



Submission of the Commonwealth Human Rights Initiative for the Universal Periodical Review

Pursuant Paragraph 15 (c) of the of the Human Rights Council resolution 5/1 of 18 June 2007

November 2007

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international NGO working for the practical realisation of human rights in the countries of the Commonwealth. The submission covers the three Commonwealth Member states to be reviewed in December: India, South Africa and the United Kingdom.

A. India

1. Consultation process (as per Para 15 (a) of the HRC resolution 5/1)

To date, it seems that the Government of India has no intention to conduct such consultation.

2. Right to information

As it stands today, all the 28 States in India have officially constituted Information Commissions for implementing the Act regionally. Yet, the implementation of this act by the government raises a certain number of concerns.

- There is a lack of public awareness about the key provisions of the act in the demand and supply side. Demand: the lack of awareness is particularly acute among people from semi-urban and rural areas. Supply: government officials at the lower levels of the administration find it difficult to handle requests as the training conducted by the government for these officials have been few or of poor quality.
- With regards to proactive disclosure, most departments are yet to publish the 17 categories of information required to be published under s.4 of the RTI Act. Sec. 4 is designed to ensure that public authorities give certain information which is important to the public voluntarily at every level of operation.
- Fee structures vary widely from state to state, and appeals fees as prescribed by a few states as opposed to the Central Government Fees and Costs Rules which impose no appeals fees, are unreasonable (denying therefore the right to information to the poorest layers of the population).
- Time for the second appeal in the Information Commission varies from 3 to 5 months. The reasons for appeal are generally: no response from PIO, appellate authority; non-compliance with the time limit of 30 days; denial of information sought.
- In practice, applicants are often confronted with attitudes of resistance and refusal to accept applications. Several instances of overcharging of fees have been reported, and worse, in certain cases, citizens have faced harassment while seeking information from the government.

- Cases of non-availability of database and poor record management with certain government departments from which to source the information have been reported.

3. Police reforms

There is urgent need for police reform in India. The police in India are commonly perceived as politicized, underperforming, brutal and unaccountable. Currently, there is no institutional mechanism to insulate the police from illegitimate political interference, nor are there regular and rigorous methods of evaluation of police performance. , An absence of credible and impartial complaint redress mechanisms and accountability measures means that several police atrocities against the hapless citizens go unpunished. This is primarily due to the fact that police continue to be ruled by a police law framed in 1861 keeping in view the colonial interests of the ruling masters of the time. After independence policing has continued to deteriorate, and impact adversely on the human rights of ordinary citizens. In the words of the Supreme Court of India “the violation of fundamental and human rights of the citizens are generally in the nature of non-enforcement and discriminatory application of the laws so that those having clout are not held accountable even for blatant violations of laws and, in any case, not brought to justice for the direct violations of the rights of citizens in the form of unauthorized detention, torture, harassment, fabrication of evidence, malicious prosecutions etc.”

The Supreme Court taking note of above mentioned aberrations in policing on a writ petition filed by two police officer, gave directives to all the states and the centre that they should implement the directives issued by the court aimed at reforming the police until they enact their respective police laws keeping in view the said directives and various commissions’ and committees’ reports on police reform submitted to the government in the past. This judgement is yet to be fully implemented.¹ One year from the judgment, it has become alarmingly evident that many states are enacting new police laws which do not uphold the spirit and letter of reform as instructed by the Supreme Court.

4. Counter-terrorism

Anti-terrorism Acts (ATA) have drastically enhanced police powers to stop and search, to arrest, to detain, to use force... The Indian POTA was repealed due to gross human rights abuses, yet many of its provisions were reintroduced in the current act, the UAPA. Similarly, in “disturbed areas” specific acts contain some concerning provisions, such as on the right to kill a suspect if the policeman considers it necessary. While enhancing police powers, ATA provide for *de facto* immunity by requiring government sanction for prosecution, and by providing with immunity for actions taken in good faith. In practice, India has developed, amongst other things, a widespread culture of torture and extrajudicial killings. For example, a senior police officer declared that a person accused of having taken part in the failed attacks on the Parliament had been tortured since “torture was the only deterrent to terrorism”, a statement that raised little public condemnation. Similarly, the practice of extra-judicial killings is so widespread that a specific name was created: “fake encounters”. Example of both practices, along with blatant police and military misconduct flourish in troubled regions such as the North East of India or in Jammu and Kashmir.

5. Access to Justice

The Indian criminal justice system is marked by extremely clogged courtrooms, lengthy delays at trial, and more significantly, corruption. As a result, victimised people are often left without legal remedy. They are frequently unable to access the judicial system. Once within the court system, their quest for justice is often defeated by frequent adjournments, the use of legal loopholes by the opposite party, and corruption among judicial officers. For example, following the outbreak of communal riots in Gujarat in 2002, the legal system failed to provide adequate and timely protection and succour to victims, and was also perceived as heavily prejudiced against the

¹ Prakash Singh and Others Versus The Union Of India

minority community. In this context, the ordinary shortcomings and lacunae of the legal system were magnified, threatening the rights and freedom of the entire community.

6. Civil Society in India

The Foreign Contribution Regulation Bill 2006, which is currently before the Parliament provides for severe restrictions on foreign funding for organisations that are classified as “organisations of a political nature, not being political parties”. This classification and the power to grant a registration certificate authorising an organisation to receive foreign funds is left to administrative discretion in the Bill, which would massively decrease the space available for civil society work and advocacy in India.

7. Assessment

- India pledged to foster a culture of transparency and accountability in governance in keeping with the requirements of its 2005 Indian Right to Information Act, yet, may efforts still remain to be made for the implementation of the act.
- India pledged to “encourage” civil society to promote human rights, yet it threatens to weaken dangerously civil society through its Foreign Contribution Regulation Bill 2006. Similarly, India failed to organise a civil society consultation prior to its submission for the UPR, in contravention the aforementioned pledge, as well to its pledge to participate constructively in developing modalities for universal periodic review by the Human Rights.
- India contravenes many of its human rights obligations, as well as with its pledge to foster a culture of transparency and accountability in governance by failing to provide an efficient access to justice and by being slow and resistant to reforming its police (encouraging in certain cases the culture of abuses, particularly in the context of counter-terrorism).

B. South Africa

1. Consultation Process (as per Para 15 (a) of the HRC resolution 5/1)

To date, the South African Government hasn't conducted such consultation.

2. Right To Information

The Promotion of Access to Information Act (PAIA) was passed by the Parliament in 2000. The legislation is exemplary. Yet, the implementation of this law raises a number of concerns. In the absence of an ad hoc body, the supervision and promotion of the PAIA is the responsibility of the South Africa Human Rights Commission (SAHRC). To fulfil these duties fully, much more active involvement of SAHRC is necessary. Similarly, under the Act no appeal bodies have been created and the applicants are therefore compelled to appeal to the High Court, an extremely expensive and lengthy process that is out of the reach of the vast majority of South Africans. An independent, inexpensive adjudication system is necessary, in addition to the current functions undertaken by the SAHRC, to allow a more rapid, accessible and inexpensive resolution to contested decisions to withhold the release of records. In the absence of the much-needed adjudicatory body, applicants for information held by public bodies are restricted in their right of appeal if they are refused access.

3. Police Reforms

South Africa is considered to be a leader on human rights focused police transformation, particularly in Africa. It is also considered to be a good practice example of effective accountability and protection of human rights through civilian oversight. While advances have been made recently such as the development of a system of police performance monitoring by

the Gauteng Department of Community Safety and a far more robust oversight role evident by the National Parliamentary Portfolio Committee on Safety and Security, more broadly the attention given to civilian oversight has not kept pace with developments in policing. Since the disbanding of the Anti Corruption Unit in 2000, the South African Police Services (SAPS) has yet to implement their Corruption and Fraud Prevention Strategy to any significant extent. The relationship between their own internal oversight processes and the external mechanisms remains weak and undermines the efficacy of the entire system. Importantly the SAPS are not obliged to report on any recommendations made to them by the Independent Complaints Directorate (ICD) to address cases of alleged misconduct. The capacity of the ICD has not kept pace with the recruitment drive within the SAPS and the Directorate has been without an Executive Director for over two years. Oversight of the private security industry, one of the largest in the world is virtually nonexistent. While well regulated, the capacity of the regulator is weak and a systematic system of monitoring fundamental issues such as death as a result of actions by security guards is not in place. The South African Government must work to protect rights and reduce corruption by strengthening policing oversight mechanisms through policy legislation and adequate resourcing.

4. Counter-terrorism

South Africa has been criticised for justifying its return of a Pakistani national to his home country on the grounds that it could not be certain that the victim *would* be tortured there. The absolute prohibition of torture would require the government to ascertain that the person will *not* be tortured. Once returned, the suspect had disappeared and had been allegedly tortured.²

6. Assessment

South Africa has often been praised for its laws and policies on human rights policing and RTI. Yet, in practice, many steps remain to be taken for their implementation.

C. United Kingdom

1. Right To Information

The Freedom of Information Act 2000, is a functioning Act which has produced a substantial amount of previously undisclosed information. The Government however has acted quite contrary to its earlier promises by making several attempts to curtail the ambit of the Act through amendments. For instance, in 2006 the Department for Constitutional Affairs released a Consultation Paper on the Draft Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2007, which if passed would have severely curtailed the amount, and scope of information available to the media and campaigning groups. In response to pressure from both, the suggested regulatory amendments were eventually dropped. Another attempt was made to introduce a Private Member Amendment Bill which sought to exempt MPs' correspondence from the coverage of the Act. Once again, CSO engagement in opposing this amendment made the attempt a futile one. Thankfully, there now seem to be some positive developments on the horizon with the Government considering widening the scope of the Act to include certain private organisations.

2. Counter-terrorism

Major concerns have been expressed about the UK's draconian terrorism related laws, which have given authorities wide and sweeping powers. For example, the Terrorism Act passed in

² See United Nations General Assembly, *Implementation of general assembly resolution 60/251 of 15 March 2006 entitled 'Human Rights Council': Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism*, AA/hrc/4/26/add.1, 15 March 2007

2006 allows for the detention of “terror suspects” for 28 days without charges. The major issues with the existing legislation are the broadness of its terms (such as “glorification” of terrorism, or “indirectly encouraging” terrorism), as well as the permitted length of detention. The current proposed legislation could raise that maximum limit to 56 days.

Other measures have been used to detain suspects. In June 2006, the High Court, through Justice Sullivan ruled that in certain cases the use of control orders by UK authorities was amounting to a detention prohibited by art 5 ECHR.³ The targeted control orders included the obligation to stay 18 hours a day in a small flat, and were not allowed to use mobile phone or Internet. The compliance of the Home Affairs with the judgment was not satisfactory.

Counter-terrorism has impacted on the country’s tolerance of torture. When the question of the admissibility of evidence obtained under torture reached the House of Lords, the Lords unanimously declared torture unacceptable. However, they somehow contradicted this strong statement by asserting that it had to be *established* that the information was obtained under torture. In practice, it is impossible to establish such facts, in particular in cases of outsourcing torture with reduced visibility and information about the place and conditions of detention. Therefore, as Lord Bingham pointed out in his dissenting opinion, “despite the universal abhorrence expressed for torture and its fruits, evidence procured by torture will be laid before SIAC (Special Immigration Appeals Commission) because its source will not have been ‘established’”.⁴

3. Arms and ammunition trade

In 2005 the UK allegedly sold arms to 11 of the 20 designated countries of human rights concern by its own Foreign Office human rights report.⁵ Key arms markets include countries such as Saudi Arabia, Vietnam, Colombia, Iraq and Russia. The UK is also alleged to have exported arms in 2005 to 17 countries engaged in major internal conflicts. Recipient countries include Nepal, Sri Lanka and Uganda.⁶ In the case of Sri Lanka it was alleged that there was a 60 percent rise in arms exports in 2005. During Israel’s attack on Lebanon between July and August 2006, AH- 64 ‘Apache’ helicopters and F16 bombers fitted with UK made spares were allegedly used for indiscriminate and un-proportional aerial attack. Towards the end of 2006 human rights groups accused the UK Government of fuelling arms race in South Asia by supplying arms to both India and Pakistan.⁷ Companies in the UK were also reported to have offered to sell stun guns, electric shock batons, leg irons, shackles and leg cuffs manufactured outside the EU.⁸

4. Assessment

The country promised to improve the promotion and protection of human rights of *all* its citizens, and stated that it would continue to foster a culture of transparency, openness and dialogue in its pursuit of improved human rights standards. This is in complete contradiction with their approach of counter-terrorism and with their repeated attempts to dilute the right to information.

The UK highlighted the fact that it is working on a national preventive mechanism on torture and that it has signed the Optional Protocol to CAT. The UK stated as well its readiness to share its experience in setting up a national preventive mechanism on torture. Yet, in practice, the highest jurisdictions of the country have indirectly declared evidence obtained under torture admissible (by shifting the burden of proof).

³ [2006] EWHC 1623 (Admin)

⁴ A & Ors v. Secretary of State for the Home Department [2005] UKHL 71 (8 December 2005)

⁵ CAAT News, Issue 199, December 2006-January 2007 P.3

⁶ CAAT News, Issue 196, June/July 2006. P.12

⁷ CAAT News, Issue. 197, August/September 2006 P.8-9

⁸ <http://www.guardian.co.uk/commentisfree/story/0,,1856915,00.html>