round of airing in the select two states was followed by Focused Group Discussions with our networks to assess the impact of the programme and to involve them and their ideas in future radio programmes. The successful airing of the radio programmes for the second time makes us believe that the method and strategy adopted to disseminate information through the radio could well be emulated by organisations who would like to promote their activities and programmes not only on Right to Information, but also on other diverse issues.

Airing in Madhya Pradesh and Chhattisgarh

This phase of focussed airing covered all the stations in the 2 states of Madhya Pradesh and Chhattisgarh. CHRI's networks and offices in both states assisted in pre-publicity, promotion and feedback analysis. The second phase of broadcasting did not include any paid pre-publicity via All India Radio (AIR). Instead, we adopted a concrete and measurable method of pre-publicity via our networks present in the states that helped us cut down on costs. We wanted to experiment with the focussed and direct approach in targeting audiences. And it worked well. The effect was even better than simply airing spots on AIR which may or may not be heard and understood by the audience. The pamphlets distributed had not just details of the programme, but also information about RTI and its usage. Other promotional activities included sticking bills at important public places, regular announcements at village level panchayat meets, and communicating through regular seminars organised by our offices in Madhya Pradesh and Chhattisgarh. The pre-publicity activities started 10 days before the broadcast of the first episode, building enough anticipation in the air before the airing of the series.

Feedback

The airing of the programmes was followed by focus group discussions in different districts of both states. The groups participated enthusiastically and actively discussed problems pertaining to RTI. CHRI staff cleared all queries and held discussions on the content and structure of the programme which we intend to incorporate in our future programmes.

CHRI also tried to disseminate its publications and other educational materials, by airing 20 sec spots with AIR for 15 days at National hook up, daily, just before the Hindi News at 8 am. The spot encouraged people to order educational material on RTI and carry forward the message through their own means and media. The response was overwhelming with more than 50 emails received in a week, not just ordering publications, but also discussing their specific problems in connection to RTI. CHRI's RTI team is working on providing solutions to their problems, helping draft their applications, and guiding them to follow up with their filed applications.

Communications Received

While most letters requested copies of our publications, many showed keen interest in understanding more about particular provisions of the RTI Act, and even showed willingness to be associated with the campaign. For example, Anuradha Suryakant from Maharashtra requested information on provisions for the physically challenged while Rachna expressed her desire to join the movement and offered help in spreading the awareness. Such letters are received almost on a daily basis and CHRI is happy to report that it is helping these active members tackle issues through RTI and spread the message far and wide. We extend warm thanks to all those who have made it happen. We hope the strategy we have adopted can be replicated in other jurisdictions, as well as in other Indian states, not only on RTI issues but also on other human rights issues.

A Step Further

In order to take this focussed campaign forward and spread the usage of RTI, the series is now being aired in Bihar and Jharkhand covering all stations in both states. Other CHRI initiatives for the season include producing a radio series on good policing and a TV-series on legal literacy. ■

CHRI Calendar : September - December 2006

CHRI Headquarters

September 2006

- Venkatesh Nayak conducted a Training of Trainers workshop held in Bhopal, Madhya Pradesh on the 13,14,15 of September.
- Swati Mehta represented CHRI in the Supreme Court and argued in Prakash Singh's case on Police Reforms.

October 2006

- Organised a State level seminar for officers of Punjab State Government on RTI.
- CHRI organised a National Convention on strategies to prevent the proposed amendments to the RTI Act.
- Swati Mehta and the Police Act Drafting Committee members met the Home Minister to handover the Model Police Act to the Ministry of Home Affairs.

November 2006

- Venkatesh Nayak resourced the Freedom of Information workshop organised by Commonwealth Parliamentary Association in Dominica.
- GP Joshi gave a presentation on CHRI's role in furthering police reform in India at a conference on "Engaging on police reform" organised by Amnesty International Netherlands.
- Venkatesh Nayak resourced the RTI workshop

December 2006

workshop with Delhi Journalist Association at New Delhi.

- Daniel Woods and Arnaud Chaltin attended an India Law Institute conference, "Criminal Justice System Under Stress: Transnational Perspectives".

CHRI Africa Office

September 2006

- Coordinator gave a presentation at the final plenary of the 52nd Commonwealth Parliamentary Conference in Abuja, Nigeria.
- Attended an African Regional workshop on Freedom of Information organised by Media Rights Agenda Lagos, Nigeria.
- CHRI hosted the FOI Coalition in Ghana and Dave Banisar Director of FOI Project of Privacy International at a dinner to commemorate the International RTI day, to introduce the Ghana FOI Coalition and discuss advocacy challenges the coalition is facing in Ghana.

October 2006

- CHRI organised the first ever public hearing in Kumasi on: the theme, "Improving the Relationship between the Police and the Public in Ghana" under the Police Accountability Project.
- The Coordinator and the Chairman of the International Advisory Commission of CHRI Mr. Sam Okudzeto attended the Biennial

Meeting of the Advisory Commission in New Delhi, India.

November 2006

- Coordinator and the staff in Ghana Office participated in a human rights fact finding mission to Shaire, Nkwanta in the Volta Region of Ghana.
- Presented at the 36th Session of the United Nations Committee on the Elimination of Discrimination against Women in New York.

December 2006

- Participated in a Pan African Conference organized by Africa Legal Aid and the Ministry of Justice.

CHRI Trustee Committee Office (London)

September 2006

- CHRI Trustees held a quarterly meeting on 19 September. The final draft of the annual statement was circulated.

October 2006

- The AGM of the London office of CHRI was held on 24 October which was also attended by the Director. The future of the London office was discussed.

November 2006

- The London Liaison officer was a speaker on a panel at the (Global Transparency Initiative- International Financial Institutions) Transparency Charter Launch Briefing at Parliament on 2 November.
- CHRI hosted a meeting of the American Women Lawyers in London group.

The Commonwealth Human Rights Initiative was founded in 1987 and is currently constituted by the Commonwealth Journalists Association, Commonwealth Lawyers Association, Commonwealth Legal Education Association, Commonwealth Parliamentary Association, Commonwealth Press Union and Commonwealth Broadcasting Association. These sponsoring organisations felt that while Commonwealth countries had both a common set of values and legal principles from which to work, they required a forum from which to promote human rights. It is from this idea that CHRI was born and continues to work.

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Acknowledgement : Many thanks to all contributors

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Members: Mr K.S. Dhillon, Mr R.V. Pillai, Ms Anu Aga, Dr B.K. Chandrashekar, Mr Bhagwan Das, Mr Harivansh, Mr Sanjoy Hazarika, Ms Poonam Muttreja, Prof Moolchand Sharma, Mr Nitin Desai, Justice Ruma Pal



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Visit our website at www.humanrightsinitiative.org
for information on activities, publications, CHRI News, links and more.

Printed by PRINT WORLD - 98101 85402