

If and when active steps are taken to rectify shortcomings highlighted above, we can consider the prospect of allowing effective devolution of power to the north and east. In this regard it is evident that the Provincial Council system has been a failure in other parts of the country, in the absence of genuine devolution of authority. In order to allow an appreciable level of devolution to the minorities, there is a need to consider a Federal system of government, provided the south has the confidence to grant such autonomy without fear of aggravating separatist tendencies, and the north can accept it as part of an overall solution to the problem on the basis of restored credibility of a government that is looking beyond political expediency. Such measures will ensure a sense of unity in diversity which is strongly needed to arrest the present polarization leading to national disaster. In considering devolution of state power, it is important to understand the nature of society as being plural or multicultural with a strong minority culture in the north, which

needs to be safeguarded as part of the national wealth. There is also the matter of governing a section of the country over which the government has very limited control, and the need to allow people in the north a measure of autonomy as a cushion against abuses of power from the south. Autonomy should never be considered in a climate of fear in the south or militancy in the north, which is presently evident.

While showing some resilience in maintaining democratic institutions and government since independence over fifty years, Sri Lanka has been lacking in political maturity among a majority of people and leadership/ statesmanship, to come to grips with the greatest threat to its survival as a nation-state, and resolve these issues in a spirit of goodwill and cooperation, by transcending parochial values and politics of opportunism, which have been characteristic of its society for several decades. ■

PROMOTING A CULTURE OF CONSTITUTIONALISM AND DEMOCRACY

Recommendations to Commonwealth Heads of Government Commonwealth Human Rights Initiative 1999

Introduction

The Commonwealth Human Rights Initiative (CHRI) is an international, independent non-profit organization headquartered in India. Its objectives are to promote the practical realization of human rights in the Commonwealth. It educates on human rights issues and advocates for greater adherence to human rights standards.

CHRI believes Commonwealth human rights defenders must develop and share amongst themselves good practice in pressuring state agents to respect human rights. Human rights advocacy and education are core elements of CHRI's approach. CHRI's strategies are:

Researching successful strategies and methods and advocacy in adverse circumstances, **Collaboration** with various groups such as NGOs, lawyers, journalists, parliamentarians, doctors, and others, **Developing** a curriculum with Commonwealth-wide application to strengthen the advocacy strategies of human rights defenders, **Conferences Advocacy** around particular issues of concern for human rights. Constitution-making was a key area identified for collaborative action by civil society at the Conference on Pan-Commonwealth Advocacy for Peace, Good Governance and Human Rights held by the Commonwealth Human Rights Initiative (CHRI) in Harare in January 1999. Constitution-making was seen as so important because it is a key way in which citizens can

participate in governance. For this reason CHRI's advocacy focuses on the participatory aspects of the process, with an aim towards finding strategies for deepening democracy. To take two extraordinary examples, the South African and Uganda experiences proved that citizen input can have serious impact in making and reforming constitutions into democratic documents that can be said to truly belong to the people.

In August 1999, CHRI convened a working group in Pretoria, South Africa to develop a position paper on best practices in constitution making. The recommendations which resulted have been circulated to the wider human rights community and experts across the Commonwealth for their comments and endorsement. The need to follow the principles set down in the Harare Declaration (1991) and the Millbrook Plan of Action (1995) are more relevant now than ever. CHRI now takes these recommendations on participatory constitution-making to Commonwealth Heads of Government and urges them to take their commitments to human rights and good governance seriously.

The following recommendations were made at the end of the CHRI consultation held on August 16-17, 1999 at Burgerspark, Pretoria. The recommendations were submitted to the Commonwealth Heads of Governments Meeting of 1999.

Recommendations to CHOGM '99

1. There are several initiatives from different areas within Africa to promote the exchange of experiences in constitutionalism and constitution-making. The CHRI, together with the support of NGOs throughout the Commonwealth, have held various consultative conferences in this endeavour.

2. In 1995 the Heads of Government adopted a Commonwealth Plan of Action at Millbrook, New Zealand, to ensure that the fundamental democratic values enshrined in the Harare Declaration (1991) would be made a reality. The Commonwealth Secretariat was enjoined to enhance the capacity to provide advance training and other forms of technical assistance to governments, including assistance in constitutional and legal matters, including with selecting models and initiating programmes of democratization.

3. In keeping with this commitment, Commonwealth States should work with civil society to ensure that in their constitutions, the rules of law and human rights are promoted. Governments must proactively seek to deepen democracy, which is largely still inaccessible to many citizens of the Commonwealth. They should therefore seek to effectively include and represent the views of all peoples. We also need to dispel the myth that it costs more to keep such processes open than to keep them closed.

4. There is a desire amongst many countries, particularly in Africa, to arrive at truly democratic and legitimate constitutions. The experience of countries that have achieved this objective is that governments must adopt *credible processes* for constitution-making; that is, a process that constructively engages the largest majority of the population. This is necessary to ensure that the end product is seen as legitimate, and owned by all the people. To achieve these objectives, governments are encouraged to ensure that:

4.1. The process of constitution-making is, and is seen to be, as important as the substantive content of the constitution itself.

4.2. The management and administration of the process is credible and respected.

4.3. The public is informed and involved at all stages of arriving at the aims and objectives of the exercise of constitution-making and how these objectives are to be achieved. This would ensure that the process is transparent, participatory and credible.

4.4. The process is made receptive and open to the diverse views existing in society.

4.5. The process by which citizens can make contributions is made truly accessible in terms of physical proximity, languages used, plain language and within a reasonable period of time.

4.6. Ordinary people are empowered to make effective contributions by giving them the necessary tools to participate through ongoing public education programmes using appropriate media and other methods to reach out especially to the disadvantaged and marginalized.

4.7. Dissenting views are valued as enriching to policy debate and ensuring that various sectors of society are represented.

4.8. Conflicting aims and views are mediated in a manner that enriches policy debates and does not stall it. In this regard, adequate provision should be made for conflict resolution and consensus building.

4.9. There is a continuous review and evaluation of the processes undertaken to confirm that operating principles and minimum standards are being adhered to.

4.10. The process of continuing education of the public, even after the adoption of the constitution, on its content and the values of constitutionalism continues to ensure that these are internalized by the people.

4.11. Constitutions are drafted in plain and simple language and translated into all the languages used in a country.

4.12. In the interest of protecting constitutionalism, all actions violating these values are unequivocally rejected.

4.13. Universally accepted rights are entrenched in the constitution along with independent institutions supporting a constitutional democracy, including specifically the Human Rights Commission, Women's Commission, Constitutional Court, Electoral Commission, Public Protector and the Auditor General.

4.14. Constitutions must enshrine the separation of powers.

5. Governments should also consider the following structural and institutional mechanisms:

5.1. An independent commission or body, with the necessary power and legal authority, must be established to facilitate a constitution-making process and have sufficient time to do so.

5.2. The state should commit itself to adequate funding for the constitution-making process.

5.3. It is also necessary to cost the various structures and institutions proposed for establishment by the constitution and the implications this has for the country.

5.4. At the same time, it is necessary to ensure that governments are committed to the effective financing of institutions that support constitutional democracy.

5.5. Governments should assist and empower civil society groups to effectively participate in the constitution-making process and in the promotion of constitutionalism.

5.6. Constitution makers should have sufficient and easy access to international experience, precedents and materials to enable them to take informed decisions.

5.7. The creative use of media is especially important. Attention must be paid to the use of popular culture such as music, theatre, art, as well as other conventional methods. Technology must also be made available and used creatively.

5.8. Academic institutions can and should play a special role in providing the necessary research and support to the constitution making process.

5.9. The public should be regularly informed at every reasonable stage about the progress of the constitutional process.

5.10. Conflict management and deadlock-breaking mechanisms are essential.

5.11. Mechanisms used for adopting or ratifying constitutions should be credible and truly representative of the people's views.

5.12. There must be clear and transparent mechanisms for the regular review of the constitution that will be made clear from the outset so that people can commit themselves to the development of the constitution. ■