

RIGHTS DO MATTER

**A Report by the Advisory Commission
The Commonwealth Human Rights Initiative
Chaired by Dr. Kamal Hossain**

1995

Members of the Advisory Commission

Dr. Kamal Hossain (chair) is a Bangladeshi lawyer who is in private practice. He was a Member of Parliament (1972-75), Minister of Law (1972), Minister of Petroleum and Minerals (1973), Minister of Foreign Affairs (1973-75), and Chairman, Drafting Committee, Constituent Assembly of Bangladesh (1972). He was a Commonwealth Observer for the South African elections (1994).

Mr. Derek Ingram, British, is a nominee of the Commonwealth Journalists Association. He was editor of Gemini News Service (1967-93). He has reported on many aspects of Commonwealth affairs, including all Heads of Government Meetings since 1969. He was a Commonwealth Observer for the elections in Pakistan (1993) and Malawi (1994).

Dr. Beko Ransome-Kuti is a Nigerian general medical practitioner nominated by the Commonwealth Medical Association. He was Secretary-General of the Nigerian Medical Association (1979-82). He has been President of the Committee for the Defence of Human Rights in Nigeria since 1989. He is President of the Campaign for Democracy, founded 1992. He was a member of the Initiative's first Advisory Group.

The Hon Margaret Reynolds is a Senator for Queensland in the Australian Parliament. She has been Senate Team Leader since 1984, Minister for Local Government (1987-90) and Minister Assisting the Prime Minister for the Status of Women (1988-90). She is actively involved in Aboriginal and women's issues.

Mr. Soli Sorabjee is an Indian lawyer nominated by the Commonwealth Lawyers Association. He has served as Solicitor-General and an Attorney-General of India. His areas of special professional interest are constitutional and administrative law and human rights.

Mr. LeRoy Trotman is a Barbadian trade union leader nominated by the Commonwealth Trade Union Council. In 1989 he was elected President of the Caribbean Congress of Labour, and in March 1992 elected President, of the International Conference of Free Trade Unions. Formerly an MP.

FOREWORD

The Commonwealth Human Rights Initiative is an independent non-governmental organisation committed to the promotion and protection of human rights in the Commonwealth. The Advisory Commission has been entrusted with the task of identifying areas and issues which should be of concern to Commonwealth governments and citizens, given the strong commitment to human rights expressed by the Commonwealth Heads of Government Meeting (CHOGM) in its Harare Declaration and reinforced in its communique after the Limassol summit in 1993. The CHRI was particularly struck by the fact that this last communique contained no fewer than 17 references to human rights-a great advance from the days when the subject was barely, if at all, mentioned in Commonwealth communiqués for fear of stirring governmental sensitivities.

This third CHRI report, issued ahead of the CHOGM in Auckland, concentrates on two quite separate but vital aspects of human rights freedom of expression and the urgent need for reform of prison conditions and police behaviour in member countries. We have assessed the state of media freedom in the Commonwealth and the question of law enforcement, and as a result put forward a number of recommendations to which we hope heads of government will give close attention.

As with our previous reports we have not hesitated to name individual countries and repeat what we said in the Foreword to our last report that “the value of the Report would be diminished if it limited itself only to pious affirmations of abstract principles and did not address itself to certain hard realities which can only be changed if these are acknowledged and corrective action is taken.”

Our Advisory Commission has held two major meetings-in New Delhi and Sydney-since the last CHOGM and its members have been in almost monthly contact with each other during this period.

At short notice the CHRI sent a distinguished team to Nigeria comprising the Hon Flora MacDonald of Canada, Mr. Justice Enoch Dumbutshena of Zimbabwe and Dr Neville Linton of Trinidad and Tobago, and the Commission cannot thank them enough for the conscientious and energetic way in which they carried out their difficult task.

While appreciating all these valuable contributions, I should like to thank specially Mr. Derek Ingram for the preparation of this Report, as well as Mr. Adewale Maja-Pearce and Mr. David Robie for their help in preparing the section on the media and Mr. T. Ananthachari for his help in writing the section on prisoners' rights. Thanks are also due to our first director, Mr. Richard Bourne, and the former administrator, Mr. S. Mahendra, for their continued support of the Commission.

After our Sydney meeting in June 1995 we worked cooperatively with the New Zealand Law Society on a special human rights seminar which we attended in Wellington.

We are grateful to the Canadian International Development Agency (CIDA), which has funded CHRI since 1990, the Canadian Governance Support Fund (GSF), the Ford Foundation for specific resources for the Advisory Commission Report and its publication, the British Foreign and Commonwealth Office, the Australian Government's Departments of Foreign Affairs, Defence and Trade, the Friedrich Naumann Stiftung (FNS), and the Body Shop Foundation.

The Commission would also like to express its appreciation to all members of the Executive Committee in New Delhi, chaired by Mr. Soli Sorabjee, for all their help and to members of the Trustee Committee in London, chaired by Mr. Harmish Adamson, for their warm cooperation.

Finally, very special thanks go to Ms. Malti Singh, our Honorary Director, who has organised our affairs from the CHRI headquarters in Delhi with such energy and dedication.

Kamal Hossain

CONTENTS

Page

1. Introduction. Human Rights: societies in transition.
2. Freedom of Expression: where the Commonwealth is still wanting
3. Police, Prisons and Human Rights: the need for major reform
4. We say again: Act right now. Our main recommendations

Appendices

- I Summary of previous CHRI recommendations
- II Ratification of Conventions
- III CHRI statement from Delhi Dec 1994
- IV CHRI letter to Prime Minister of New Zealand

1. INTRODUCTION

Human Rights: societies in transition

Since the Commonwealth Heads of Government Meeting (CHOGM) in Limassol two years ago the process of change has accelerated across the globe. Two transitions are taking place simultaneously: a political transition from authoritarian to democratic political orders and an economic transition from planned to market economies within an increasingly globalised world economy. Both have substantial implications for the implementation of human rights and present a challenge to all those involved-governments and citizens as members of emerging civil societies. To succeed, the essential linkage between democracy, the rule of law, human rights and development must be kept in view.

The restoration of democracy is marked by formal measures, such as the revocation of states of emergency and promulgation of constitutions, which guarantee the enjoyment of human rights and provide for the establishment of such institutions as an elected parliament, an accountable government, and an independent judiciary.

This kind of political order is founded on a recognition of the supremacy of the constitution and respect for the rule of law. But formal restoration merely provides a society with an opportunity to build through conscious and sustained efforts a truly democratic order in place of the authoritarian one it aims to supplant. It calls for an orchestrated effort by the legislature, the executive and an active citizenry to cultivate the fragile plant of democracy.

The negative legacies of an authoritarian past cannot be expected simply to go away. Such legacies include centralised bureaucracies which remain allergic to transparency and accountability, being accustomed to the arbitrary exercise of wide discretionary powers; law-enforcing agencies which have habitually acquiesced in carrying out illegal and repressive orders; and a social milieu which discourages dissent, the free expression of views and open debate on public issues.

Before the transition there were no checks and balances which acted as safeguards against the abuse of power. Judicial independence, if it existed at all, had undergone serious erosion. As a result violations of human rights were not substantially redressed and victims could hardly expect justice in the absence of the rule of law.

Where democratic values had been absent for so long, civil society was weak, engendering in citizens a sense of helplessness and inertia. Channels to ventilate genuine grievances and felt injustices were absent. As the lid was lifted with the advent of democracy, their suppression led to outbreaks of violence. This in part is why in many transitional societies sectarian, communal, linguistic, religious and ethnic conflicts have erupted and threaten the newly-won democracy. Lack of democratic processes to reconcile conflicting claims and to redress injustices has meant that, in some countries, multi-party politics tended to degenerate into extreme partisanship, party patronage, clientelism and ultimately into violent confrontation among party followers.

Positive lessons are to be learnt from the experience of those societies which have promoted the healthy development of democracy and protection of human rights. Foremost among these is South Africa, which has regained its rightful place in the Commonwealth.

The new South Africa

This success is gratifying for Commonwealth Heads of Government, who had declared in Harare in 1991 that they would work with renewed vigour to end apartheid and establish “a free, democratic, non-racial and prosperous South Africa.” The imaginative and innovative processes of national reconciliation, through discussion and negotiation, through teaching and disseminating democratic values via the media and schools, through the churches, and through civic and other non-governmental organisations, have shown the world what is possible. South Africa has proved that a democratic society can be built on the debris of a collapsed authoritarian political order.

It has also shown that the political support of members of the Commonwealth and their sustained technical cooperation can strengthen political institutions and facilitate reforms needed to re-orient state administrative machinery, the police, the security and intelligence services, and the media. This way democracy and human rights can be nourished.

The concerted efforts of the Commonwealth and the international community in South Africa led to innovative constitutional provisions for a Government of National Unity for the first five years and clearly signposted social restructuring. This was to be effected with considerable flexibility in realising the goals, which, in the words of one of the architects of the Constitution, “helps to avoid the dangers of backsliding on the one hand, and producing grandiose but unrealisable plans on the other.”⁽¹⁾

These were reinforced by practical measures to nurture a culture of human rights through implementing imaginative legislation. One example was the law setting up the Independent Media Commission, which allowed the media, especially the state-owned electronic media, to play a truly impartial role in the run-up to the election. The values of tolerance, critical discussion and evaluation of the many political parties were promoted through open debate and free exchange of information and views.

Also important were the measures adopted in South Africa with the help of the Commonwealth to provide for the rule of law by establishing a high-powered constitutional court, promoting civic education programmes, re-training the police so as to transform their role as instruments of a repressive regime to that of protector of citizens’ rights in a democratic society.

Nigeria: rule by the big stick

Sadly, there are still a great many violations of human rights in the Commonwealth and in some countries no serious attempt seems to be under way to eliminate them, despite the fine language of Harare. Their governments continue to use what the Commonwealth Secretary-General referred to in an important lecture delivered in Nigeria as “rule by the big stick.”⁽²⁾

The lesson of South Africa has particular and urgent relevance in the case of Nigeria, where military government has led to the daily gross abuse of human rights and brought the country to a parlous economic state. At the very time when South Africa was achieving freedom, human rights and freedoms were whittled away. This, in a country which for so long helped to lead the Commonwealth struggle to erase apartheid.

In our 1993 report we recommended that only the representative of an elected, civilian Nigerian administration should be allowed to participate in the Cyprus CHOGM. As it happened, an unelected civilian was briefly in office as head of government, but he was quickly removed and in 1994 the result of a presidential election was aborted and the believed winner held in jail, where he remained a year later.

A meeting of our Advisory Commission held in New Delhi in December 1994 called for Nigeria to be excluded from the 1995 CHOGM and also for sanctions against the regime. Since then the human rights situation in Nigeria has progressively worsened and only in mid-1995 did the international community begin to float ideas for measures to be taken against the regime.

In July 1995 CHRI sent a three-person mission to Nigeria to assess the human rights situation in advance of the CHOGM in Auckland. Its report painted a bleak picture and we commend its recommendations. *

CHRI believes military rule is quite incompatible with the terms of the Harare Declaration and therefore with full Commonwealth membership, and that Nigeria should be subjected to measures similar to those imposed on apartheid South Africa. These should include an end to all international sporting links with Nigeria. In the meantime, Nigeria should be suspended from attending ministerial and other official Commonwealth meetings, except as observers.

- * A contact group of Commonwealth foreign ministers should be set up to monitor the situation in West Africa, where instability is, sadly, not confined to Nigeria.
- * In consultation with political parties and citizens' organisations, it should strive to identify steps which need to be taken to restore democracy and promote national reconciliation.
- * Steps to be promoted would include: release of all political prisoners; immediate restoration of habeas corpus; removal of all restrictions on media freedom; and removal of restrictions on human rights including personal liberty, freedom of speech, assembly and association, and freedom of movement.
- * When civilian rule comes a massive rehabilitation programme will be required to build a strong civil society, for which the official Commonwealth and the NGOs are well-equipped to play a leading role.

Hong Kong: time is running out for ethnic minority

Less than two years remain before Hong Kong is handed back to China to become a Special Administrative Region. In our 1993 report (pp 32-33) we dealt with the problem of members of ethnic minorities in Hong Kong who are currently British nationals but will be rendered stateless after the handover. We urged the British government to grant full UK citizenship to these people, pointing out that Britain would be in breach of its treaty obligations if it did not do so, and thus responsible for a denial of fundamental rights to the members of these minorities. In the interim the CHRI has made strong representations to the British Home Secretary, but the government has firmly resisted any change of policy.

Some of these people have since been given British nationality individually on a basis that is far from clear to us, but this still leaves about 3,000 people to face statelessness. The situation is becoming urgent and we ask the British government to act now to redress this wrong to people who are making a major contribution to Hong Kong and who, in any case, are unlikely to leave the territory.

Strengthen the electoral process

The role of free and fair elections in a democracy is critical. The electoral process in many Commonwealth countries remains flawed and much can be done to improve it. Already the Commonwealth has developed a capacity for providing technical support for electoral reform.

Voter education is vital in promoting tolerance and scrupulous observance of the ground rules for a fair election—for example, not tearing down posters, abstaining from carrying arms to public meetings and renunciation of political violence.

While continuing to provide Commonwealth observers, the national capacity to provide election observers should be strengthened. NGOs and other civic organisations need to be more deeply involved. More effort must be put into training polling agents, election agents and presiding officers.

A citizens' election watch should monitor political party activities over a considerable period before the actual election campaign. Citizens' movements for free and fair elections should be promoted. Voter education and training national election monitors and observers must have high priority. Young citizens should be involved in promoting democratic values and the renouncing of violence on the pattern of the peace volunteers in South Africa.

Accountability and the rule of law

Public accountability is essential to prevent abuse of power and resultant human rights violations. Human rights and development suffer in the absence of a predictable framework of

law that precludes the arbitrary exercise of wide discretionary powers. Human rights violations result from the irresponsible exercise of wide powers such as detention without trial on the pretext of threats to national security.

And wide discretionary powers to regulate economic activities adversely impact on development because investors and others cannot assess risks and costs in making economic decisions.

The rule of law connotes the existence of a coherent set of rules, their communication with accuracy and clarity, and their fair and nondiscriminatory application. Fairness requires respect for due process and the principle of equality before the law.

Another fundamental aspect of the rule of law is that the state and its functionaries should exercise power under the authority of law and that government officials should be subject to law just as are private citizens and be accountable for abuse of power.

Legislative and administrative practices which impede effective participation in the making of policies and decisions need to be replaced by a culture of democracy. Citizens have a right to information and in most Commonwealth countries government is still not as open as it is, say, in Canada and Sweden.

Secrecy laws should be reviewed. New rules should provide for easy access to information and greater transparency. Only then can an effective check be provided on maladministration and corruption; only then can efficiency be promoted and accountability ensured.

A strong and independent judiciary is a shield against arbitrary exercise of power and for enforcing the private rights of citizens. Experience shows that constitutional provisions declaring the judiciary to be independent alone cannot guarantee it. Implementation requires adequate budgetary resources and separation of the judiciary from the executive and from its administrative control.

Colloquia of judges from Commonwealth countries would provide valuable opportunities for exchanges of ideas for judicial and law reform. Innovative remedies and judicial techniques, such as public interest litigation (PIL) for protection of human rights, should be applied by the judiciary to strengthen democracy. The Commonwealth has a substantial reservoir of experience and resources to be drawn upon for enhanced cooperation in such areas as training of judges and practitioners, exchanges between lawyers' organisations and law schools.

Economic transition: those who are left behind

The economic transition to market economies has significant implications for the implementation of economic, social and cultural rights, and in particular the rights of the poor and disadvantaged, and of women and children. The linkage between democracy, development and human rights is underscored by studies which have documented how "bad governance leads to incompetent and often discriminatory administration of social services and development projects, widening social gaps... and constitutes a major obstacle to social development."⁽³⁾

WOMEN'S RIGHTS ARE HUMAN RIGHTS

The CHRI welcomes the work of the Commonwealth Expert Working Group on Women and Development in preparing the new 1995 *Commonwealth Plan of Action on Gender and Development: A Commonwealth Vision for Women Towards the Year 2000*, which was prepared to re-focus governments' attention to the position of women within the Commonwealth.

The Plan was the major contribution of the Commonwealth to the International Women's Conference in Beijing in September and provided both a model of action for the Commonwealth and a pro-active commitment to the key themes debated within the UN forum.

We strongly endorse the Fourth World Conference on Women's Platform for Action, which identifies that women's rights as highlighted in the Vienna Declaration and Programme of Action as adopted at the World Conference on Human Rights in Vienna in 1993, must be fully recognised for protection.

Furthermore, the Beijing Platform for Action adopts the language of

"all human rights and fundamental freedoms"

which is the language of major international agreements in preference to

"universally recognized" or "universally accepted" which distort and limit the meaning of human rights and undermine international law.

Therefore we recommend that the Commonwealth Heads of Government meeting in Auckland strongly endorse the *Commonwealth Vision for Women Towards the Year 2000* and recognise the priority necessary to reflect the urgency of the debate in Beijing.

There is also considerable evidence of the impoverishing effects and basic inhumanity of gender discrimination in terms of prescribed and limiting roles: lack of economic opportunity, health care geared to the needs of women and children, access to education, credit, land, income and property, and playing a role in institutions which enable popular participation.⁽⁴⁾

Recent studies identify and illuminate the risks (eg. deterioration of health care, food shortages, unemployment) of ill-designed structural adjustment programmes and some strategies which can be used to mitigate them.

Experience has shown that the globalisation of economic activities means attraction of corporate investments into poor developing countries with large numbers of low wage workers, especially women workers. Such workers cannot protect themselves against labour abuses-excessive hours of work and forced overtime, unsafe workplaces with inadequate safety precautions. Threat of plant re-location, use of casual workers and physical threats to union organisers all prevent workers organising themselves to improve their situation.

Governments should protect workers against abuses by supporting their efforts to organise themselves. They could do this by adopting legislative and administrative measures which would help secure improved wages, reasonable working conditions and a safe workplace.

The process of designing and implementing these programmes needs democratising. If workers participate, the risks and the need for effective protection of those most vulnerable can be better understood. As the World Bank studies show, it is essential that the interests of poor people are represented and their rights to food, health and other basic resources protected.⁽⁵⁾

In designing development projects and programmes, appraisals of economic costs and benefits need to be supplemented by appraisals of the impact of human rights and the environment. These should take into account such questions as:

- * How will they affect children, the poor and the vulnerable?
- * Will implementation involve procedures that would enable the powerful to pre-empt the benefits or lead to corruption?
- * How will they impact on human rights?

Non-state entities have an important part to play in ensuring that development programmes and projects respect economic and social rights. As a recent study has noted:

The capacity of NGOs and institutions (professional associations, trade unions, business organisations, grassroots groups, research centres, universities, and the mass media) to articulate the needs of important constituencies, analyse policy requirements, and contribute to policy formulation are important aspects of accountability. Building this capacity is a central aspect of developing and enabling environment for growth. Information must be understood, processed and used effectively. Capacities need to be developed in the universities, in policy research institutes, in economic committees of legislatures, and in the media to understand development issues, and in turn to contribute to broader public education⁽⁶⁾

New institutions are needed

Priority for the implementation of economic, social and cultural rights also calls for new institutions to be developed to monitor and measure the progressive implementation of these

Support for the Pacific

Two human rights concerns in the Pacific Commonwealth call for immediate action.

1. Rehabilitation is required now in Bougainville, Papua New Guinea. After years of strife, relative peace has been restored there and the time has come to relieve the suffering of the victims and repair the damage to the island's infrastructure.

The government in Port Moresby needs some help. The Commonwealth should send a task force to assess what is required to rebuild the community, and restore homes and schools.

2. The people of the South Pacific had a right to believe that the time had long passed when their region was used for the testing of nuclear weapons by a power on the other side of the world. Nuclear detonations anywhere are a gross abuse of human rights, threatening life and the environment.

CHRI deplores the fact that for reasons of political expediency Britain alone of the major Commonwealth members condoned the French decision to resume tests. It was also upsetting that under French influence, Vanuatu, alone in the Commonwealth Pacific did not see fit to protest over the testing. This is a subject on which the Commonwealth should be united and all governments should be persuaded to sign the Non-Proliferation Treaty.

rights. CHRI believes the traditional approaches, which aim to secure human rights through judicial enforcement, should be supplemented by the setting up of human rights commissions and economic and social rights commissions. There are some good examples from Commonwealth countries and we welcome this stand.

These would make state and non-state entities aware of their responsibilities in the sphere of economic, social and cultural rights and monitor progress in the implementation of these rights. Such bodies could also play an active role in monitoring situations that might cause sectarian, communal, religious, racial or ethnic conflicts and take measures to prevent their deterioration, which could otherwise lead to full-scale violence and human rights violations.

Such bodies also need to monitor the causes of violence by state and non-state players, since human rights violations and the escalation of violence in societies are closely related.

Put an end to these mindsets

Despite recognition that active participation by citizens is essential for the implementation of human rights and the working of democracy, in practice this is obstructed by the mindsets developed over decades in bureaucratically regulated environments. Participation rhetoric does not by itself remove such obstacles to participation as:

- * Constraints on rights of freedom of association and assembly, resulting from the need for licensing civic groups, professional bodies, workers' organisations, and cooperatives and other forms of NGO activity. In this context, the new guidelines for NGOs approved by the NGO Forum in Wellington promise to prove most useful.
- * Repressive policing practices used in the name of public security.
- * Secrecy entrenched both in the culture and formal rules contained in outdated legislation which denies access to information, let alone recognises "duties to disclose."
- * Absence of transparency, accessibility and fairness in public administration.

Commonwealth Heads of Government should reaffirm their commitment to democracy and human rights contained in the Harare Declaration and reiterated in Limassol.

More, they should re-dedicate themselves to those goals with greater vigour and a sense of urgency, take new initiatives, and adopt practical measures to strengthen democratic processes and institutions and so promote and protect human rights throughout the Commonwealth.

Footnotes

1. Albie Sachs. Protecting Human Rights in a New South Africa. Cape Town 1990. P. 19.
2. Chief Emeka Anyaoku. Rebuilding Faith in Our Unity. Lecture delivered in Abuja, Nigeria. December 19, 1994.
3. James Paul, Incorporating Human Rights into the Work of the World Summit for Social Development.

American Society of International Law, 1995. pp 13-14.

4. *Ibid*, P 10.

5. Lionel Demery et al. Understanding the Social Effects of Policy Reforms, A World Bank Study. The World Bank 1993.

6. Governance and Development, World Bank report 1992 P 47.

* *Nigeria-Stolen by Generals*. Published by CHRI September 22,1995.

2. FREEDOM OF EXPRESSION

Where the Commonwealth is still wanting

The Declaration of Commonwealth Principles of 1971 and the Harare Declaration 20 years later provided a practical, workable framework for the development of a caring, credible and cooperative Commonwealth. CHRI has fully supported the documents and will continue to do so, but it is a disturbing fact that neither contains any reference to the central pillar of any acceptable form of democratic government: freedom of expression.

We believe that as leaders of an association committed to democracy and human rights, Heads of Government should address this matter with urgency at their Auckland meeting.

Freedom of expression is a human right fundamental to democracy and good government and if it is to be effective and real it must have a generous content. It must accord an accommodation as hospitable to the thought which we hate as that which it assures to the orthodoxies of the day. Right conclusions are more likely to emerge from a multitude of voices than through one voice preaching the official gospel. In its essence freedom of expression embodies the right to know.

That the Commonwealth recognises this is borne out by the fact that whenever it sends a group to observe an election special attention is paid to the performance of the media during the weeks before polling to weigh up whether all the political parties involved are being given equal treatment. A truly fair election cannot be held unless press, TV and radio coverage is balanced.

Since the last Commonwealth Heads of Government Meeting (CHOGM) in Cyprus democracy has been stifled in a major member country: Nigeria. It is hardly surprising, therefore, to find that the military government in Abuja has made the press a main target for harassment and persecution. Tragically, Nigeria had for long maintained, often in extremely difficult circumstances, the most vociferous and independent press in Africa.

Bouncing back

The media in the Commonwealth shares many common values and ways of working and the tradition of the independence of the journalist is deeply rooted. As a result it has bounced back in some countries from periods of repression. Today it can be said that the overall situation has improved considerably in the last few years.

Nonetheless, treatment of the media is volatile in several areas and there is still much that is wrong. One of the most serious problems is the continued monopoly in many countries of state radio and television. Though the printed word can still prove mightier than the sword, the electronic media reaches a much wider public and in the long term can control the minds of the mass of the people.

In this brief survey of the media situation in Commonwealth countries we give prominence to Africa because it is that continent, still in a phase of profound change, that needs most attention and the heads of government should be reminded that freedom of expression is a human right which 50 years ago all governments pledged to defend in the UN Declaration.

In Commonwealth Africa especially, democratisation has in recent years resulted in greater levels of tolerance towards the independent media. Only a few years ago, for instance, the emergence of commercial broadcasting stations would have been unthinkable. In 1993 in Uganda two stations were given licences. In Tanzania, Radio Tumaini, owned by the Roman Catholic Church, and Radio IFM, owned by a private businessman, were licensed in 1994 by the Tanzania Broadcasting Commission. And in Zambia four licences have been awarded in the last year.

The power of radio

That said, there have been notable exceptions. In Kenya the ruling Kenya African National Union (KANU) has consistently blocked all applications for independent radio stations in contravention of section 79 of the Constitution which guarantees freedom of expression. The most notable case involves a Kenyan businessman, S.K. Macharia, who first applied for a licence to operate a combined radio and TV station in January 1992. A regional network was proposed serving Uganda and Tanzania as well as Kenya.

The application was served simultaneously in all three countries. It succeeded in Uganda and Tanzania but was rejected in Kenya, initially because the applicant, Royal Media Services Ltd, was not registered. Mr. Macharia promptly registered his company and re-submitted the application. Six months later, having had no reply, he sent a reminder. It was ignored. In November 1993 he filed to no avail a motion in the Nairobi High Court, arguing that the government had violated his constitutional rights, specifically Section 79. In December 1994 Minister of Information Johnstone Makau publicly declared that the government would not be granting any radio licences. In January Royal Media Services withdrew its application. The Minister, in an interview with the independent magazine *The Patriot*, then reiterated government determination to maintain its stranglehold on the airwaves:

The government has absolutely no plans to licence any radio station. It is the government's view that so far there is no immediate need to register more radio stations because the current one KBC (Kenya Broadcasting Corporation) is able to reach 98% of the country's population and is serving Kenyans adequately.⁽¹⁾

Similarly, President Robert Mugabe of Zimbabwe has personally expressed his hostility towards the principle of private broadcasting. He told a press conference in Harare in July 1993 that "You don't know what propaganda a non-state radio station might broadcast," and added that it was necessary to protect the medium from "subversive and irresponsible journalism."⁽²⁾

In Ghana the government of President Jerry Rawlings recently closed the independent station Radio Eye two weeks after it had gone on the air following the refusal of the Frequency Control and Modulation Board to assign and register it a frequency. Information Secretary, Kofi Totobi Quakyi, later criticised the owner, Dr Charles Wereko Brobby, for failure to use the proper legal channels. He characterised the owner and his staff as "modern day Tarzans (who) must be reminded that we are not living in a jungle where there are no laws." Dr Brobby responded that the authorities would only have used the legal system to "frustrate us," adding: "If we had gone to court the matter could have dragged on for a long time, providing a legal outlet for the government, and the people, to forget the case."⁽³⁾

This continued resistance by some governments to open up the airwaves to the private sector, despite their otherwise democratic credentials, is explained by the perception of radio as easily the most effective means of disseminating information and ideas in a continent with relatively low rates of literacy. This is underscored by the refusal of all governments, with the exception of that in South Africa, to allow the national broadcasting networks to function independently of state control, as witness, for instance, the role they are expected to play during elections.

The 1992 election in Kenya is a case in point. The National Electoral Monitoring Unit (NEMU), an umbrella body of four local NGOs, concluded that the extreme bias of the KBC “adversely affected the elections” by effectively acting as a mouthpiece of the ruling party:

In general, both TV and radio stations loudly and persistently broadcast news, events and reports to KANU’s advantage. The station campaigned in open and blatant campaigns in favour of KANU, thus becoming some of KANU’s major campaign fora... in total, the broadcasts portrayed KANU as a formidable party, a people’s party which had achieved unprecedented success in all aspects of the socioeconomic life of Kenyans, and which had in President Moi an immortal and indispensable leader.⁽⁴⁾

An analysis of the main (15-minute) 7 pm news broadcasts on selected days between 30 October and 24 December showed an item on President Moi consistently heading every bulletin, and coverage of KANU outstripping that of the 11 other registered parties combined. For instance, on three days running (30 October-1 November) KANU received respectively, 90%, 84% and 65% of the total airtime. Forum for the Restoration of Democracy- Kenya (Ford-Kenya), one of the main opposition parties, received 10%, 0%, and 12% respectively. No other party received any coverage then or on subsequent days covered by NEMU.

Many KANU items broadcast hardly qualified as news proper. On 30 October the first six and a half minutes were given over to the President opening an agricultural show. This was followed by three minutes on the President speaking to a delegation of teachers and councillors. The remaining one minute detailed a squabble between the Ford-Kenya leader and a prospective candidate from the Democratic Party (DP). Next day the first four minutes covered the President on a meet-the-people tour, followed by another two minutes on the Vice-President predicting that one of the country’s ethnic groups was planning to re-elect Moi. Only one minute was given to a candidate from the DP denying the previous day’s allegations by Ford-Kenya. All this was in contravention of Section 8(1)(a) of the Kenya Broadcasting Corporation Act, which obliges the Corporation to “provide independent and impartial broadcasting services of information, education and entertainment.”

The partisan nature of KBC’s election reporting was extreme but not unusual. Much the same charge was laid against the Ghana Broadcasting Corporation by the opposition parties in the run-up to the 1992 elections, which saw the transformation of the incumbent, after 11 years in power, from military ruler to civilian president.

In this context, it is important to point out that only the national broadcasting networks have the resources to reach remote communities in the multiplicity of languages in most African countries. Radio Uganda broadcasts every day in 11 languages (Alur, Ateso, Karamajong, Kubsabiny, Luganda, Lugbara, Lumasaba, Luo, Lwo, Madi and Rukonzo)-and three international languages (Arabic, English and Kiswahili)-to reach a population of under 17

million. Commercial stations broadcast only in English, serving communities already well covered by the independent press.

The reason is economic. Radio is expensive. An FM station with a range of about 150 kms-the range of most existing independent networks requires a minimum investment of US \$200,000 for the basic equipment and before salaries and rent. Radio, unlike newspapers, is wholly dependent on advertising revenue for its profits. The independent stations are therefore largely uninterested in remote communities with limited spending power the very communities most in need of levels of information without which they cannot make the informed political choices that underpin a functioning democracy.

This dependence on advertising explains why independent radio poses even less of a threat than does the independent press to the powers-that-be, and why the continued resistance from some governments seems more a matter of ideology (or simply stubbornness) than common sense. In a continent where most of the resources are controlled by governments, denial of advertising revenue adversely affects viability. Moreover, pressure can easily be exerted on the private sector, itself dependent on government for contracts. Finally, there is always the threat that licences can be revoked, particularly since the process of licence allocation is itself often shrouded in secrecy.

State monopoly in South Asia, too

Monopoly use of state radio and TV is currently a prime concern of the media in India, Pakistan, Bangladesh and Sri Lanka. The Sri Lankan *Sunday Observer* wrote (23 April 1995): "The policy of an open market economy and the necessity to have transparency in governance make it unthinkable that any part of the media should be controlled by the government. Media people should call upon the government to release its control over media while protecting the rights of its workers."

In an important judgment on 9 February 1995 the Indian Supreme Court pronounced the airwaves to be public property for the enjoyment of the citizen's fundamental right to freedom of speech and expression which was held to include the right to receive information. The case involved the sale by the Cricket Association of Bengal (CAB) of the TV rights of international cricket matches. The official TV network Doordarshan claimed exclusive right domestically with the option to sell overseas rights. The Court ruled that CAB was entitled to have the matches televised through a foreign satellite link (in this case Star TV), but it directed the government to establish "an independent, autonomous public authority" to regulate and control the airwaves to prevent "a few private affluent broadcasters" or "oligarchic organizations" from replacing "unregenerate... monopoly state broadcasters purveying information, disinformation, misinformation and non-information" to create "an uninformed citizenry." The judgment further stressed that there could be no "true democracy" unless the citizens "have a right to participate in the affairs of the polity of the country." The judgment has been seen as relevant to the entire region.

The present government of India is generally tolerant of criticism and publications have not been penalised for their comments or other contents.

However, the central government's grip on television remains as tight as ever. In Bangladesh,

too, state monopoly over the electronic media continues unabated, despite the pre-election commitment of the ruling party and persistent public demand to establish an autonomous body for this purpose.

Regulation must be independent

Although radio licences have been granted in Zambia, the situation is far from satisfactory. The country has no regulatory body for independent broadcasting. Licences are granted by the Minister for Information and Broadcasting Services on the recommendation of a committee appointed by the Minister without public consultation and according to hidden criteria. The technical committee comprises officials from the Zambia National Broadcasting Corporation, whose current chairperson Josephine Mapona, also happens to be the permanent secretary to the Ministry.

All four licences recently allocated went to Christian groups-enough to raise suspicion of government bias since President Chiluba is himself a born-again Christian. Only South Africa has a genuinely independent body, the Independent Broadcasting Authority (IBA), appointed after public hearings and answerable to a standing committee of the National Assembly. The IBA is responsible for allocating frequencies, developing ethical standards, hearing complaints and fashioning policy.

Licence allocation secrecy has led to worrying trends in the ownership structure in some countries. In Uganda, Capital radio is part-owned by William Pike, editor of the government-owned *New Vision*, the country's only daily newspaper, and numbers among its shareholders senior political figures such as Eriya Kategaya, the Second Deputy Prime Minister, and Ateker Ejalu, former labour and social welfare minister.

All of which may explain why the independent stations shy away from political commentary and concentrate on popular music, sports reports and innocuous phone-in programmes. In Nigeria, for example, such a station, Radio Ray Power, was allowed to begin broadcasting from Lagos at a time when the military government of General Sani Abacha was launching his most sustained attack on the independent press in an effort to silence dissent.⁽⁵⁾

Nigeria: a free press silenced

The travails of the independent press in Nigeria, which has justifiably replaced South Africa in the eyes of the international community as a pariah nation, provide a useful microcosm for the large-scale human rights abuses visited on those who merely want their country to take its rightful place among the community of nations. Since taking power in November 1993 General Sani Abacha seems to have singled out the otherwise robust Nigerian press for particular attention. Two months into office, security forces seized 50,000 copies of the weekly *Tell* magazine following a cover story "Return to tyranny: Abacha bares his fangs," which, says its editor-in-chief, "(was) just an analysis of the 10 new decrees... promulgated by the administration."⁽⁶⁾ In April 1994 three members of the editorial staff of another weekly, *Newswatch*, were held and charged with sedition and criminal intent to cause fear, alarm and disaffection among the military and the public for publishing an interview with a retired brigadier-general who claimed Abacha was planning to stay in power for five years, and that the

constitutional conference he had convened as proof of his democratic credentials was no more than a talking shop designed to deceive the Nigerian people. After a week in jail all three were freed with a pardon. Worse was to follow.

Early on Saturday 11 June armed anti-riot policemen and 20 agents from the State Security Service (SSS) stormed the premises of Punch Nigeria Ltd, arrested the editor and sealed the offices. Another detachment did the same at the offices of Concord Press Nigeria Ltd and *African Concord* magazine. The Punch group-*The Punch* (daily), *Sunday Punch*, and *Toplife* (both weeklies)-had consistently remained the most outspoken newspapers in Nigeria since they were founded in 1973. The Concord group-*National Concord* (daily), *Sunday Concord*, *Business Concord*, *Idoka*, *Isokan*, *Weekend Concord* and the *African Concord* (all weeklies)-is owned by Chief Moshood Abiola, the presumed winner of the June 1993 presidential elections.

In court hearings the police claimed to have information that all three publishing houses were being used to store arms and other offensive weapons, although they did not explain why, having found none, they did not immediately leave the premises. On 29 July the Federal High Court in Lagos ruled in favour of the Punch group. In a 22-page judgment Justice Tajudeen Odunowo declared the closure “illegal and unconstitutional” and ordered the forces to vacate the premises. The newspaper was awarded substantial damages. The papers waited another ten days for the security forces to comply with the order, but the victory, such as it was, as well as the ongoing Concord case, was meaningless. On 6 September the government dispensed with its pretence of legalism and proscribed the papers by decree.

Also proscribed on the same day were all five titles of Guardian Newspapers Ltd-*The Guardian* (daily), *Guardian Express* (afternoon daily), *Financial Guardian*, *Lagos Life* and *African Guardian* (all weeklies)-following occupation of their premises by 150 armed policemen on 15 August. The government did not maintain the fiction that Nigerian journalists were now gun-running, but the closure may have had something to do with the lead story in the previous day’s edition of *The Guardian*.

Under the headline “Inside Aso Rock: The raging battle to save Nigeria,” it claimed the 11-man Provisional Ruling Council (since dismembered) was split between hawks and doves and that this split represented the wider division in the country between the northern conservatives, the traditional rulers of the country since independence in 1966, and the southern progressives who might be expected to speak up for the imprisoned Abiola.

The decrees banning the newspaper groups-Decree 6 (Concord), Decree 7 (Punch) and Decree 8 (Guardian)-were to run for an initial six months, with provision to extend them for a further six months by “the appropriate authority.” The fact that the first two closures preceded the enactment of the respective decrees was also provided for:

Any person who on the direction of the appropriate authority had at any time before the commencement of this decree dealt with or acted in compliance with this decree or thereafter deals with any copy of the newspapers or weekly magazine proscribed or prohibited from circulation pursuant to this decree should stand indemnified in respect thereof and no suit or any other proceedings whatsoever shall lie at the instance of any person aggrieved in respect of an act, matter or thing done in respect of such direction or in compliance and whether any suit or other proceeding has been or is instituted in any court

shall abate and be of no effect whatsoever.

To cover itself, the regime backdated the decrees to cover their initial closures, and then promptly enacted another decree, “The Military Government (Supremacy and Enforcement of Powers) Decree 12 of 1994,” which divested the courts of all authority to question the actions of the government. Decree 12 also gave the chief of general staff and the inspector-general of police the power to detain any person for up to three months without charge or trial, with provisions to renew the three-month detention indefinitely. Finally, yet another decree, “The Constitution (Suspension and Modification) Amendment Decree 5 of 1994,” empowered the military to try all cases of treasonable felony, which circumvented the problem of how best to proceed with Abiola’s trial without risking tiresome arguments about the separation of powers. Consequently, the military can arrest him, try him, and pass whatever sentence it likes on him.

As expected the proscriptions were extended for a further six months when the first time-limit expired, with the attendant hardship for the 5,000 staff of the publications. *The Guardian* was regarded as the best daily paper in Nigeria, selling more than 250,000 copies (twice that of its nearest rival, the government-owned *Daily Times*).

The hallmark of *The Guardian* was the depth and range of its coverage, coupled with its ability to separate news from comment. No other Nigerian newspaper was able or willing to do this on a consistent basis.

Consider, for instance, one of the paper’s last editorials before it was closed down:

We are convinced... that an overly legalistic response... would not be enough. The trial of Chief Abiola is, as is well known, a political trial. Chief Abiola is not a criminal. What the administration ought to have done all along-and what it must still do if there will be peace in Nigeria-is sort the entire matter out politically.

The federal attorney-general ought to be asked to discontinue the court proceedings and the nation saved this charade. The political crisis can only be settled by genuine dialogue, not the unrestrained and impolitic use of the coercive instrument of state power.

We find extremely short-sighted a use of state power which tunnels unwittingly at the very root, plinth and sustenance of civil order in the country so recklessly. For, if the faith of the citizenry (and, hence, in civil order) continues to be subverted, are the authorities enamoured of the destination of the continuing slide to anarchy in Nigeria?⁽⁷⁾

In July *The Guardian* was allowed to re-commence publication, but only after it had given the government assurances that were not properly revealed.

The Gambia and Sierra Leone

The media has also suffered with the advent of military rule in two other West African Commonwealth countries.

In The Gambia one of the first acts of the Armed Forces Provisional Ruling Council when it overthrew the democratically-elected government of President Dawda Jawara in July 1994 was

to issue the Political Activities (Suspension) Decree, banning all political activity and giving the Junta wide-ranging powers of censorship, specifically with regard to “political propaganda by means of a newspaper publication.” This was duly used against *Foroyaa*, the organ of the former opposition party, the People's Democratic Organisation for Independence and Socialism. Two of its journalists were fined 1,000 dalasis (£65) on 12 October 1994 for an article said to have contravened the provisions of the decree. They were also ordered to “refrain from political activities until the Decree is lifted” Failure to comply would lead to three years’ jail.

In May 1992 veteran Liberian journalist Kenneth Y. Best founded *The Daily Observer* to prove that an independent daily newspaper (Monday to Friday) was viable in a country of just over one million people and a literacy rate of about 20 per cent. Best proved right and his paper rapidly established itself as the country’s leading publication with average daily sales of 5,000. It was a natural target for the military government and in an extraordinary move, Best was summarily deported to his native Liberia. Best said his deportation had been the result of articles calling on the government to set a time-table for return to civilian rule⁽⁷⁾ and, following domestic and international pressure, he was allowed back into The Gambia.

Best’s allegation is denied by the government, but it seems to have been borne out by subsequent events. In early November one of his staff, Alie Badara Sheriff, was beaten up by security troops, apparently being mistaken for a colleague, Rodney Sieh, who doubles as a correspondent for the BBC. Sieh was later assaulted with another *Daily Observer* journalist, Abdullah Savage, when they tried to enter a detention camp to interview ministers detained after the coup. In an interview with a representative of the Paris-based Reporters Sans Frontieres, Minister of Interior, Captain Sadibou Hydara claimed that the journalists “probably... tried to enter the camp by force.”⁽⁹⁾ He also denied that the government was hostile to the independent press *per se*, but that any tension was entirely the journalists’ fault.

In Sierra Leone the fortunes of the independent press have been adversely affected by the escalating civil war, although the military government’s hostility to freedom of expression and information was apparent within days of seizing power in April 1992. A state of emergency was soon followed by a new press law requiring newspapers to pay a deposit of two million leones (£2,130), a registration tax of 50,000 leones (US\$53) and to employ a minimum of six journalists. Editors also had to have a degree and at least four years’ journalistic experience, or a diploma in journalism and at least ten years’ experience. Registration deadline was 1 February 1993. The result: reduction in the number of independent newspapers from 40 to 11.

In December 1993 it was ruled that all state enterprises obtain clearance from the Information Ministry before advertising in the independent press. The Minister would select the publications in which the advertisements would appear. In a country with an extremely limited market based almost exclusively in Freetown the denial of advertising revenue was enough in itself to wipe out the small profit margin that made them viable. *For di People* (For the People), one of the most radical of the independent weeklies (there are no independent dailies) soon folded. The editor, Paul Kamara, and his deputy, Salieu Kamara, both also officers in the newly-created National League of Human Rights, were held without charge for three days in connection with their activities as journalists. Their office and homes were ransacked, and documents, photographs and notebooks confiscated.

Other arbitrary government actions have underscored its hostility towards all potential voices of

dissent. In July 1992 the *New National* was banned because its editor, Candi Kallon, refused to reveal the sources of an article about a delivery of Russian tanks. The paper has not appeared since. In January 1993 the editor of *Pool*, Chernoh Ojuku Sesay, was detained for several days at the notorious Pademba Road Prison for an article condemning the executions of 26 people implicated in an alleged coup attempt. Sesay claimed he was tortured and denied food and water. One month later *Pool* was closed following publication of an article by the editor about his treatment in jail. The newspaper has been closed ever since, even though it had complied with the terms of the regulations, and despite the fact that Sesay issued a letter of apology, as requested by the authorities, which was circulated at a press conference convened for that purpose.

Other journalists who have suffered the wrath of the government include Julius Spencer, Donald John, Mohamed Jal-Kamara, Alfred Conteh and Mohamed Bangura, all of *The New Breed*. They were charged with sedition and jailed for ten days in October 1993 for reproducing an article from the Swedish newspaper *Expressen*. It alleged that head of state Captain Valentine Strasser had flown to Antwerp to sell diamonds valued at US\$43 million, and Ibrahim Seaga Shaw and Abbas Dumbuya, editor-in-chief and editor, respectively, of *Afro Times* were taken into custody in August last year for an article alleging that the son of a former prime minister had undermined the country's judiciary by setting up a tribunal to pass judgment in a trade dispute. The two were eventually freed on bail. Siaka Massaquoi, president of the Sierra Leone Journalists Association, says the government action has violated, in this and other cases, its own commitment to the separation of powers, an argument that appears to cut no ice with the authorities.

These actions pose serious doubts about the credibility of the pledge by the military in Sierra Leone to hand over power to a civilian government in January 1996.

The reality of life with a free press

The relationship between government and the press is generally healthier where there has been a transition to multi-party democracy but, as one commentator has pointed out, "it does not usually take long for opposition parties championing the cause of a free press to turn against the media when they get into office."⁽¹⁰⁾

A case in point is Zambia, where *The Post*, a bi-weekly independent newspaper launched in the run-up to the 1991 multi-party elections, appears to have been singled out for special attention by a government which had been loud in its commitment to the fundamental freedoms, including freedom of the press, in its election manifesto:

The MMD (Movement for Multi-Party Democracy) believes that freedom of expression and the right to information are basic human rights. As such, journalists will have an important role in promoting democracy and development in an MMD-led government. All bona fide journalists, both local and foreign, will be accredited to perform their duties without hindrance.

Less than 18 months after coming to power the President himself threatened to sue the newspaper following articles accusing him of receiving a Mercedes-Benz car in part-payment for a contract worth US\$18,000 with a South African company. State prosecutor Ali Hamir demanded that the paper's director Fred M'membe, apologise and pay damages or face prosecution. In the event, the matter was dropped. Three months later *The Post*, by now the

highest selling independent paper, carried a story, supported by official documents, accusing a government minister of drug smuggling. The police demanded that the paper reveal its sources. Mr. M'membe declined and was briefly detained. Later that year, on 16 September, armed men ambushed a van taking 50,000 copies of the paper from Ndola to Lusaka. The driver was assaulted and bundles of *The Post* were set alight.

Government pressure on *The Post* was kept up in 1994. In April police interrogated Mr. M'membe and two colleagues for an article which called the President "a cretin." In August police interrogated Mr. M'membe and several colleagues and charged them on five counts: two of libelling the head of state, two under the Official Secrets Act for publishing confidential documents, and one of publishing false information with the intention of disturbing the public order.

One of the paper's lawyers, Sakwiba Sikota, says the charges resulted from several news items in the previous weeks. One was on a government plan to abolish housing allowances for civil servants, another on a United Nations report claiming that the government was secretly supporting UNITA rebels in Angola, and a third on allegations by a former minister that the President was involved in drug trafficking. All the charges are still pending. One of the newspaper's lawyers, John Sangwa, says the problem lies with the country's libel laws, which he calls "archaic and incompatible with the principles of a democratic society."⁽¹¹⁾

The existence of "archaic and incompatible" laws had already been identified by the Media Reform Committee meeting in Lusaka in September 1993. Ironically, the committee, which comprised 26 leading figures in the Zambian media, was the result of a government-sponsored seminar in October 1992 entitled "National Seminar on Democracy and the Media in Zambia-the Way Forward." In the words of the then information and broadcasting services minister, Dipak Patel, who opened the seminar: "My government believes that freedom of expression and the right to information are basic human rights, and this is not up for debate."

In its report, *Recommendations for Media Reform in Zambia*, the committee identified "five critical areas which require attention by government." These were: the need for legal reform; the privatisation of the state owned press; the strengthening of media associations, including the training of journalists, the non-interference by government in the functioning of the state-owned broadcasting services; and the need for a media resource centre. On the first, the committee identified "at least 13 sections of the Penal Code which directly affect the freedom of the press." These include Section 53, "Prohibited Publications," which empowers the President to ban publications in the public interest; Section 60, "Seditious Intention," which makes it an offence to "excite disaffection against the government," and Section 69, "Defamation of the President," which is punishable by three years' jail. As the government's subsequent actions towards *The Post* have amply demonstrated, these and all the other laws restricting press freedom continue to remain firmly in place.

Malaysia: a case of self-censorship

The existence of restrictive media laws is hardly unique to Zambia. In Malaysia, the Internal Security Act, which was passed in 1960 as an "anti-communist weapon" but is currently used to silence dissenting voices, has led to a degree of self-censorship on the part of journalists in areas deemed "sensitive" by the authorities, such as human rights, the environment and the activities of

the opposition parties. Also the Official Secrets Act makes it an offence for journalists to investigate matters “prejudicial” to the government. Finally, the Printing Presses and Publications Act of 1984 requires all publications in the country to apply annually for a licence from the Ministry of the Interior, which in turn has the right to withdraw it at any time. Under this Act, the writer, editor, publisher, printer and vendor are all equally liable for any article deemed to harm the public interest or public order or cause public alarm.

Although rarely applied, it was used in June 1994 against *Thoothan*, a bi-weekly, Tamil-language magazine. No reason was given, but the magazine was believed to have offended the authorities for printing a report on a stock market scandal involving Maika- Telekom, the state-owned telecommunications company.

These laws aside, the Malaysian government has also shown itself unusually sensitive to reports filed by resident foreign correspondents. In March last year the deputy home minister, Megat Junid, threatened to bar foreign journalists who “libeled” the country following a series of reports in the British press about the Pergau dam affair, which involved allegations of corruption in the award of contracts. The following month, Leah Makabenta, a correspondent with the Inter-Press Service, was expelled for a “very negative article” about the mistreatment of migrant labourers, especially Filipinos. She was given 48 hours to leave the country.

Ironically, Malaysia’s phenomenal growth rate of over eight per cent a year has made it more difficult, not less, for the media to challenge the prevailing laws which limit their freedom of expression; in the words of Rose Ismail, features editor of the *New Straits Times*:

For newspapers especially, it is impossible to even propose a more independent structure because direct and indirect controls have not stifled the economic growth of the country. Because of this, the laws that keep us in line will continue to keep us in line and the practice of issuing publishing licences to individuals with political connections will not be dismantled for the simple reason that there is no justification to do so.⁽¹²⁾

Singapore: more of the same

Much the same applies in Singapore, where a similar “economic miracle” is regarded by the authorities as justification for the government’s continuing authoritarian attitude towards the media. In a letter to the *Straits Times* last December, for instance, the Prime Minister’s press secretary, Chan Heng Wing, warned that too much criticism of the government would lead to “confusion, conflict and decline.” Such a prospect, he said, dictated that “the government has to stay in charge of the agenda,” although he went on to concede that, as the population of Singapore became “better educated and more mature, limits for expression would widen.”⁽¹³⁾

How soon that day might arrive is anybody’s guess; in the meantime, the government remains acutely sensitive to any criticism, however moderate. Foreign publications are carefully monitored. Those that are deemed to have overstepped the mark are liable to find their circulation severely restricted, as happened to the Hong Kong-based *Far Eastern Economic Review* in 1987 when the government imposed a limit of 500 copies because of alleged interference in the city-state’s domestic affairs. This was later revised upwards to 2,000 copies in May 1994, where it currently remains. Similarly, sales of the London-based *Economist* magazine

were limited to 7,500 copies in August 1993 for publishing a letter by an opposition politician; the government threatened further cuts to its circulation unless it published a government response to the letter, which it did. The restriction was lifted the following January, as well as the requirement that the magazine should have its copies marked with stickers stating that it had been approved for sale.

Singapore-based commentators, whether nationals or not, are liable to find themselves charged in court for writing articles which would be passed over in silence in other democratic countries. One recent case involved an article which appeared in the *International Herald Tribune* by Christopher Lingle, an American academic at the National University of Singapore, in which he referred to "certain intolerant governments" in the region that relied on "a compliant judiciary to bankrupt opposition politicians." Lingle was sued for libel and subsequently forced to abandon his job and leave the country.

In July 1995 three of the republic's leaders were awarded a record £427,000 in defamation damages because of another article in the same newspaper, which alleged government nepotism.

In view of such events, it is hardly surprising that many Singaporean publications resort to self-censorship. Following the Lingle case, the university scrapped an issue of the journal *Commentary*, over fears that the government would object to certain articles. The four editors resigned in protest.

Hong Kong: self-censorship is already creeping in

By the time of the next Commonwealth Heads of Government Meeting in 1997, the British colony of Hong Kong will have reverted to Chinese control. Under British rule the media there has been as free as anywhere in the world. There is a thriving newspaper, radio and television industry. Hong Kong journalists, however, are concerned about their future; signs are growing that self-censorship is creeping in. They were deeply shocked in September 1993 when Xi Yang, Beijing correspondent of the Hong Kong-based *Ming Pao Daily News*, was sentenced to 12 years jail in China for "stealing and spying on state secrets." Xi Yang, a Chinese citizen, had reported a government plan to sell gold to support the currency. He also accurately forecast a rise in interest rates. His paper has since moderated its criticism of the Chinese government and even condemned the position of the Western media.

All this leads to concerns about the position of the proprietors themselves, who are in any case already looking to the lucrative Chinese market, according to George Shen, editor of the *Hong Kong Economic Journal*. He says: "Businessmen who own the presses... are like other businessmen in search for business opportunities, and many see the Chinese market as an attractive source of profit in the longer term." For this reason, he says, it simply does not pay "to offend the future master of Hong Kong."⁽¹⁴⁾ It is significant in this context that the *South China Morning Post*, which was formerly owned by Rupert Murdoch, was taken over in 1993 by Malaysian businessman Robert Kuok, known to be sympathetic to China and who may bow to pressure from Beijing. As co-owner (with Sir Run Run Shaw) of the Independent Television Broadcasts (TVB), for instance, he agreed to drop a controversial documentary on the life of Mao Zedong, the former Chinese leader, due to be broadcast in January 1994. Later in the year, TVB withdrew a BBC documentary about work camps in China, even though the station had

already paid for broadcasting rights.

As a colony Hong Kong has never been a full member of the Commonwealth, but it has enjoyed strong links through its connection with Britain, and Hong Kong people have played a major role in the work of many Commonwealth organisations. After 1 July 1997 Hong Kong will no longer have any official links with the Commonwealth. It is to be hoped, however, that unofficial, professional links can continue in many fields, and that on the official level Commonwealth governments will be ready to exert pressure, if it should become necessary, to help maintain the tradition of freedom of expression which Hong Kong has enjoyed for so long.

The pressures grow in the Pacific

Among the Pacific Commonwealth countries the biggest, Papua New Guinea, enjoys the most vigorous news media in the region. Launch of a new national newspaper and a new radio station have been followed by plans for a new TV station. Freedom of expression is guaranteed under the constitution and the country takes full advantage of it.

However, the media in several other parts of the Pacific Commonwealth is under increasing pressure.' Akilisi Pohiva, a parliamentarian and pro-democracy editor and publisher in Tonga, has faced five legal actions in the last two years which he claims were designed to force his newspaper into bankruptcy. Three libel cases involved damage claims totalling 180,000 pa'anga (£84,600) and two gagging actions sought to prevent him publishing information considered to be confidential to his newspaper *Keele'a*. Pohiva has waged a decade-long campaign for open government in Tonga and he exposed a passports-for-sale scandal.

In Western Samoa a new law was introduced in early 1993 requiring disclosure of sources of information in defamation cases. Penalties for breaching the law involve a fine of up to 5,000 tala (£1,250) or three months in jail. Journalists protested vigorously against the law, but now reporters are being troubled by a sedition trial. They have been pressured to provide information that would confirm statements made last year by a lobby group calling for the dropping of a 10 per cent value-added tax and the removal of Prime Minister Tofilau Eti Alesana's government.

In Vanuatu the government ordered Australian publisher Mark Neil Jones, of the country's only independent weekly newspaper, *Trading Post*, to carry some French articles in the English-language publication or face deportation. Mr. Jones was sent a letter by a senior official of the Prime Minister's office asking him to follow the policy of the French-speaking government. Prime Minister Maxime Carlot Korman has been pushing the notion of a bilingual French and English community since he came to power in 1991. The country's other paper, the government-owned *Vanuatu Weekly*, is published in English, French and Bislama (pidgin).

A new threat: media ownership

The structure of media ownership and with it the problems posed to the free flow of news, is a complicated issue. In Zimbabwe, where two of the three publishing houses are controlled by Zimbabwe Newspapers (180) Ltd (Zimpapers). Although this is an independent company and quoted on the Zimbabwe Stock exchange, the largest shareholder-45%-is the Zimbabwe Mass Media Trust, which owns 51 % of the shares. In theory the Trust holds these shares on behalf of the Zimbabwe people. In practice the Trust has consistently acted on behalf of the government-

President Robert Mugabe's ruling ZANU-PF in order to deal with recalcitrant editors. The Trust chairman doubles as chairman of Zimpapers by virtue of the Trusts's majority holding in the company.

At the other end of the spectrum is the discomfort over the concentration of media ownership in the hands of a single individual, as is the case with Rupert Murdoch's News Corporation, which controls access to more than two-thirds of the world's population through his Asian satellite TV companies. In Britain, Murdoch and Conrad Black between them control seven of the 12 national daily and Sunday newspapers. Distinguished British journalist Godfrey Hodgson says the problem is more subtle than the direct interference from the proprietors which editors face in Zimbabwe:

It is rather that executives and editors anxious to please them recruit key staff from a narrow band of ideological persuasions, and conduct the kind of journalistic campaigns they imagine the boss will like. The first time in history, I imagine, that *The Times* wrote five leaders in four days was when it was campaigning against the BBC in the middle 1980s. The leader writer who decided to write those leaders, and he assured me it was his own idea, rose with exceptional rapidity to become the editor.⁽¹⁵⁾

At the time Murdoch was bidding for a franchise to run a satellite TV company-BSkyB-which would be in direct competition with the BBC. Murdoch's editors, in other words, "pander to his imagined prejudices," a problem which would not be so serious if there was a greater diversity of media ownership. Unfortunately, the British government is currently coming under pressure from the British Media Group- "one of the most powerful ever formed"⁽¹⁶⁾ -to dispense with almost all the remaining safeguards against media monopoly. The Group, created in July 1993, comprises most of the major British newspaper publishers-Associated Newspapers, Pearson, Guardian Newspapers and the Telegraph-who have now set their sights on radio and television, as well as provincial newspapers.

A related problem is the sheer financial muscle the major players are able to exercise by virtue of their global empires. In September 1993 Murdoch cut the price of *The Times* from 45 to 30 pence on the grounds that British newspapers were overpriced in a time of recession. In fact, most commentators quickly recognised that Murdoch, who stood to lose tens of millions of pounds in revenue every year, simply wanted to eliminate competition, notably *The Independent*, then facing a financial crisis. *The Independent* was rescued from closure by Mirror Group Newspapers, whereupon the price of *The Times* was cut to 20 pence in an apparent challenge to *The Daily Telegraph*, which was forced to follow suit.

The price war continues and one commentator says it "is likely to have long-term implications for the whole newspaper industry in Britain" in a variety of ways: it lowers brand loyalty; it opens the door "to direct mail and other competitive media"; and it introduces doubt "on readership value to advertisers" at a time when the print media is seeing its share of advertising revenue being undermined by the growth of commercial broadcasting.⁽¹⁷⁾

The challenge posed to the print media by the growth in commercial broadcasting is not unique in Britain, where the press has seen its share of the available advertising revenue fall from 60% to 50% in the last decade. At the 1994 Commonwealth Press Union conference in Cyprus and Malta newspaper editors from Malta, Mauritius and New Zealand all voiced similar complaints,

and a Singapore representative was fearful that the same might happen in her country where state-run radio and TV have been split into different companies, each to be run on commercial lines.

There is an irony in the fact that greater openness of the airwaves should threaten the continued existence of newspapers, although whether such a development is harmful is difficult to judge. The emergence of independent radio in countries like Uganda and Tanzania has not resulted in an increased diversity of available information and views (quite the reverse), but only because the governments in both countries control most of the resources, and therefore distort the true picture. The problem, in other words, does not lie with the radio stations, which can hardly be blamed for trying to make a profit in the prevailing circumstances, but with the absence of a significant private sector as pertains, say, in countries like Britain and New Zealand, where advertisers merely follow the dictates of the market.

Plusses, but a new threat looms

On the positive side, the commitment to multi-party democracy in most Commonwealth countries which once laboured under authoritarian regimes has been beneficial for freedom of expression. Uganda is one example. Seychelles is another. Following the 1993 election there and the adoption of a new constitution guaranteeing freedom of the press, seven new private newspapers emerged. Four survive. In Pakistan and Bangladesh the print media flourish with a greater degree of freedom than in the days of military rule.

In Bangladesh, where the nine-year dictatorship of General Ershad ended in 1991, there has been police violence against selective reporters and cameramen during anti-government demonstrations by the Opposition parties. But the primary threat to the independent media comes from the fundamentalist Muslim movements, although to placate them the government has sometimes seemed less than committed to free expression. In June 1994 the authorities arrested Toab Khan and Borhan Ahmed, respectively, editorial adviser and managing editor of the daily *lanakantha*, and charged them under Section 295(A) of the Penal Code for an article held to have offended Muslim feelings. They were held for three weeks, then released on bail. Under the law, they faced two years' jail. The editor, Mohammad Atiqullah Khan Masud, and his deputy, Shamsuddin Ahmad, were sought and went into hiding. Meantime, the offices of the paper and another daily, *Banglar Bani*, were attacked by armed mobs. They called for both papers and three others, *Sangbad*, *Bhorer Kagoj* and *Ajker Kagoj* to be banned.

The demonstrators' banner proclaimed them "The Enlightened Followers of Islam." They called for the death of writer Taslima Nasrin because of an interview with the Calcutta *Statesman* in which she was alleged to have called for the amending of the Quran. She claimed to have been misquoted and that she had merely called for changes in the *sharia* law that would improve women's rights. In June 1994 the government, which had banned one of her books because it had "created misunderstandings among communities," issued a warrant for her arrest under Section 295(A). She appeared before a court in Dhaka in August, and was granted bail.

In Pakistan, too, fundamentalism poses a real threat to freedom of expression, which is seriously menaced by the implementation of the so-called blasphemy laws. Mohammed Riaz, religious affairs correspondent of the daily *Dawn*, says:

Religious and ethnic topics are still very sensitive and journalists who tackle them are exposing themselves to the risks of threats and reprisals. Religious groups use violence in an effort to prevent publication of any critical reports and try to force us to give their view of events.⁽¹⁸⁾

An example of this came on 9 January 1995 when about 50 armed activists of a religious organisation called Sipah Mohammad attacked the offices of *Al Akhbar* and the *Pakistan Observer* in Islamabad and beat up their employees. The newspapers had refused to publish unedited versions of “news items” given by the attackers. The police did not intervene and there was no prosecution.

This also happens in India where the Hindu fundamentalist Shiv Sena regional party in Bombay attacked offices of newspapers which criticized it. Fundamentalist militant groups in other parts of India have indulged in similar acts.

Commonwealth governments need to be on their guard against this potentially new danger to freedom of expression. The example of Algeria, where 46 journalists have died at the hands of fundamentalists, is a danger signal.

Aside from this worrying problem, the extent of the new media freedom in Pakistan is reflected in a doubling of the number of newspapers over the last decade.

South Africa: still a white-dominated press

In the apartheid years sections of the press in South Africa put up a long struggle against intensive government harassment and persecution. One way or another independent voices continued to be heard, thanks to many journalists who were prepared to expose themselves to great physical risk.

During the period leading up to the 1994 elections newspapers enjoyed a boom, but following “the high-tension times” the industry has suffered “a terrible slump in circulation.”⁽¹⁹⁾ *New Nation* fell to 27,000 copies a week.. The paper was saved from closure when it was acquired by Argus Newspapers, the largest English-language publishing group. This has raised fears about the lack of black representation in what continues to be a white-dominated, white-owned industry- in itself the *raison d’etre* for the launch of the *New Nation* in 1986.

A related problem is the relatively small number of properly trained black journalists who are able adequately to represent the voice of the majority community, although steps are being taken to remedy this as part of the government’s commitment to a new, democratic South Africa. Fortunately, the country has several good journalism training institutes.

This is not the case in many of the poorer Commonwealth countries. In the Caribbean, where there is little or no interference in the functioning of the independent press, the absence of proper journalistic standards means that in many of the smaller countries, newspapers are unable to fulfil their role as well as they might.

Poverty limits the number of titles and threatens those that exist. In Guyana, where the press has become free since the change of government in 1992, the high cost of newsprint imported from

the United States, has resulted in a decline in sales. The general manager of the independent *Stabroek News*, says “newspapers are in danger of becoming unaffordable for the (person) in the street.”⁽²⁰⁾

The need for specialist reporting

Poverty acts in more subtle ways to limit the free flow of news. The absence of specialist reporters-to cover agriculture, the environment, science, health and technology-means that knowledge of one’s own country, including events which could have consequences for the well-being of the population, are covered only sketchily, if at all. The only beneficiaries, in fact, are authoritarian regimes, whose hold on power is dependent on their subjects (hardly citizens) knowing as little as possible, which is precisely why they always and everywhere target the independent media.

Secondly (and a corollary of the first), the inability to maintain reporters outside one’s own borders means that the local population is wholly dependent on foreign sources.

Any genuine commitment to pluralism in a world which many claim has been made smaller by the growth in global telecommunications is dependent, after all, on the equal representation of all voices. All voices are self evidently not equal, which means in turn that the contributions of those outside the magic circle remain unheard to everybody’s detriment.

The pressing need for training

This chapter on the media has shown that although many Commonwealth countries have made progress in ensuring greater freedom of expression others are still deliberately denying its people this fundamental human right. This is not in accordance with the spirit of the fine words expressed by Heads of Government in their 1971 and 1991 Declarations.

The CHRI believes a much firmer and unequivocal commitment to freedom of expression in all member countries must be made.

Above all, there is a need for a major effort to raise the standards of journalism in many parts of the Commonwealth. Democracy cannot function without a strong and highly professional press. In those countries where the press has been weakened by repression and censorship the quality of journalism has suffered grievously. With the beginning of moves towards greater return of freedom of expression and the advent of independent media, lack of experience is leading journalists to over-react in a way that is proving counter-productive and in danger of producing in turn over-reaction from governments.

The situation calls for better facilities for training journalists, but also for the training of management staff at all levels to ensure that the new newspapers and radio and TV stations now sprouting remain viable.

The funds made available by the Commonwealth for this work-an essential ingredient if democracy is to be buttressed-have been meagre. The CHRI calls on governments to provide the resources for the Commonwealth media organisations to carry out this work.

Notes

1. Electronic media: Why government has maintained cautious stance. *The Patriot*, Feb.1995 p6.
2. Quoted in Reporters sans Frontieres: 1994 Report: Freedom of the press throughout the world. p378.
3. Jason Lothian: 'Radio Tarzan' looks government straight in the eye. *Gemini News Service* 1995.
4. The multi-party elections in Kenya, 29 December 1992: Report of the National Electoral Monitoring Unit 1993. p58.
5. For fuller discussion of independent radio in selected countries in East and Southern Africa see: Richard Carver and Adewale Maja-Pearce: Who rules the airwaves? Broadcasting in Africa. *Article 19/Index on Censorship*, February 1995; also Radio pluralism in West Africa, Panos Institute/West African Journalists' Association 1993.
6. Quoted in: Critics suspect government apology over *Tell seizure*. *The Guardian* (Lagos) January 17, 1994.
7. Curiouser and curiouser. *The Guardian* (Lagos). August 12, 1994. For a fuller discussion on the travails of the press under the Abacha regime, see Adewale Maja-Pearce: The Press in Nigeria, *Index on Censorship*, 6/1994 pp 209-227.
8. The junta has since set a date-December 1998-for departure.
9. Kenneth Best can come back provided Capt Hydara. *The Point* (Banjul) Nov. 24, 1994.
10. Vilma Wimaladasa: Media honeymoon is cut short. *Gemini News Service* 1995.
11. Quoted in Reporters sans Frontieres 1995 Report: Freedom of Expression throughout the World.
12. Rose Ismail: A distinct place on the map. *CPU News* Jan. 1995 p16.
13. Quoted in *Index on Censorship* 1/95 p 248.
14. Quoted in Jeff Heinrich: "The writing on the wall gets clearer and dearer." *Gemini News Service*.
15. Godfrey Hodgson: A matter of prejudice. *Index on Censorship*, 2/95. p 73.
16. Paul Foot. Enough is enough. *Index on Censorship* 2/95 p 70.
17. Gerry Holbrook: Calls to revise cross media rules., *CPU News Jan.* 1995 p19.
18. Quoted in Reporters sans Frontieres 1995 Report: Freedom of Expression Throughout the World p219.
19. Mike Tissong: The terrible slump in circulation. *CPU News* January 1995 p18.
20. Doreen de Caires: No government interference *CPU News*, Jan 1995 p15.3.

3. POLICE, PRISONS AND HUMAN RIGHTS: The need for major reform

One of the foremost concerns of CHRI has been the performance of the law enforcement agencies in Commonwealth countries and conditions in jails. Last December CHRI held a two-day workshop in New Delhi on *Police, Prisons and Human Rights* with particular reference to India, Pakistan, Bangladesh and Sri Lanka. It plans to stage similar seminars in other regions of the Commonwealth and so to build a comprehensive picture of the problems of reform that lie ahead for the Commonwealth.

Every member country has its difficulties in the area of penal reform. In South Asia the media has increasingly exposed gross abuses of human rights by law enforcement agencies. There is blatant violation of the laws of the land, transgressing the judicial norms laid down by the courts, violence against prisoners often leading to death in custody, unauthorised detention and repeated instances of people who disappear after being taken in police hands.

Equally disturbing is the general state of human rights of prisoners in jail. Social service and voluntary agencies sometimes bring conditions to light, and in some cases public interest litigation has helped. Too often, however, prison administration has shown utter disregard towards the feelings, human dignity and rights of the prisoners in its care.

Commissions and committees set up by South Asian governments make their recommendations, judicial pronouncements are made at the highest court-level and guidelines are laid down for better procedures. But violations go on. In India, for instance, there is no sign yet that the recommendations of the National Police Commission and the Jails Reform Committee are to be implemented.

Human rights violations of prisoners continue to take place, to a greater or lesser degree, in all Commonwealth countries-despite the commitment made by all Commonwealth governments in their Harare Declaration in 1991. Cases of torture and other forms of ill-treatment of suspects in custody, including a high number of deaths, as a result of unjustified use of force by police, are reported from places like Jamaica, Nigeria, Zimbabwe, Malaysia and Australia (particularly in the case of aboriginal prisoners).

CHRI finds it hard to understand why heads of government do not as a priority satisfy themselves that violations are not taking place in their countries and insist on severe punishment for those individuals responsible. Instead, leaders still seem in many cases to be turning a blind eye.

It is expected that the findings of the Delhi workshop, which received considerable publicity in India; will alert Commonwealth governments to the urgent need for reform in this area.

As a result of the New Delhi workshop CHRI wants every Commonwealth government to subscribe to a Charter of the Rights of Prisoners based on these recommendations from the workshop:

1. Proper monitoring mechanisms to ensure that guidelines and judicial decisions relating to

prisoners are implemented.

2. While prisoners serve their terms their inner creativity should be developed so that when they are released they can be more easily integrated into society. It was stressed that with a view to affording greater access and interaction with the family the criteria for giving parole should be relaxed.
3. Urgent steps should be initiated to reduce the delays in bringing prisoners to trial.
4. Comprehensive measures should be adopted to reduce overcrowding in jails.
5. Long-serving jail officials should be posted to other departments.
6. Legal aid should be given to an accused at the first point of contact with the police.
7. The right of a prisoner to see a lawyer of his/her choice should be ensured. Meetings with the lawyer may be subject to reasonable regulation as to time and place but not held within the hearing of prison officials.
8. Human rights education should be compulsory for the police and other law enforcement officers.
9. The old concepts of prison should no longer be seen as central to the criminal justice system. Alternatives to custodial sentences should be adopted- for instance, community service such as in Canada, Britain, and some other countries.
10. Change in the attitude and culture of the police is imperative.
11. Measures should be adopted to ensure freedom of communication between the prisoner and members of his/her family who should be permitted periodic visits under conditions which while safeguarding security do not impair privacy of communication.
12. Provisions should be made for effective informal mechanisms for redress of human rights violations of prisoners, as, for example, the Independent Complaints Commission set up in South Africa to investigate serious complaints against the police.
13. Stringent penalties should be imposed for the practice of torture and custodial violence. Such offences should be tried by a senior judicial officer.
14. Provisions should be enacted for the award of compensation to prisoners who have been victims of human rights violations by police and jail officials.
15. Provision should be made for examination and treatment of prisoners by independent doctors.
16. Provisions should be enacted for co-ordination between NGOs, human rights organisations, jail officials and legal aid committees.

17. UN Minimum Standard Rules for the Treatment of Prisoners should be incorporated into the domestic criminal justice system.

The workshop was of the view that by pooling experience common plea could be made for a sustained effort by governmental authorities and NGOs to create awareness of a human rights culture.

South Africa: a complete overhaul

The workshop heard that South Africa, as a result of its harsh experience, is completely overhauling its police and criminal justice system. Chapter 3 of its constitution sets out a Bill of Rights curtailing police power and authority. These sections include rights to life; to human dignity; freedom and security of the person; the right not to be subjected to torture, cruel, inhuman or degrading treatment or punishment; access to information; and, in Section 25 the rights of detained, arrested and accused persons.

These Section 25 rights guarantee due process and would preclude resort to torture, assault or coercion to extract confessions. An Office of Public Protector has been set up in addition to a Human Rights Commission, to deal with institutional abuses of power and corruption as against complaints of individuals which will lie with the Commission. Another innovation is the setting up of an Independent Complaints Commission to investigate serious complaints against the police. Various covert agencies set up by the former apartheid regime have been dismantled. It is admitted that, although the new police order is far more benign and accountable than before, it will take time to cultivate the new culture of a humane police force.

Violations country by country: Some Asian examples

The seminar received reports on human rights treatment in jail and relations with police in the four Commonwealth South Asian countries. These are summaries:

BANGLADESH: the code is flouted

The Criminal Procedure Code in Bangladesh lays down formalities to be observed once an arrest has been made. The accused must be taken or sent to the magistrate without unnecessary delay within a maximum of 24 hours. The Code says: "No more force is to be used than is necessary." The courts have held that handcuffing is by no means necessary and to be used as a restraint. If the police want to hold the prisoner for longer the magistrate must give prior permission.

This is the law. Yet police have arrested people at random without warrants as provided for by Section 54 of the Criminal Procedure Code. This section, though innocent in appearance, has given the police much power to detain who they like. Another law, the Special Powers Act 1974, permits law-enforcing agencies to hold people for a maximum of one month. If the detainee is wanted for longer, prior government sanction is required.

Children are entitled to bail even for a non-bailable offence (provided enough security is forthcoming). Where bail is refused or not sought, the child will then be ordered to be detained in a remand home or place of safety. Yet children are forwarded not to the juvenile court or remand home but to local jails to be kept in custody with adult offenders or in an unsuitable environment.

It is reported that to complete a case successfully the police often treat the detainee so badly that he/she suffers serious injury or dies of “heart failure.” Autopsies, if the state of the body permits, often tell a different story.

Even at a time when human rights organisations worldwide are increasingly active, prisoners of all categories in many countries continue to suffer horribly. Bangladesh is no exception. Yet little has been done to ameliorate the horrors NGOs are beginning to bring to light.

The jail system has not prevented offenders from repeating their crimes. Officials say full reform is impossible because of the character of the jails. First offenders and the young mix with hardened criminals, who encourage them to commit crimes after release. For these cases an alternative to jail, as in other countries, should be introduced.

A report by the Bangladesh Women’s Lawyers Association revealed that 7.5% of prisoners surveyed had to sweep the jail premises; 1.5% were entrusted to swat flies; 23% had nothing to do; and the rest said they just frittered away their time by resting. Human rights activists such as the Bangladesh Society for the Enforcement of Human Rights found that some prisoners awaiting trial had been held for over 12 years and even up to 23 years. Yet every prisoner not yet convicted-and the law presumes a person innocent until found guilty-is entitled to a speedy trial.

An NGO can exert only so much pressure. An excessive amount could trigger administration resentment and the Home Ministry could then stop the women lawyers’ access to prisons and case records.

An immense number of prisoners are in the “safe custody” category and the government, with NGO help, should step up the building of safe custody homes to help the largely innocent men, women and children in jail. Many pass from one stage of their lives to another behind bars. Sometimes babies are born in Bangladeshi prisons and grow up in cells alongside young and old prisoners of all kinds, without having sampled the joy of freedom, sunlight and living in clean, healthy conditions.

The male-dominated police, the so-called protectors of the helpless and oppressed, are eager to dismiss a woman’s charges and evidence against a male criminal’s empty claims. Bangladeshi police are unfriendly to women and such hostility is more painful when the victim is poor, helpless and illiterate.

Most police stations have no women constables, so women usually find themselves at the mercy of male officers. “Police power” in the country today is beyond the scope of any law or authority.

The gulf between laws in theory and practice in Bangladesh must be rapidly narrowed. Minimum standards must be set for decency to be observed when arresting and searching women and adolescent girls. Following an arrest, the police should inform the nearest Legal Aid Community or any other recognised services, without delay.

INDIA: inquiries but no action

The report of the All India Committee on Jail Reforms (1980-83), chaired by Mr. Justice A.M. Mulla, said that for a long time press, parliament and judiciary had talked of overcrowded jails, prolonged detention of under-trial prisoners, unsatisfactory living conditions, and the inhuman approach of prison staff.

But nothing much had changed. There had been no worthwhile reforms. The Committee noted that most people in jail were from the underprivileged sections of society and from a rural or agricultural background. A large number of prisoners were first offenders accused of technical or minor offences. The Committee said “protection of society as an objective of punishment has been universally accepted and this can be achieved through reformation and the rehabilitation of offenders.” Hardened criminals needed to be kept out of circulation, but a progressive prison system had to operate.

Since independence state governments have appointed jail reform committees, but it has been impossible even to get a list of such committees from central government agencies.

To make prison administration more efficient, humane and professional the Mulla committee made wide-ranging recommendations on classification of prisoners, living conditions in jail, medical services, treatment programmes, vocational training, under-trial prisoners and so forth. Earlier, the National Police Commission (1977-80) had looked into issues of arrest, interrogation of women and delay in investigation. It made proposals to amend the law and procedures.

The National Human Rights Commission (NHRC), in its first annual report 1993-94, has expressed its deep concern about the “appalling conditions of overcrowding, lack of sanitation, poor medical facilities, inadequate diet and the like, in most of the jails of the country.” It said: “These serious deficiencies are compounded by unconscionable delays in the disposal of cases for various reasons and mismanagement in the administration of jails, all of which need to be remedied.”

The courts in India have also laid down specific rules and guidelines in matters like the right to physical protection; protection against assault; restrictions on handcuffing and bar fetters; solitary confinement; the right to a speedy trial; freedom of expression; and press interviews.

Recently the Supreme Court issued directions about the procedure to be followed when a person is arrested. It referred to the National Police Commission’s finding that 80% of all arrests were unnecessary or unjustified, and it laid down these requirements:

1. The right of the arrested person to request that a friend, relative or other persons be informed of his/her arrest and the place where detained.
2. The duty of the police officer to inform the arrested person of this right.
3. An entry to be made in the police station diary as to who was informed of the arrest.
4. The duty of the magistrate before whom the arrested person is produced to satisfy himself

that these requirements have been complied with.

5. A police officer making an arrest should record in the case diary the reasons for making the arrest, implying thereby that every arrest by the police has to be justified.

These committees and commissions have thus made many valuable recommendations down the years to reform the entire criminal justice system in India. Without comprehensive reform decisive change in the prisoner's treatment is unlikely. Unless the government agencies dealing with specific aspects of all the processes involved work in co-ordination and their efforts are complementary there can be no purposeful result.

Public confidence in India in the credibility of the entire system has been shaken. Society is losing faith in the system of justice. Sensitivities to human suffering and disregard of the law have been dulled. The foundations of a free and democratic society are in serious jeopardy.

The total prison population in India in December 1993 was 196,240 -only 0.02% in a country of nearly 890 million people. Even in absolute terms the prison population is very small. Given the will, these numbers can be easily managed.

On the plus side, individual officers have tried to improve living conditions in jails and to introduce administrative reforms. Under the system of *Jail Panchayat* inmates in several jails take an active part to improve their lot and take up issues of common interest with the administration. Education facilities are better in many prisons. In Madhya Pradesh attempts are being made to achieve 100% literacy among inmates of some select prisons. Prison officials are increasingly aware of the need for decent standards of hygiene.

But there is no organised or systematic effort to sustain and institutionalise reforms because of a lack of formal government policy and commitment, inadequate budget, non-availability of professional skills among jail administrators, and failure to take advantage of available NGO resources and facilities.

PAKISTAN: torture has become the norm

Efficient investigation of crime in Pakistan has always been a problem with the police force which is ill-equipped in terms of men and material. The force is depleted because policemen are constantly being detailed to attend on VIPs.

Inability to tackle crime leads to the arrest of innocent people because police feel it necessary to "show some progress" in an investigation. Third-degree methods are used to extract confessions. Torture in custody has become the norm. Sometimes relatives of suspects are detained for long periods to force them to disclose the wanted person's whereabouts.

Recently some young lawyers collected evidence to show that one particular person had acted as a witness more than 50 times to help a police officer in his inquiries.

In several cases recently brought to the High Court's attention a person was shown to have been arrested on a particular day in the presence of witnesses when it was conclusively established that he was already in custody on that day or that there was no possibility of his being present

where the arrest was shown to have taken place.

Pakistani laws do allow preventive detention for several reasons, including maintenance of public order. Political activists who are considered threats to public order are detained under the Maintenance of Public Order Ordinance 1963. The superior courts have nevertheless laid down strict standards upholding the validity of a detention order. Unlike some other jurisdictions, Pakistani courts refuse to treat the subjective satisfaction of the retaining authority as a valid basis for detention. They insist that such an authority must objectively satisfy the court that detention was necessary for purposes laid down by the law.

A magistrate still functions under the control of the Executive hierarchy, despite a constitutional provision mandating separation of the judiciary from the Executive..

The superior courts in Pakistan, to be fair, have shown concern at this horrifying situation and given relief to hundreds of victims of police suppression. *The habeas corpus* jurisdiction has been liberally exercised not only in formal proceedings but even on the basis of letters and telegrams received by the court. In several cases, police officials were personally summoned to appear and justify the basis of detentions and in the absence of a satisfactory explanation detainees were released on bail or otherwise. Even bail amounts were liberal and the poor who could not afford a solvent surety were directed to be released on execution of personal bonds.

As a rule, the State should be made liable to pay instant compensation the moment detention is found to be illegal. At the same time, measures for recovery of the amounts from the offending police officials need to be taken at government level.

What follows is a summary of the 1994 report published by the Human Rights Commission of Pakistan.

Although government leaders often talk of the need to streamline the work of law-enforcing agencies, especially the police, failure to raise standards has contributed significantly to the people's sense of insecurity and alienation from the law and order machinery. A growing number of people are making their own private arrangements to protect themselves from criminals. They feel recourse to the police is futile and could be hazardous.

Complaints to the Commission related to extra-legal killings (in so-called encounters or in custody), illegal detention, torture, abuse of authority, defiance of court orders, and inefficiency in the discharge of duties.

Adding to public concern was the weakness of the accountability process where misdemeanours by the law-enforcement agencies have come to the notice of superior authorities and the judiciary. The principle of holding an inquiry into each case of extra-legal killing was seldom respected, and magisterial or departmental inquiries were long delayed and could be unduly influenced by the answering parties, directly or through patrons in service or political hierarchies.

Torture of suspects is almost the sole method of investigation and innocent people have often been tortured to please interested parties. So it is impossible to compile a complete record of cases of torture. In Karachi the number of people tortured in custody without any specific

charges being laid ran into thousands-many of them youngsters. In Hyderabad several detainees were recovered after 17 months of torture at one centre. Karachi may be special because of the troubled political situation there, but a pattern of torture is practised all over the country.

The heavy burden put on the courts to deal with abuse of authority by the police reinforces the argument for a separate mechanism to deal with these complaints, such as a special ombudsman.

The ability of police to escape accountability was illustrated by the Annar Gul case in Punjab. While an inspector in 1977 Gul was accused of putting a nail into the nose of an opposition activist and dragging him by a string tied to it. The case went through legal ups and downs for 16 years till the Supreme Court sentenced him to six months jail in 1993. By then he had been promoted and even after the Supreme Court verdict he was neither arrested nor removed from service. After a question in the provincial assembly his suspension and arrest were ordered. He was then reported to have disappeared. When the matter was again raised in the assembly six months later the law minister said he was still at large.

Later it was alleged in a press report that he had filed a clemency plea before the Chief Minister who accepted the petition and ordered that his seniority was not to be affected. It was further asserted that the Home Secretary had found legal flaws in the order and therefore it could not be implemented.

A private four-year (1989-93) review of the Lahore High Court, showed that it had ordered proceedings against 298 officers and men on various grounds, such as illegal detention, excesses, and instituting false cases. They included four deputy superintendents, 12 inspectors and 66 sub-inspectors.

Pakistan is high on the list of countries where policemen are punished on a large scale. Public protests have often forced superior officers to make efforts to control police corruption, but the effects have been marginal because of inadequate support for discipline from politically powerful friends of the culprits. The first demand from political authorities, ministers and establishment legislators is for the posting of favourites to their districts and police stations.

In Pakistan it is generally believed that an honest policeman who completes his service is worse off at the end than one whose service is cut short after a brief period during which he has accumulated wealth by crooked means. In this environment the police get more corrupt by the day and the criminals become emboldened.

In 1994 prison conditions showed no improvement. The jails were overcrowded and complaints were common of lack of facilities-drinking water, sanitation, protection from heat and cold, and medicines. Punishments, including the use of fetters, remained harsh. Although a reforms committee was supposed to be at work at the federal level and in Sindh a committee was set up by the chief minister, no concrete steps or recommendations were announced in 1994.

The year had begun with hopes of a major advance towards improving the lot of prisoners in Sindh as a result of a Supreme High Court judgment on 30 December 1993. This dealt with detention of juvenile offenders, conditions in prisons, and the use of fetters. Reform was frustrated because the Sindh government appealed, but the judgment does offer ample guidance to anyone seriously interested in mitigating the hardships of detainees.

After complaints about maltreatment of prisoners in Landhi Juvenile Jail and Karachi Central Prison, Chief Justice Nasir Aslam Zahid, and an 18 other judges of the Supreme High Court made an unprecedented visit to the Karachi jail on 30 January 1993. Hopes of reform, however, did not materialise and more complaints came from the prisoners. It transpired that some wards had not been shown to the judges. They were later inspected by one of the judges, who found the conditions of most prisoners in these wards “pathetic and pitiable.” Even animals in the zoo were better kept. The judge was told fetters were used, sanitation and drinking water were lacking, and the air was foul. Prisoners’ history files were neither up to date nor complete. They were harshly punished by jail staff and those awaiting trial were not produced in courts on the due dates.

The Lahore High Court also examined complaints about the use of fetters. It said the treatment violated human dignity, though it conceded that in exceptional cases there could be a legitimate reason to resort to fetters. A final decision was deferred until the case was disposed off by the Supreme Court.

SRI LANKA: steps in the right direction

The Prevention of Terrorism Act and the Emergency Regulations arising from the rebellion in the north give the police wide powers of search, arrest and detention. It is the way the police exercise their powers under the National Security Laws that has been the concern of human rights activists at home and overseas. During 1993 the Supreme Court determined 1,495 fundamental rights applications, of which 920 were alleging violations of rights by the police.

A main complaint is that the composition of the police and security forces is not national since ethnic minorities do not get their due place and the police force remains Sinhalese. This has led to a deterioration in relations between police and public in the north and east of the country. The language gap also aggravates matters.

Police officers see the UN Code of Conduct for Law Enforcement Officials as an attempt to curtail their ability to control crime and political violence. The Code is neither binding on police officers nor is intended to be a compulsory handbook for police. Instead it tries to put forward certain principles to guide police work. Article One reminds the police or the armed forces that they are accountable to the community at large.

With the increase in disappearances and involuntary removals the UN created a working group on enforced or involuntary disappearances which is trying to establish a channel of communications between families and the government. It sends its reports and recommendations to the Commission on Human Rights.

Human rights organisations are disappointed with the work of the Commission. Its findings go to the President and are never published. Although, according to Amnesty International, the Commission has said individuals responsible for disappearances should be prosecuted, nothing has happened. Since the Commission’s reports are not public it is not known how many people have sought its assistance and what the Commission has actually done.

Three factors have contributed to custodial violence: detention incommunicado was possible under the national security laws; there was no accountability for what was done while in custody; and confessions obtained in custody were admissible in trials under these laws.

When alleged voluntary confession is marked as evidence, it is *per se* admissible. Without any further proof and on a confession alone the accused could be sentenced. Burden of proof that the confession was not voluntary is cast on the accused. A salutary aspect is that judges carefully consider the extraordinary procedures permitted in coming to a decision.

Human rights activists are greatly relieved by the steps taken by the new government of President Kumaratunga. A proposed Act would give effect to the Convention Against Torture and makes it a punishable offence. It invokes the Nuremburg rule that superior orders cannot be invoked in defence of torture. Further, it prohibits admission of confessions made under torture, and makes payment of compensation mandatory.

The decision of the Justice Minister to appoint a three-member committee to review court sentencing policy, prison reform, parole procedure and the rehabilitation of prisoners is a step to be commended.

The most recent report of the Commissioner of Prisons, which was for 1991, identifies these problems:

1. Admissions of unconvicted prisoners and the daily average of unconvicted prisoners outstrips the number of convicted prisoners. The rights, privileges and needs of unconvicted prisoners have to be dealt with on a more liberal basis than those of convicted prisoners, yet they are held in the same institutions and even in closed prisons meant only for long-term convicts.
2. Up to 83.8% of all convicted admissions were for non-payment of fines. The courts feel these people should not be sent to prison in the first place. In some cases people detained and then released in court have immediately been re-arrested. A detainee freed and then re-arrested must be produced before a magistrate on re-arrest.
3. The present practice of keeping prisoners convicted under National Security Laws with other convicted prisoners is not desirable. They must be segregated.
4. NGO human rights organisations must be encouraged to visit detention places and work for detainees' welfare, rather than spending their resources on documentation and discussion.
5. Human rights should be taught in schools so that all citizens will respect human rights as part of their culture. Citizens committees should be organised to act as watchdogs against human rights violations.

4. WE SAY AGAIN: ACT RIGHT NOW

This report has dealt with only a few aspects of human rights in the Commonwealth, but it shows that, four years on from the Harare Declaration, many governments are still paying little attention to the pledges they have made. In some cases there has been no regard for them at all.

If the Commonwealth, as its defenders submit, carries certain assumptions - about the law and human rights, freedom of expression and democracy, about a bias against corruption - then much work in these directions has to be done.

South Africa is setting a fine example in moving from a repressive to a free society and, though it has far yet to go, has shown already what can be done once the political will exists. Sadly, the political will to improve human rights is still lacking in many Commonwealth countries and their leaders should not be allowing the iniquities quoted in our report to continue.

The effective Commonwealth machinery to promote and assure human rights, which we called for in our last report, still does not exist, nor is there any sign that an effort is being made to provide it. The Human Rights Unit in the Commonwealth Secretariat is disgracefully small and under-resourced, even though the CHOGM Cyprus communique two years ago contains this passage:

Heads of Government also noted with satisfaction the Secretariat's efforts to promote human rights in all its aspects, through the dissemination of information; the provision of opportunities for consultation and the sharing of experience and expertise; human rights education and training; and assistance with the establishment or strengthening of national human rights institutions and mechanisms. They asked the Secretariat to provide for increased allocations to that area as much as available resources would allow.

There has been little sign that in the intervening two years governments (with one or two exceptions) have paid much attention to this important paragraph and certainly the resources to carry out this programme are conspicuous by their absence.

CHRI believes it has made some impact in raising Commonwealth awareness of human rights problems, and hopes that it will increase further with the setting out of this further list of recommendations which it regards as needing urgent attention.

Recommendations

1. Heads of Government should reinforce their Singapore and Harare Declarations by making a clear statement in Auckland of their commitment to freedom of expression as a human right to be enjoyed by every Commonwealth citizen.
2. As part of this commitment it should be accepted that:
 - (a) Any citizen should have the right to apply for a licence to set up an independent TV or radio station. Allocations of licences should be made by an independent regulatory body on the lines of the Independent Broadcasting Authority of South Africa.

- (b) At election time all parties should be given fair coverage by the media and an independent body should be set up to ensure this.
 - (c) The media is responsible for ensuring that what is published does not stir racial, ethnic or religious sensitivities, but governments for their part should cease to exert the kind of pressures that in some countries have led to self-censorship.
 - (d) The Commonwealth works for international agreement to restore the neutral, non-combatant status of journalists that till a few years ago was respected by all governments through periods of world wars and numerous other conflicts. The journalist was traditionally treated on the same basis as medical workers and other non-combatants. Today the journalist is often a principal victim of human rights violations. The situation in Algeria (and in the former Yugoslavia) stands as a threat to all journalists, particularly to those operating in areas where fundamentalism is a factor, and Commonwealth governments need to be aware of the potential dangers, already manifesting themselves in such countries as Pakistan and Bangladesh.
 - (e) To raise the standards of journalism, especially in those countries where the press has been controlled under autocratic and one party systems, and to buttress democracy in all Commonwealth countries, greater funds for journalistic training should be made available to those NGOs concerned with all aspects of the media.
 - (f) Secrecy laws should be reviewed to provide citizens, as a human right, with easy access to information, and as a check on corruption and to ensure accountability.
3. Adequate budgetary resources must be made available to ensure the independence of the judiciary from the executive. Constitutional provisions alone are not enough.
 4. To strengthen democracy, colloquia of judges from Commonwealth countries should be convened to exchange ideas on judicial and law reform.
 5. The impact on human rights of development programmes, not just economic and costs and benefits, should be appraised.
 6. Traditional approaches to secure human rights through judicial enforcement are inadequate. Human rights commissions and economic and social commissions should be set up to make state and non-state entities aware of their responsibilities in the sphere of economic, social and cultural rights.
 7. To buttress democracy, the capacity to provide more national election observers should be increased by involving the efforts of NGOs. Greater effort should be put into the training of polling agents, elections agents and presiding officers.
 8. Commonwealth Heads of Government should endorse the 1995 **Commonwealth Plan of Action on Gender and Development: A Commonwealth Vision for Women Towards the Year 2000.**
 9. Commonwealth governments should draw up a Charter of the Rights of Prisoners on the

lines recommended in pp (47-49). In this document they should, *inter alia*, seek to set an international example by making a concerted effort to reform and where necessary re-educate their police forces to respect the human rights of all citizens. A Commonwealth programme should include these steps:

- (a) A conference at ministerial level to exchange ideas on prison reform. It should involve NGOs and draw on their great experience in this area. The conference should look at the variety of experiments in police and prison reform now going on in many Commonwealth countries such as Canada, South Africa, Britain, and Barbados.
 - (b) Governments should treat as a priority the elimination of all forms of torture in their prisons.
 - (c) Likewise governments should seek to eliminate as quickly as possible ill-treatment of children in prison, their detention in jails with adult prisoners, and the holding of mothers with babies in prison.
 - (d) Stringent measures should be taken to reduce prison crowding by eliminating unnecessary arrests and speeding trials and slashing the amount of time prisoners are held awaiting appearance in court.
 - (e) Human rights education should be compulsory for the police and other law enforcement officers in all Commonwealth countries.
 - (f) NGOs should be called in to cooperate more closely at all levels with officials to help promote awareness of human rights, step up visits to prisons, and pursue public interest litigation. Wherever necessary, a co-ordinating mechanism should be created of administrative, prison, police and judicial officials and NGOs to secure reform and ensure implementation.
- 10. Human rights should be taught in all schools so that all citizens will respect human rights as part of their culture.
 - 11. Unless the Military government in Nigeria is prepared to free all political prisoners, lift its bans on the media, end all harassment of journalists, restore freedom of expression and produce a firm time-table for the restoration of civilian rule within the next year, the Commonwealth should suspend the country from membership. It should also impose sanctions similar to those applied to apartheid South Africa.
 - 12. A contact group of Commonwealth foreign ministers should be set up to monitor the situation in the West African region.
 - 13. On return to civilian rule in Nigeria the Commonwealth should play a major role in a massive rehabilitation process.
 - 14. Sierra Leone and The Gambia have set out timetables, but if they are not kept they too should be similarly suspended from Commonwealth membership pending return to civilian rule.

15. The Commonwealth should send a task force to Bougainville to assess the needs for rehabilitation of the community and restoration of the island's infrastructure.
16. Heads of government should express the hope that when Hong Kong's sovereignty is handed back to China the government of the Special Autonomous Region will maintain the tradition of freedom of expression that has obtained in the colony for so long.
17. The CHRI repeats its call for Britain to grant full UK citizenship to t British nationals of the ethnic minorities in Hong Kong and not allow them to become stateless.

Summary of previous recommendations by the Commonwealth Human Rights Initiative

1. Put Our World to Rights, 1991

This comprehensive report of 232 pages, prepared by an international Advisory Group chaired by Flora MacDonald, former External Affairs Minister of Canada, was published prior to the Commonwealth Heads' meeting in Harare. It was subtitled, "Towards a Commonwealth Human Rights Policy", and addressed to governments, non-governmental organisations and the Commonwealth at large. It was the first independent survey of the state of human rights in the then 50 member countries, focusing on issues affecting large numbers of citizens, and providing practical guidance on how to use international machinery for redress. Altogether it made nearly 140 recommendations of which the following are the most important:

- (a) The Commonwealth Heads of Government at Harare should adopt a Declaration of Principles on Human Rights as a first step in making a Commonwealth Human Rights Policy; this would include a commitment to enforce international and national provisions, to set an agenda, and to outline the responsibilities of the Commonwealth Secretariat and other institutions (pp 176-7).
- (b) The Commonwealth should mediate when there is a threat to internal peace due to ethnic conflict, should establish a fund to support human rights activities and recognise the valuable role of NGOs in promoting and implementing human rights. "No member state would arm or in other ways aid another in furtherance of the violation of the rights of its people" (pp 177-8).
- (c) Member governments should devise and implement national policies for human rights, including ratification and implementation of the international covenants and conventions; law officers including the Attorney-General should scrutinise new and existing legislation to ensure that it is compatible with provisions for human rights; officials, including police and prison staff, should be educated to observe human rights standards; judges and lawyers should be qualified and independent, and relevant NGOs should be able to bring actions on behalf of individuals or in the public interest; education in human rights should begin in primary schools; governments should recognise the legitimate function of human rights NGOs and the major role of a free press; administrative detention should be a last resort and governments should strengthen safeguards against arbitrary administrative detention; development projects must be carefully assessed to determine their impact on the land rights and economies of indigenous and tribal peoples; governments should incorporate women in decision-making, spotlight adverse sexual discrimination, and exchange views with religious and NGO bodies on religious and cultural obstacles to human rights for women; workers should participate in policies which affect them, workers' rights should be extended to export processing zones and rural areas, the right to strike should be provided for in legislation and Commonwealth states should permit independent trades unions (pp 178-182).
- (d) Commonwealth Heads of Government should appoint a Standing Commission on Human

Rights of ten or so independent experts to advise them on general issues affecting human rights, publishing a report prior to each Heads' meeting; there should also be machinery for investigation and adjudication on human rights matters, with standing for NGOs; the Secretary-General should implement a human rights policy through the official Commonwealth agencies, and mediate in conflicts between or within member states which threaten human rights (pp 183-4).

- (e) The resources of the Commonwealth Secretariat Human Rights Unit will have to be increased significantly; with the Legal Division it should disseminate judicial decisions and other human rights developments, be involved in education and networking support for resource centres and NGOs; prior to establishment of a substantial fund for human rights work both the Commonwealth Fund for Technical Cooperation and the Commonwealth Foundation should assist this, and support NGOs; the Commonwealth of Learning should give priority to human rights education (pp 184-5).
- (f) More specific suggestions (pp 185-189) included:

Detentions: The Human Rights Unit should prepare a paper on the international, regional and best Commonwealth standards on administrative detentions, including the grounds and procedure for detentions.

Expression and information: The Commonwealth should advise member governments on constitutional and legal provisions guaranteeing freedom of expression and information; should study internal security, prevention of terrorism and similar acts with a view to developing acceptable guidelines, as also other media regulatory acts so that editorial independence and diversity may be ensured, consistent with legitimate national interests; studies should also be launched on media ownership, newsprint availability, and the licensing and registration of journalists and newspapers.

Refugees: The Commonwealth Secretariat should prepare a comprehensive report on the state of refugees in Commonwealth countries, and should increase awareness of the 1951 Convention and its 1967 Protocol.

Indigenous peoples: The Commonwealth should prepare a report on the various approaches to issues involving indigenous and tribal peoples, especially land rights and cultural autonomy, and make this a contribution to the ongoing work of the UN Working Group on Indigenous Populations; it should facilitate the participation of such peoples within Commonwealth bodies, states and initiatives and encourage exchanges and awards for them; and it should respond to the UN Year of Indigenous Peoples with a special conference.

Women: The Commonwealth Secretariat should provide a follow-up report to *Engendering Adjustment* to be made available to Ministers Responsible for Women's Affairs no later than 1995, focusing on how their changing economic situation affects the rights of women; such Ministers deserve more support-with Law Ministers and NGOs they should exchange views on domestic violence, and with Education Ministers they should examine the impact of formal education systems on human rights for women; all Commonwealth programmes and reports should include an assessment of their impact on women.

Children: The Commonwealth should assist member governments to carry out their duties under the Convention on the Rights of the Child, and should compile information regularly on the state of children in the Commonwealth.

Workers: Commonwealth member states should consider the adoption of a charter regulating the activities of multinational companies in order to eliminate forms of competition which undermine workers' human rights.

Environment: The Commonwealth should exchange information in the field of environmental protection, and Education Ministers could consider how best to educate ordinary citizens about environmental issues.

- (g) NGOs have an indispensable role to play in the protection and advancement of human rights, and should give special attention to education about human rights; in every country there should be at least one legal resources centre which could provide legal aid to other NGOs and individuals involved in human rights litigation; it would also undertake education in the legal rights of specialised groups, remind governments of deadlines for submitting reports to international monitoring bodies and help coordinate NGO submissions; there should be networking between such centres in Commonwealth states (pp 189-90).
- (h) Commonwealth professional NGOs should adopt and where relevant review their codes of conduct to ensure that they conform to international standards; sponsoring organisations of the Commonwealth Human Rights Initiative and other suitable NGOs should stimulate networking; human rights-oriented NGOs should organise a Commonwealth conference on human rights every two years, in advance of the meeting of the heads of Government and in the same place, focusing on current needs and forwarding recommendations to the Heads; there should be research into the roles of NGOs and the obstacles they face, including legislation such as the Societies Acts; Commonwealth NGOs should collect information on attacks on journalists and restrictions on newspapers; such NGOs should incorporate women into their own decision-making processes (pp 190-1).
- (i) On the future of the Commonwealth Human Rights Initiative the group stated, "We propose that the sponsoring organisations of this Initiative should consider how best they might continue their support for human rights in the future, in collaboration with other, more grassroots, NGOs." (p 191).

2. Act Right Now, 1993

Subtitled "To Fulfil the Promise of Harare" this report was briefer than the first, being only 42 pages long with 12 main recommendations. Its purpose was to update the picture following the Harare Declaration, in terms of progress and setbacks within the Commonwealth, and it also took account of the UN's World Conference on Human Rights at Vienna in June 1993. It reiterated some recommendations from 1991, but modified others-for example recommending a High Commissioner post instead of the earlier Commission proposal-and welcomed the progress in democratisation after Harare. In 1992 the Initiative had institutionalised itself by means of a Memorandum of Understanding and this report, which urged the Commonwealth to move

forward further at the Limassol summit, was prepared by its permanent Advisory Commission chaired by Dr Kamal Hossain, formerly Law and Foreign Affairs Minister in Bangladesh. The following is a summary of the recommendations:

- (a) That an independent body should be established within the Commonwealth to look into allegations of violations of human rights, recommend appropriate redress and provide general advice on the promotion and protection of human rights. A suitable title might be the Commonwealth High Commissioner for Human Rights; this office could provide a lead to the world community which was unable to reach consensus on a UN Human Rights Commissioner at Vienna (p 36).
- (b) That the half of Commonwealth states which had not yet ratified the two key international conventions-the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights-should do so. Commonwealth states which had ratified these and other human rights conventions should improve their record of reporting (p 37).
- (c) That the Commonwealth should do more to secure democracy in states which have moved from one-party or military regimes to multi-party civilian systems. Only an elected, civilian Nigerian administration should be allowed to participate in the Cyprus Heads' meeting (p 37).
- (d) That the Commonwealth should do more to protect the rights of women, children, refugees and migrants, workers, indigenous peoples and minorities and the disabled. Specifically the Commonwealth should undertake a comprehensive study of the position of its indigenous and tribal minorities as a contribution to the 1993 International Year of the World's Indigenous People; it should promote a programme of study and exchange with regard to ethnic tolerance; and it should urge the British Government to grant full UK citizenship to British nationals in Hong Kong who, as members of ethnic minorities, would not be entitled to Chinese citizenship from July 1997 (pp 37-38).
- (e) That the Commonwealth and member states should do more to respect rights which are frequently infringed-personal liberty, freedom of expression and association, the independence and protection of journalists, rights to work and employment-if necessary by provision of special machinery (p 38)..
- (f) That violators among state officials and security forces should be promptly brought to justice (p 38).
- (g) That the Commonwealth should pay more attention to economic and social rights, since relatively little regard is paid to the plight of the poor and disadvantaged, and to their basic needs. Workers and women should be more involved in planning and implementing social and economic programmes; more commitment is needed to sustainable development; resources released from disarmament should promote social, economic and cultural progress; and Ministries of Finance should accompany their budget proposals with analysis of their effect on socio-economic and labour rights (p 38).
- (h) The Commonwealth should seek the active cooperation of human rights activists and NGOs. Their right to promote and protect human rights, through criticism of

governments, educational work, distribution of literature, meetings and litigation should be respected. Harassment is contrary to the Harare Declaration and the Cyprus CHOGM should acknowledge the contribution of such activists and guarantee their defence and safety. The Commonwealth Fund for Technical Cooperation, the Commonwealth Foundation and any special fund for human rights, should assist such organisations (p 39).

- (i) The Secretary-General should offer his good offices in disputes between member states, or in ethnic or similar strife within a state which threaten human rights. The Secretariat should identify and disseminate good human practices within the Commonwealth (p 39).
- (j) The Commonwealth should commit significantly increased resources to human rights activities and the special fund established at the time of the Harare CHOGM on the initiative of The Gambia and Canada should be strengthened (p 40).
- (k) The additional human rights mandate for the Secretariat and the availability of fresh funds should lay the basis for a Commonwealth Action Plan for Human Rights with goals, targets, policies and concrete measures (p 40).

3. Membership

Put Our World to Rights was prepared by the Hon Flora MacDonald (Chair), Dr George Barton (New Zealander, nominee of the Commonwealth Lawyers Association, formerly in the UN Human Rights Division and Dean of Law at the Victoria University, Wellington), Professor Yash Ghai CBE (Kenyan, nominee of the Commonwealth Legal Education Association and Professor of Law at Hong Kong University), Miss Billie Miller MP (Barbadian, formerly Minister of Health and Minister of Education), John Morton (British, nominee of the Commonwealth Trade Union Council, President of the International Federation of Musicians), Dr. Beko Ransome- Kuti (Nigerian, nominee of the Commonwealth Medical Association, formerly Secretary-General of the Nigerian Medical Association and President of the Committee for the Defence of Human Rights in Nigeria) and George Verghese (Indian, nominee of the Commonwealth Journalists Association and formerly Editor of the Hindustan Times and the Indian Express).

Act Right Now was prepared by Dr. Kamal Hossain (Chair), Professor Yash Ghai (as above), Derek Ingram (British, nominee of the Commonwealth Journalists Association, Editor of Gemini News Service from 1967 to 1993), Sithembiso Nyoni (Zimbabwean, Founder and Coordinator of the Organisation of Rural Associations for Progress), Dr Beko Ransome-Kuti (as above), Senator Margaret Reynolds (Australian, formerly Minister for Local Government and Minister Assisting the Prime Minister for the Status of Women), Soli Sorabjee (Indian, nominee of the Commonwealth Lawyers Association, formerly Attorney General) and LeRoy Trotman MP (Barbadian, nominee of the Commonwealth Trade Union Council and President of the International Confederation of Free Trade Unions).

APPENDIX II

RATIFICATIONS OR SIGNATURES OF INTERNATIONAL INSTRUMENTS											
(latest information available)											
	ICESCR	ICCPR (+Op)	CERD	APARTHEID	TORTURE	REFUGEES	WOMEN	GENOCIDE	CHILDREN	ILO87	ILO98
TOTAL	24	22	36	22	11	24	33	22	32	21	30
50											
Antigua & Barbuda			X	X	X		X	X	X	X	X
Australia (B)	X	X+OP	X		X	X	X	X	X	X	X
Bahamas			X	X			X	X	X		X
Bangladesh			X	X			X		X	X	X
Barbados (A) (B)	X	X+OP	X	X			X	X	X	X	X
Belize*					X	X	X		X	X	X
Botswana			X			X					
Brunei Darussalam											
Canada	X	X+OP	X		X	X	X	X	X	X	
Cyprus	X	X+OP	X		X	X	X	X	X	X	X
Dominica	X	X					X		X	X	X
The Gambia (B)	X	X+OP	X	X	S	X	X	X	X		
Ghana			X	X		X	X	X	X	X	X
Grenada	X	X	S				X		X		X
Guyana (B)	X	X+OP	X	X	X		X		X	X	X
India (A) (B)	X	X	X	X			X	X	X		
Jamaica	X	X+OP	X	X		X	X	X	X	X	X
Kenya (A)	X	X		S		X	X		X		X
Kiribati											
Lesotho	X	X	X	X		X	S	X	X	X	X
Malawi	X	X				X	X		X		X
Malaysia									X		X
Maldives			X	X			X	X	X		
Malta (A)	X	X+OP	X		X	X	X		X	X	X
Mauritius	X	X+OP	X		X		X		X		X

	ICESCR	ICCPR (+Op)	CERD	APARTHEID TORTURE	REFUGEES	WOMEN	GENOCIDE	CHILDREN	ILO87	ILO98
Pakistan			X	X			X	X	X	X
Papua New Guinea			X		X	X	X	X		X
St. Kitts & Nevis						X		X		
SI. Lucia			X			X	S	X	X	X
SI. Vincent & the Grenadines	X	X+OP	X	X		X	X		X	
Seychelles	X	X+OP	X	X X	X	X	X	X	X	
Sierra Leone			X	S	X	X		X	X	X
Singapore										X
Soloman Islands	X		X							
Sri Lanka	X	X	X	X X		X	X	X		X
Swaziland**			X					S	X	X
Tonga			X				X			
Trinidad & Tobago (A) (B)	X	X+OP	X	X		X		X	X	X
Tuvalu					X					
Uganda	X		X	X X	X	X		X		X
United Kingdom (A) (B)	X	X	X	X	X	X	X	X	X	X
United Republic of Tanzania	X	X	X	X	X	X	X	X		X
Vanuata								X		
W. Samoa					X	X		X		
Zambia	X	X+OP	X	X	X	X		X		
Zimbabwe	X	X	X	X	X	X	X	X		

(A) Declaration/Reservation regarding the International Covenant on Economic, Social and Cultural Rights.

* In an exchange of letter with the UN Secretary-General. Belize agreed to be bound by all instruments signed by Britain as the former colonial power.

(B) Declaration/Reservation regarding the International Covenant on Civil and Political Rights.

** Swaziland has ratified the 1967 protocol to the Refugee Convention.

PRESS RELEASE

Issued in New Delhi, December 12, 1994

CHRI Calls for Sanctions on Nigeria

The Commonwealth should take immediate action against the Nigerian military government for its continuing gross abuse of human rights. This is the message the Commonwealth Human Rights Initiative (CHRI) intends to convey in letters to Prime Minister Jim Bolger of New Zealand and Prime Minister John Major of Britain.

The advisory Commission of the CHRI took this decision at its meeting in New Delhi yesterday (Sunday). Mr. Bolger is the Chairman of the next Commonwealth Heads of Government Meeting (CHOGM) in Auckland (November 10-13, 1995).

In its letter CHRI will ask Mr. Bolger not to invite Nigeria to the meeting. It will also ask him to exclude Sierra Leone and The Gambia. These three West African countries are the only members of the 51-nation Commonwealth still under military rule. Autocratic rule is contrary to the Commonwealth declaration made in Harare in 1991 and to which all Commonwealth countries subscribe.

In its letters, copies of which will be sent to the Commonwealth Secretary-General, the CHRI will call for the Commonwealth to impose sanctions on Nigeria as it did on South Africa. These should be framed to isolate Nigeria internationally and include a freeze on Nigerian assets abroad, cutting off sporting links and an end to all arms sales.

We also call on Commonwealth Secretary-General to coordinate urgently action to prevent serving and retiring Nigerian officers who have violated human rights from entering Commonwealth countries.

In view of the continuing unsatisfactory human rights situation in Cameroon and the inability as yet of the Commonwealth to guarantee the rights of citizens in neighbouring West African States, it would be premature to accept Cameroon's pending application for membership.

The CHRI is particularly shocked that Britain is still supplying arms to the regime in Abuja that could be used against its own citizens and will express its concern to the British Prime Minister.

APPENDIX IV
December 13, 1994

The Rt Hon J. Bolger MP
Prime Minister
Prime Minister's Office
Wellington
New Zealand

Dear Prime Minister

As Chairperson of the Commonwealth Human Rights Initiative, I am writing to you following a meeting of our Advisory Commission just held in New Delhi.

Among many problems discussed the Commission gave special attention to the situation in Nigeria, where human rights are increasingly being abused in total contravention of the principles laid down in the Commonwealth Declarations of 1971 and 1993.

We believe the situation is so serious that the Commonwealth needs to take action in a number of ways to put pressure on the military regime.

One would be to exclude the regime from the next Commonwealth Heads of Government Meeting which you are hosting in New Zealand in 1995. We would ask you not to issue an invitation to Nigeria to attend unless in the meantime it releases all political prisoners, lifts all restrictions on the media and returns to democratic civilian rule.

We believe similar action should be taken against The Gambia and Sierra Leone.

We are further calling on the Commonwealth to impose sanctions on Nigeria as it did on South Africa and thus to isolate it internationally. We would like to see a freeze on all Nigerian assets abroad, the cutting off of sporting links, an end to all arms sales, and measures taken to prevent Nigerian serving and retiring officers who have violated human rights from entering Commonwealth countries.

We are sure you will agree that the functioning of the Nigerian government and the recent coup in The Gambia are serious setbacks to the progress made towards good governance and democracy achieved in the Commonwealth in the last few years and challenge the credibility of the Commonwealth itself.

Yours sincerely
(Dr.) Kamal Hossain
Chairperson
Advisory Commission

Copy to Chief Emeka Anyaoku, Commonwealth Secretary-General