

HUMAN RIGHTS

FEATURES

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CHINESE CHEQUERS

China's salvo against Item 9 has touched a chord among Asian Govts, but many have constituencies back home to answer to

IT must have been a difficult first week for Ambassador Mike Smith, the Chairperson of the 60th Session. It was also a rewarding week for him and others who sought to keep the agenda of the 60th session on track. On the very first day, the Chinese dragon stomped its feet and blew dragonfire across the assembly hall. Speaking on behalf of the Like Minded Group (LMG) it stated that country resolutions under Agenda item 9 had to go. Cuba rode shotgun in support and Nigeria also waded in.

The Chinese, not known to show their cards so early in the game, were clearly hoping that the fire, brimstone and bluster would rally the wavering troops amongst the Asian group. This is yet to be and will not be, if there is some meaningful and substantive dialogue between cooler heads in all the regional groupings.

Their appetites whetted by successes at the 59th session, with each of the African country mandates falling like ninepins, South Africa, Nigeria and Zimbabwe decided that it was time to move in for the kill at the 60th session. They hoped that through resolution 110, they could ask for a suspension of the discussion on agenda item 9 and subsequently move ECOSOC for a deletion of the agenda item altogether. The Cubans, congenital diplomats of resistance that they are, could smell opportunity. They hurried to carry the tidings to the Asian group, which they addressed in the first week of March. The

Asians, with a few dishonourable exceptions, were not convinced by this maximalist game of brinkmanship. Many of them were not happy with what they saw as the selective use of coun-

Talking shop or righting wrongs?

"It is our hope that the CHR can be a forum of dialogue and cooperation, which the founders of the CHR wished it to be. In this regard, the LMG supports the initiative of some states that calls for the CHR to re-evaluate its consideration of agenda item 9. (*China, on behalf of the LMG*)

If a government fails in its duty to protect human rights, the international community needs to address it. The (CHR) has a key role here. We must voice our common concern, or the CHR loses its raison d'être. (*Isao Matsumiya, Parliamentary Secretary for Foreign Affairs, Japan*)

try resolutions by the Western Group of countries. Sure, they said in private, China did not have a human rights rights record that would merit a mention in the dispatches, but why was the US struck with laryngitis when it came to Saudi Arabia. After all they are only too aware of how the Wahhabite kingdom treated Asian workers. Or France, which invariably lost its voice when human rights violations in

Morocco, Algeria or Tunisia came up. Yet, many Asians have democratic constituencies to answer to at home. A jettisoning of agenda item 9 is not yet part of the Asian Group's roadmap.

The moderates in Asia know that an incremental dialogue is already showing effect. A case in point is the draft resolution on Nepal put in circulation by the Swiss. The Swiss, mindful of the sensitivities around agenda item 9, are proposing to move it under agenda item 19. The Swiss draft resolution itself is weak and is not going to satisfy civil society in Nepal or even the official Nepal National Human Rights Commission, which has taken a more forthright position on the abominable human rights situation in Nepal. The more astute among the Asian Governments know that the Swiss position is a minimalist one. Not supporting this will boomerang next year at the CHR or even at the General Assembly later this year in a stronger resolution from elsewhere. Even the Asians are aware that an absolutist monarch is no substitute for multiparty

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Reflections of a former Special Rapporteur

PARAM CUMARASWAMY

THE United Nations special procedure mechanism is a creature outside the UN Charter. It is not provided for in any of the UN treaties on human rights. Pursuant to the 1946 Convention on Privileges and Immunities of the UN and a couple of advisory opinions of the International Court of Justice, those appointed with mandates under this mechanism are classified as "experts on mission".

Since 1979 special mandates have been entrusted to these experts by exigencies of time to examine specific country situations or themes from a human rights perspective. To date there are no less than 45 such mandates. It is now acknowledged that this mechanism

contributes to the UN early warning system to alert the international community to human rights violations. It is also acknowledged that the reports of these experts presented annually at the sessions of the UN Commission on Human Rights bring the inter-governmental debate on human rights closer to reality on the ground. These experts are often described as the 'eyes and ears' of the Commission.

Indeed paragraph 95 of the Vienna Declaration underlined the importance of preserving and strengthening the system of this mechanism and called upon the Commission to provide the experts with the necessary human and financial resources. It also asked all member States to

"co-operate fully with these procedures and mechanism".

The experts are not paid any stipend for their services. All experts accept the mandate as an honour to serve the international community in the field of their expertise.

I have had the honour of serving the mandate on the independence of judges and lawyers since its creation in 1994 until 2003. During this period I intervened with governments in more than 100 countries and carried out in situ missions in some countries of every region including some developed countries.

Governments generally do not like these experts, particularly when the reports are critical of

human rights situation in their countries. They find these experts intrusive. I drew the fury of the Government in my own country, Malaysia, where for five years I battled libel suits claiming to the tune of US\$73 million against me before the Malaysian courts. The suits were in regard to a published interview I gave in my capacity as a Special Rapporteur to a London-based periodical, *International Commercial Litigation*, on improprieties in the Malaysian judiciary.

The Secretary General of the UN determined that I was entitled to immunity from legal process under the Convention for the impugned words. The Malaysian Government refused to accept that. Concerned international NGOs, jurist organisations and governments saw this not just as a harassment against me personally but a threat and intimidation to the entire

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Chinese chequers...

democracy in the Himalayan kingdom if democracy and human rights are to be preserved and the Maoists kept at bay.

The European Union also appears to have chosen to ignore the European Parliament recommendation on sponsoring or co-sponsoring a resolution on the killings of Muslims in the Indian state of Gujarat. North Korea has painted itself into a corner and has few friends even in Asia. No one is about to raise the issue of Aceh in Indonesia, and the move against China by the US is not going to fly. The more sensible Asians are aware that China is not doing itself a favour by the new aggressive posturing. Yet, historical experience has shown that it is best to allow China to be hoist on its petard.

NGOs are also aware that eternal vigilance is the price for space at the 60th session. Being kicked upstairs to the rarefied climes of the balcony during the high-level segment was

indicative of how they are viewed in the Club of Nations United. The Norwegians will bring a feel-good resolution on human rights defenders. Yet, the draft does little to comfort defenders in the hurly burly of events, far away from the placid tranquility of the Norwegian fjords. Meanwhile, Egypt, India and Russia, soon to be followed by others, are starving frontline NGOs

The Americans with their blunderbuss strategy on counter-terrorism fail to see that the Mexican draft resolution actually gives them a sensible opportunity at course correction. But will the wisdom of the Aztecs rub off on the Bald Eagle?

through draconian legislation on international funding for NGOs. (see p.7)

The Russians have already fired a salvo from Battleship Potemkin. All hands off Chechnya. We are fighting terrorism, and so what if some more innocents rather than Chechen hardliners get short shrift. The Americans with their blunderbuss strategy on

counter-terrorism fail to see that the Mexican draft resolution actually gives them a sensible opportunity at course correction. It remains to be seen if the wisdom of the Aztecs will moderate the Bald Eagle. The battle against terrorism needs to be fought but it must be done so by democratic means. Ends and Means - does anyone remember that debate from a hoary past?

At the end of the week there was some comic relief for the uninitiated, with Palestine and Israel joined by India and Pakistan going at each other like Kilkenny cats. It is tragic that serious issues like Palestine and Kashmir and the larger debate on the right to self determination has been reduced to a theatre of the absurd.

The first day saw some brilliant diplomatic footwork by Ambassador Smith, who adopted the agenda before taking up resolution 110, Rev 1. The Chinese, Cuban and African troika could only look on in stupefaction. On Friday, he again squelched efforts to reopen 110, Rev 1. A judicious use of the gavel has kept the hatches battened with the waters swirling below.

One down, five weeks to go. Advantage Ambassador Smith.

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Reflections...

thematic procedure of the UN human rights system. It became a dispute between the UN and the Government. Efforts by the Secretary General of the UN to resolve it diplomatically failed. The dispute was finally resolved by an Advisory Opinion of the International Court of Justice against the Malaysian Government. The Opinion delivered in April 1999 was sought by the Secretary General through ECOSOC.

What was most embarrassing (more for the Malaysian Government than for me) was that subsequent to the Advisory Opinion the Malaysian Government in a concerted move in Geneva actually attempted to prevent my being re-appointed in year 2000 to the mandate under the transitional provision in para. 7(ii) of the Commission Chairperson's statement of 28 April 1999 (E/1999/23-E/CN.4/1999/167 para. 55; E/CN.4/2000/120 and E/CN.4/2000/120).

Resulting from this saga, a point for discussion among some who were following the developments in my case was whether I was right in investigating my own country. In its Advisory Opinion, the International Court of Justice made no comment on this. However, subsequently in a letter dated 2 August 2000, the Secretary General of the UN advised the then Prime Minister of Malaysia and said that I, *inter alia*, "had received a universal mandate from the Commission on Human Rights to investigate such complaints wherever they arise. Malaysia was merely one of about 100 countries in which he intervened. The Special Rapporteur on the independence of judges and lawyers had a right and a duty to investigate Malaysia's judiciary in the course of the performance of his mission". The contents of this letter were brought to the attention of the Malaysian Court at the request of the Secretary General. I felt vindicated when the concerns I expressed in the interview more than six years earlier were confirmed by events in the country's judiciary.

Even the United States Government did not spare me over my public statement on the military commission and the denial of due process to detainees in Guantanamo Bay. Its delegation's statement during the 59th session last year on the Hungarian resolution on Independence and Impartiality of the Judiciary (L.48) was, I thought, most uncharacteristic of a developed nation like the United States which has a reputation, among other things, for monitoring human rights violations worldwide.

But the worst attack levelled against me was by the Government of Zimbabwe in a four-page scathing communication dated 27 September 2002 to the UN High Commissioner for Human Rights over my public statement on the arrest, detention and charges brought against retired Judge Blackie. I replied appropriately in writing. After all those attacks levelled against me, I was pleased to learn that on 30 June 2003, all the charges against Judge Blackie were with-

drawn. Later, I was more pleased to learn that the Supreme Court Bench of Zimbabwe declared the arrest and earlier detention of Justice Paradza unconstitutional. I had publicly protested against the arrest and detention of Justice Paradza, and went public no less than nine times on the Zimbabwe situation simply because the Government failed to respond to my communications. The same Government had earlier resiled from an agreement to permit me to carry out an *in situ* mission.

About a year ago, a journalist asked me whether I had any disappointments in relation to my work over the past nine years. I replied that my one disappointment was that I was unable to prevent the murder of that courageous lawyer in Belfast, Rosemary Nelson. Since the first time I met her and heard about the threats she was subjected to, I knew she was at risk and could one day meet the same fate as Patrick Finucane in 1989, another fearless lawyer in Belfast. Every threat against her brought to my attention was relayed to the UK government immediately, urging protection for her. What I feared happened exactly 10 years after Patrick Finucane's murder.

One perennial frustration for experts under the special procedures system is the lack of resources from the OHCHR for the discharge of mandates. Once, an arranged mission of mine to South Africa had to be aborted because until the day of my scheduled departure for Johannesburg, I did not receive the travel ticket!

My mandate, particularly, required intensive research. I could not be seen going wrong in the assessment and evaluation of facts, and more particularly, in the analysis of the laws and constitutions of member States. It was not until the year 2000 that my mandate began to receive additional resources, both human and financial.

Another frustration in the system was the little time allocated to experts to present their reports at the annual Commission sessions. The worst scenario was the 58th session where the restriction imposed was so intolerable that some experts refused to be humiliated in that way. They merely told the session that they took it that their reports had been read. Subsequently, we expressed our frustrations at a press conference. There was improvement at the 59th session which provided for a few minutes for interactive debate after presentation of reports.

Yet another frustration was the failure of member States to comply with the recommendations of the experts given in their reports. There were also no effective procedures to follow-up on recommendations on the part of the experts. This, of course, was largely due to inadequate human resources at the Office of the High Commissioner. Member States who are unable to comply with any or all of the recommendations of the respective experts should be called upon by the Commission to explain in writing at the following Commission session.

Whatever may be the shortcomings in the system, and regardless of attacks and threats by States, the experts should not be deterred. They should be consoled by the thought that if a

Government has expressed unhappiness over his or her report, then that must mean that he or she has discharged his or her mandate independently and honourably. In my experience, no Government, however liberal it may be, however supportive it may be of the special procedure mechanism, and however pleased it may be with the work of a particular expert, the same Government will not be happy if it is criticised publicly by the expert. Those are the realities the experts must live with in the discharge of their respective mandates. However, experts who tailor their reports according to the needs or dictates of Governments or NGOs will do a disservice to the cause of human rights protection.

In the last three or four years, there has been a gradual decline in the effectiveness of the Commission. Some States are seen seeking membership of the Commission and then using it as a shield to avoid Commission strictures against themselves for human rights violation in their States. The experts too could be more effective if there was greater co-operation and cohesion among them. While each mandate is personal to its holder, to be discharged independently and impartially, there are times when joint or collective statements of experts during Commission sessions, particularly on widespread violations in a particular country requiring scrutiny under several thematic mandates, could be effective to trigger the Commission into action. The Office of the High Commissioner could co-ordinate this procedure.

Member States of the Commission must be reminded that when the 171 States in 1993 adopted the Vienna Declaration and Programme of Action they solemnly pledged to respect human rights and fundamental freedoms and to undertake individually and collectively actions and programmes to make the enjoyment of human rights a reality for every human being. In paragraph 95 of the same Declaration, member States agreed to "co-operate fully" with the experts to realise the pledge undertaken.

Member States therefore should accept the concerns and recommendations expressed by these experts in their reports and other communications in good faith. These experts who have nothing to gain from the UN or from any other quarter, financial or otherwise, and have no hidden agendas against any particular government. Their only agenda is their commitment to the cause of human rights protection. Invariably it was for that commitment that they were and are appointed. While constructive government criticisms of findings in experts' reports are always healthy and welcome, personal attacks against these experts will be perceived by the international community, particularly the victims of human rights violations, as an attack on the very objectives the Commission was mandated to realise. The Commission should not be seen as undermining its very foundation.

Dato' Param Cumaraswamy was Special Rapporteur on the independence of judges and lawyers since the creation of the mandate in 1994 until 2003.

CHR's work must not be undermined'

WHEN His Excellency **JOSE RAMOS HORTA** spoke to *Human Rights Features* last year, East Timor had been independent for a year, its institutions were being set up, and the country and its leaders were grappling with competing conceptions of justice and accountability. A year later, Mr. Horta revisits some of these issues, speaks of the constraints on his young nation, and urges the international community and the Commission on Human Rights not to attempt to undermine the gains made with respect to the promotion of human rights over the past 50 years...

Human Rights Features (HRF): *It has been reported that you are not in favour of pursuing the establishment of an international tribunal to address human rights abuses that occurred during Indonesia's rule. Do you not agree that successor governments of a State have a responsibility to own up to historical wrongs and seek to right them? Are you not contributing to a climate of impunity?*

H.E. Jose Ramos Horta (JRH): In an ideal world, yes. An international tribunal to try individuals, whoever they may be, for war crimes and crimes against humanity is a logical indispensable tool to redress the wrongs done to the people. But we are not in an ideal world, we have to weight the pros and cons, consequences, implications for a decision to be made. In East Timor, we consider it an absolute priority the normalisation of relations with Indonesia in all aspects. At the same time, [we need to] consolidate our national institutions all of them still fragile, including the court system. The establishment of an international tribunal does not depend, in any case, only on the will of the East Timor side, but depends also on the will of the five permanent members of the Security Council and the ten non-permanent members. There is no guarantee that we will secure enough votes in the Security Council to have an international tribunal, or assuming we secure the vote for an international tribunal, there is no guarantee that we will get the funding necessary for a tribunal to function. And, at the same time, assuming we do get funding, there is no guarantee that the court will function, because there are no people to try because Indonesia will not cooperate.

So what we have proposed to the United Nations and to different countries is [that] instead of an international tribunal, we would like to see an international truth panel established with some five eminent jurists, who would review the facts of the events of 1999 in East Timor, establish the facts, responsibilities, name names and then leave it to each individual country to take additional action, unilaterally on their own, if they deem [it] morally, politically necessary. I conclude my answer with this: a grave injustice was done to the people of East Timor by another country. This injustice was addressed by the international community in helping pave the way for East Timor's freedom and independence. This is the greatest act of justice of all. We are prepared to swallow the bitter pill that some of the worst elements responsible for the carnage and destruction of 1999 might never go to jail.

HRF: *The US State Department report on human rights practices for 2003 sets out several cases of the use of torture in your country. Given East Timor's history, should there not be a complete abhorrence of torture?*

JRH: I do not bother reading the State Department human rights reports. Who gave the legitimacy, the mandate to the US to monitor, to comment, to opine on the human rights situation around the world? Ironically, in their own report there is not one chapter on the US; maybe

if they were to address their own messy internal human rights situation, it would require a whole volume on themselves. The US is not exactly the moral barometer of the world. If one country should be elected to be the monitor of the human rights situation around the world, I would prefer maybe Iceland, maybe Tasmania, not really the US. So I won't even comment on their very biased, politically motivated reporting on any country.

HRF: *When do you intend to sign and ratify the Optional Protocol to CAT?*

JRH: First let me say obviously that there is no torture in East Timor. Whoever has alleged that there is torture, I challenge them to prove it. It goes against our culture, our national legislation. There might have been reported abuses by police officers whenever they handle individual cases of law and order, but I have never heard of one single case of torture in my country. If you read it in the US State Department human rights report, I would advise for your own sanity to ignore it because I would say the State Department is not exactly the most credible source of reporting on any human rights situations around the world. My country might start issuing its own human rights report, starting with the human rights conditions in US jails, in Guantanamo, the behaviour of the Los Angeles, Chicago, New York police, the immigration authorities at JFK, at Los Angeles Airport the

way they discriminate, they insult individuals from different countries that enter that country.

HRF: *East Timor is a small country and could become the Costa Rica of Asia without a standing army and committed to human rights within itself and the region. Given your own background and that of your head of state, what proactive measures is East Timor going to take*

INTERVIEW

H.E. Jose Ramos Horta

to take the moral high ground and act as a moral beacon in the region with respect to human rights?

JRH: We do not wish to be a model to anyone, it would be too pretentious. What we want to do is to be true to ourselves, to our history, to our own values, and that is why from day one, we began working on acceding to all the relevant international human rights treaties. And even though the reporting process is cumbersome, duplicating, wasteful, we are working hard with the OHCHR to streamline the reporting mechanism process and to fulfil all our obligations under the treaties.

Our first obligation is to the people of East Timor. Working with the people, with civil society in order to create a truly democratic State where the rule of law prevails, and where there is a culture of respect, of tolerance toward everyone including different ethnic groups, different religions. Even though East Timor is 98 percent Catholic, we do have very small Protestant and Muslim communities which must be respected and cherished.

We are working hard with the NGO community, with the Commission on Human Rights, the thematic bodies, and the Special Rapporteurs to make sure they help us in fulfilling our obligations, to the people first and foremost, and to the international community. Will that make East Timor a model? Well, maybe. But we don't have such a pretentious ambition to

be a model to anyone.

HRF: *As you are the only Roman Catholic country in the region apart from the Philippines, given that the Vatican's pronouncements on the death penalty are clear, when do you propose to sign the Second Optional Protocol to the International Convention on Civil and Political Rights relating to the death penalty?*

JRH: We intend to accede to every single instrument and protocol relating to human rights and to the humanitarian field. If we haven't done so, it is only because we have been independent for less than two years. We have acceded so far to more than to 20 international instruments, human rights instruments, and also to many relevant conventions related to non proliferation, to chemical and biological weapons, and so on. The Ministry of Foreign Affairs has a particular division called the Division of Treaties, Legal Affairs and Human Rights, staffed with three people. So, it is obvious that we cannot accede to all the international treaties within the first two years. We have done more than most countries that have been independent now for 50 years. More than the US, for instance, that they have such ambition to be the moral judge of the rest of the world. The US has not ratified the Convention on the Rights of the Child and many others.

HRF: *It is reported that pre-trial detention is a problem in East Timor. As your judicial mechanisms are still finding their feet, do you propose to give your citizens an international remedy by signing the first optional protocol to the ICCPR?*

JRH: We do acknowledge we have some serious deficiencies in our court system because of a lack of judges, prosecutors, infrastructure, clerks and administration personnel. Because of that, yes there are numerous cases of individuals detained beyond what would be normally accepted. We have been trying, since the beginning of 2003, to declare 2003 the year of justice and public administration, whereby the Government puts special emphasis on correcting the deficiencies that we have.

But there are no shortcuts. We cannot train lawyers and judges and prosecutors in a year or two. Neither Portugal nor Indonesia had put much effort in having a strong, independent judiciary. As I said earlier, if we have not acceded to the remaining relevant protocols is only because there is only enough time in a day for two or three people to do [what they can]. In that particular division that handles all the treaties there are, as I said, three people. Our obligation in the division is not only to satisfy the international community in terms of human rights and

humanitarian obligations, but also we have bilateral agreements with many countries and multilateral agencies that we accede to. So we cannot paralyse everything just in order to [make time to] accede to human rights and humanitarian conventions and protocols. In due time, *inshallah*, God willing, with more resources, financial and human, we will accede to all the protocols.

We have had good co-operation from the Office of the High Commissioner, [with the Office] seconding one or two individuals to advise us. We have two units in the country working with the office of the Prime Minister, one is a human rights unit, the other is a gender unit. Working in co-operation with the Foreign Ministry and the other government agencies, the Minister of justice, the police, and civil society, we have developed a national human rights action plan. It has been drafted and approved and will make, I hope, a real impact on the protection and promotion of human rights. That

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'I have not personally studied the Chinese proposal [on item 9], but I would caution the international community, in general, not to undermine or curtail the competence of the Commission on Human Rights to hear [reports of] human rights situations around the world.'

'One of the greatest achievements of the last 50 years is in the field of promotion of human rights, with UN bodies like the Commission [on Human Rights] making themselves accessible to NGOs... I will resist any attempt at setting back the tremendous gains the UN has made in the last 50 years.'

INDIA

'Shining' India has a dark side

An abysmal record of compliance with international norms and treaties takes the shine off New Delhi's image-building campaign. This is the second of a two-part series...

THE portrayal of India favoured by the current Government as 'Shining India', a nation making unprecedented social progress, is fundamentally contradicted by the Government's regressive attitudes towards its basic human rights obligations.

Far from boasting a 'shining' human rights record, the Government's stance on the issues of torture and the rights of women and children is fraught with contradictions.

Although it has acceded to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC), most of the provisions of these treaties are yet to be translated into concrete protections of human rights.

Furthermore, its continuing failure to ratify the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT) is a clear derogation of international human rights standards. India has also made reservations, euphemistically termed "declarations", to all three treaties. Consistent with its position in relation to the ICCPR, the ICESCR and the ICERD, the Indian Government continues to demonstrate a commitment to rhetoric rather than action.

The Prevalence of Torture

The systematic use of torture by police as a tool of interrogation, or even as a form of summary punishment against detained individuals, is evident throughout India. In fact, in 1996 the UN Special Rapporteur on Torture noted that marks of torture were often found on the bodies of detainees who died in custody. The methods of torture that have been documented include beating, burning with heated objects, electric shocks and rape. Torture is prevalent in the state of Jammu and Kashmir. It is perpetrated by security forces to extract confessions from suspected militants. However, torture is not limited to the situation in Jammu and Kashmir.

No Redress

Articles 12 and 13 of CAT require States to ensure individuals have the right to allege torture and have these allegations impartially and promptly examined without fear of retribution. In India, no such impartial mechanism for receiving complaints of torture presently exists. Complaints have to be made to the police - the same party often accused of perpetrating the crime - potentially exposing the complainant to intimidation and pressure to withdraw the complaint.

Although the National Human Rights Commission is theoretically mandated to investigate individual complaints of torture, it is rendered powerless in practice because it is prohibited from investigating the armed forces. In light of the proportion of complaints implicating the armed forces, this effectively undermines any capacity it has to address allegations of torture. The impunity this confers on the armed forces is especially alarming given the powers granted to them under laws such as the Armed Forces (Special Powers) Act 1958, which allows security forces to fire at any person if it is considered 'necessary for the maintenance of law and order' in areas declared a 'disturbed area' by the Central Government.

Other legislation in force acts to further thwart the investigation of torture. The Armed

Forces (Jammu and Kashmir) Special Powers Act 1990 stipulates that unless approval is obtained from the Central Government, no "prosecution, suit, or other legal proceeding shall be instituted...against any person in respect of anything done or purported to be done in exercise of the powers of the act." The provisions of India's Criminal Procedure Code (specifically sections 45(1), 132(1) and 197) also deny courts the jurisdiction to hear complaints of human rights violations committed by public servants or members of the armed forces while acting or purporting to act in discharge of their duties, unless courts receive prior authorisation from the government.

Even if a complaint of torture is investigated, the provisions of India's Penal Code that address the punishment for torture (sections 330 and 331) are widely recognised as inadequate to give effect to the provisions of CAT.

Article 14 of CAT enshrines the fundamental right of victim of an act of torture to 'fair and adequate compensation.' This has been endorsed by the Supreme Court of India in several cases including *Rudul Shah v. State of Bihar*, *Bhim Singh v. State of Jammu & Kashmir* and *M C Mehta v. Union of India*. A discretionary remedy is available to victims of torture under Articles 32 and 226 of the Criminal Procedure Code, although they have generally been exercised conservatively by the judiciary. More to the point, the State has still not enacted mandatory compensation provisions

recognising this right to compensation. This unsatisfactory situation is exacerbated by the reported reluctance of victims to accept compensation out of fear of retribution.

Legitimising Torture?

Under Section 27 of the Prevention of Terrorism Act 2002 - India's most recent counter-terrorism legislation - confessions made to police are now admissible as evidence in court. This overrides the provisions of the Indian Evidence Act that previously made such confessions inadmissible. Along with the extraordinary powers of arrest and detention conferred on police by the Disturbed Areas Act and the National Security Act, this practically gives authorities carte blanche to disregard the rights of detainees and use any means possible to coerce confessions.

An Obstructionist Approach

The Indian Government's reluctance to allow international scrutiny of its human rights record is apparent in its opposition to the draft Optional Protocol to the CAT. The Optional Protocol creates a system of inspection of places of detention in order to prevent the torture and ill-treatment of detainees. Its obstruction of this development is especially unusual because States are not obligated to sign the Optional Protocol until they become a party to the Convention itself - which India is not.

Unsurprisingly, India's Home Ministry has also consistently refused to extend an invitation to the UN Special Rapporteurs on Torture

and on Extrajudicial Killings.

The Neglected Rights of the Child

The Indian Government's ratification of the Convention on the Rights of the Child in 1992 has done little to alleviate the miserable plight of millions of Indian children. The civil, political, economic and social rights affirmed in the CRC are designed to protect one of Indian society's most vulnerable social groups. In spite of this, the routine exploitation and neglect of children in India continues.

Article 28 of the CRC recognises the obligation of the State to institute a system of compulsory and free primary education for all children. This has been reiterated by the Supreme Court in its judgment in *Unnikrishnan v. State of Andhra Pradesh*, in which it held that all citizens of India have a fundamental right to education up to 14 years of age. However, this right remains largely illusory. The Government does not provide universal primary education, and only approximately 59 percent of children between the ages of five and 14 attend school.

The Government is also expressly obligated to protect the welfare of children and ensure their freedom from "arbitrary interference." However, an average of 30,133 children go missing annually in India and 27 percent of these children are not traced. Although the Government has enacted the Juvenile Justice (Care and Protection of Children) Act 2001, this is no guarantee that its provisions will be respected or realised in practice. For example, the existence of the Child Marriage Restraint Act has made a negligible difference to the incidence of child marriage in rural India. Furthermore, the enactment of statutes outlawing child labour has not made any difference to the lives of over 10 million children currently working under conditions of bonded labour.

The Government has failed to even notionally address the issue of the traditional preference for male children in some parts of India, even though protection from discrimination on the basis of sex is enshrined in Article 2 of the CRC. Accordingly, the female to male ratio among children aged between zero and six continued to fall between 1991 and 2001 from 945 females per 1,000 males to 927 females per 1,000 males. Despite the disturbing implications of this trend - the practice of female infanticide - the Government has not considered any measures to prevent it.

Other statistics attest to the serious neglect of the welfare of Indian children and the State's responsibilities under the CRC. The fact that 47 percent of children under the age of three are malnourished speaks volumes about the Government's implementation of the right to health in Article 24 of the Convention. The Government has also failed to develop effective steps to combat the prevalence of violence and sexual abuse committed against children. In a move in the opposite direction, the Prevention of Terrorism Act 2002 allows for the prosecution of children by special courts and disregards limitations on the age of criminal responsibility enunciated by the UN Committee on the Rights of the Child.

Rights of Women - A Lesson in Inequality

The pattern of disparity between the Indian Government's rhetoric and its action is also reflected in the status of women in Indian society. The Government has ratified CEDAW, committing itself to ensuring equal rights for men and women. However, women are systematically discriminated against in both the public and private domains. This is illustrated by the list

CONTINUED ON PAGE 11

Although India has acceded to CEDAW and CRC, most of the provisions of these treaties are yet to be translated into concrete protection of human rights. The exploitation and neglect of children continues, while women are still discriminated against, both in the public and private domains.

INDIA Treaty Compliance - II

The systematic use of torture by police as a tool of interrogation, or even as a form of summary punishment against detained individuals, is evident throughout India. New Delhi has consistently refused to extend an invitation to the UN Special Rapporteurs on Torture and on Extrajudicial Executions.

MAINSTREAMING HUMAN RIGHTS

'UNESCO is a human rights organisation'

THE protection and promotion of human rights has not been a major preoccupation of the United Nations Educational, Scientific and Cultural Organisation (UNESCO). However, of late, the organisation appears to be taking a fresh look at the human rights components of its programmes. In May 2004, UNESCO will organise the World Forum for Human Rights in Nantes, France, with the aim of bringing together the various actors that inform and influence the debate on human rights and whose paths do not always converge. Last week, **PIERRE SANÉ**, Assistant Director-General for Social and Human Sciences at UNESCO, was in Geneva to present an overview of the planned Forum, and spoke to *Human Rights Features*...

Human Rights Features (HRF): It is evident that UNESCO has rediscovered human rights in the last few years. What are the main issues that you seek to focus UNESCO's attention on?

Pierre Sané (PS): Why do you say rediscover? I consider UNESCO a human rights organisation, set up to push the right to education, to share the benefits of scientific advances, working for justice and peace. In the 1946 Constitution of UNESCO, there is reference to democratic principles. So, to a certain extent, you can consider UNESCO a human rights organisation.

It is true that over the past three years, there has been a lot of contemplation on human rights, because of the multiplicity of human rights actors and the complexity of issues. So we engaged in a long process of consultation which makes clear what we are going to do and what not. UNESCO's strategy focuses on intellectual contribution. So we want total support for research in, for example, economic, social and cultural rights, especially the right to education. We want to bring in new actors. We're taking an initiative to build a coalition of cities united against racism because cities have become sites where you have multicultural societies. We want to encourage them to take action through their municipal projects... to push issues of tolerance. In terms of awareness-raising, I can give you an example, in the field of bioethics and the threats that genetics poses to human rights in the future. Through the development of standards etc we try to ensure that science advances on an ethical framework that advances human rights.

HRF: You have identified the fight against racism as a key area of UNESCO's work. How do you plan to integrate the Durban Declaration and Program of Action in UNESCO's own work plan for the next few years?

PS: We've done that already. In Durban, there were special recommendations addressed to UNESCO, for example, on the slavery route project, and to look at how we continue to build the memory around slave trade, how we encourage cultural dialogue between the people of African and European descent and indigenous cultures.

We have been asked to produce educational materials and research on racism, so when we came back from Durban, we extracted not only the special recommendations of Durban but also the recommendations that fall within the domain of UNESCO, and this is what we're implementing now.

For example the World Coalition of Cities, will assist municipal policy making. Cities will sign up to an ethical charter and contribute to fighting racism at the municipal level.

HRF: The country offices of UNESCO have not been known to be proactive in the area of human rights. Most of their past contact has been with governmental agencies in the host country. How do you propose to create a new relation between them and civil society to defend human rights?

INTERVIEW

Pierre Sané

PS: The first thing we'll do is implement a strategy on human rights... mainstreaming of human rights is the first. We're going to evaluate the mainstreaming and develop our own plan including specifically in field offices. Our field offices will be championing the right to education and poverty... it will take time, but we can learn from the experiences of agencies like

"[The work of the UNESCO complaints mechanisms] is not very well known. It's not in competition with the Geneva [human rights] mechanisms, but it is useful. Many NGOs have said it is not effective, but it is not effective because they have not used it. I hope that with publicity and awareness raising, more NGOs will use these mechanisms."

UNICEF and OHCHR to see how we can shape our contributions.

HRF: The High Commissioner for Human Rights has announced an initiative to have a Convention on Human Rights Education. What are your perceptions of this initiative?

PS: I have not seen the details, but whatever can encourage governments to pursue vigorously the objectives of the first decade of human rights education will be welcome. UNESCO has worked with the OHCHR during the first decade to see what lessons can be learnt. It's a good idea, it will take time to develop a convention, but that should not stall efforts in this direction.

For us, human rights education has to be seen as a core right within the right to education. So in the coming weeks and months, we will be exchanging information with OHCHR on the

specific details.

HRF: Following from that, what are your views on the initiatives of some to have a second Decade on Human Rights Education?

PS: In view of the results of the first decade, a second decade will be needed, just like the decade on women and on racism. So if another decade allows us to concentrate energies and resources, then it's fine. But the first decade has to be evaluated first.

HRF: The work of the complaints mechanisms available in UNESCO on academic and media freedoms is not very well known. How do you plan to correct this lack of information?

PS: It is true, it is not very well known. I've had many discussions in the course of developing new strategies. As we've had consultations, we've taken opportunities to disseminate information. One central element of that strategy would be to educate NGOs on what the mechanisms are. It's not in competition with the Geneva mechanisms, but it is useful. Many NGOs have said it is not effective, but it is not effective because they have not used it. I hope that with publicity and awareness-raising, more NGOs will use these mechanisms.

HRF: Are you contemplating convening a meeting with treaty bodies and special mechanisms on building a synergy between UNESCO complaint mechanisms and those available under the CHR?

PS: I think there is already an exchange of information. For example if there is a complaint to UNESCO, we check if the complaint was made here or not, to avoid duplication. We envisage a meeting with all special rapporteurs, treaty bodies and others interested in poverty and human rights. We're doing conceptual work at the moment with intellectuals and academics and other actors. As we look at the concept of poverty, we will organise a seminar in Geneva with experts to advance this thinking.

HRF: The forthcoming UNESCO World Forum on Human Rights will need a proactive method to involve civil society from the South. How do you propose to do this?

PS: The first [step] is to share and disseminate information. We have sent out 10,000 brochures, we are reprinting a different brochure which will communicate more powerfully the nature of this Forum. This is important, so that people don't misunderstand the Forum, as its purpose is very different. We have a website too.

We have funding constraints. We have had hundreds of requests for funding. We have not secured funding for many participants... the forum itself does not have money to pay for everyone. But we are in discussions with funding agencies... I would encourage NGOs to liaise with funding agencies, and to approach embassies and governments in an attempt to source funding.

HRF: Finally, are there any other issues that you would like to inform the readers about?

PS: What we want and where I see the role of UNESCO is to strengthen the linkages between research and action through the academic community and others, to tackle adequately those challenges. It is important that action is based on thoughts. We want to generate food for thought and thought for action.

World of possibilities?

THE World Forum for Human Rights, to be held in Nantes, France, in May 2004, aims to provide "space for an extensive and free dialogue on issues related to the implementation and protection of human rights."

The programme includes plenary sessions on key challenges, including terrorism and human rights, poverty and the fight against discrimination. It will also include round-tables, to be organised by and at the initiative of the participants, including United Nations bodies, programmes and agencies, regional intergovernmental organisations, cities, international, regional and national non-governmental organisations, national human rights institutions, research centres, etc.

The event, as was emphasised by Pierre Sané during the lunch hour meeting on 19 March, is not aimed at condemning any government or State. The event brochure further explicitly states that round tables "should NOT contain any material which has for its main purpose to condemn or incite to condemn any government or any State." (emphasis original) In this regard, some participants at the 19 March meeting asked about the expected outcome of the conference. It was pointed out that the panelists included, for example, the Vice President of Colombia, a country with serious human rights problems.

Funding, as Mr. Sané stated during the meeting and in the interview with *Human Rights Features*, is a problem at the moment. With participants expected to foot the bill themselves, the Forum may not find too many takers from the countries of the South.

TURKMENISTAN

Technical assistance is the easy part

THE international community took a firm stance last year by passing a resolution on Turkmenistan at the 59th Commission on Human Rights (CHR). Inherent in the CHR's resolution was the decision "to continue its consideration of this question at its sixtieth session."

Over the past year, the international community has taken additional steps to strengthen last year's resolution and further engage and cooperate with the government of Turkmenistan. In November 2003, the General Assembly (GA) approved a resolution criticising the situation of human rights in Turkmenistan, furthering the recommendations outlined by last year's resolution. On 16 January 2004, the European Parliament called on the European Union (EU) to sponsor or co-sponsor an additional resolution on Turkmenistan at the 60th session.

Of fundamental importance to the CHR this year is Turkmenistan's recent decision to possibly cooperate and engage with the United Nations. On 2 March 2004, Turkmenistan and the UN reached an agreement over a five-year strategic-planning document that outlines a system of cooperation between UN agencies and Turkmenistan for the next five years. The importance of this agreement, as facilitated by Turkmenistan's signing of the United Nations Development Assistance Framework (UNDAF), has been characterised by Ruven Menikdiwela, head of UNHCR's Ashgabat office, as the "first time...the UN had issued a collective, five year 'plan of action' for the country."

Although this agreement could signify a positive first step towards improving relations and engagement with the UN, it could also be read as an attempt by the leadership of Turkmenistan to mask their inaction in the run-up to the 60th session. An overview of Turkmenistan's compliance with the CHR's recommendations since last year and their compliance with UN mechanisms in general provides a clearer picture.

The Reality in Turkmenistan

A year after last year's resolution, political suppression continues. "The treatment of accused individuals in violation of the ICCPR following the events of 25 November 2002" and the "persistence of a governmental policy based on the repression of all political opposition activities" (as addressed in last year's resolution) remain unchanged. In fact, the relationship between the alleged perpetrators and political opposition has become all too clear. In her annual report for 2003, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions raised concerns over alleged deaths in custody and the treatment of the supposed coup ringleader Boris Shikhmuradov. Her request to visit Turkmenistan is still pending.

A year later, civil society remains oppressed. The prime example is the implementation of Turkmenistan's new law 'On Public Associations'. The new law, which took effect on 21 November 2003, forces all NGOs to register with the government. In addition, the law requires NGOs to register all foreign assistance (coordinated through the Ministry of Foreign Affairs), with the Ministry of Justice and the State Agency for Investment. The law's most dangerous provision makes operating an unregistered NGO a criminal offence. Such executive action is a blatant violation of the CHR's recommendation, "[t]o remove restrictions on the activities of non-governmental organizations." (See similar practices by Egypt and India, P7)

A year later, religious minority groups in Turkmenistan still face systematic harassment. On 10 November 2003, Turkmenistan passed a new law, similar to the law 'On Public Associations', that requires all religious organisations to register with the government. Similarly, the illegal operation of an unregistered religious group is now a criminal offence. In an unexpected step on 11 March 2004,

President Saparmurat Niyazov relaxed registration requirements for religious organisations. Although the new decree eliminates an old requirement that barred religious groups with less than 500 members in a single district from enjoying official registration, it remains unclear

Votes in favour of the resolution on Turkmenistan (59th session):

Argentina, Australia, Austria, Belgium, Canada, Chile, Costa Rica, Croatia, France, Germany, Guatemala, Ireland, Japan, Mexico, Paraguay, Peru, Poland, Republic of Korea, Sri Lanka, Sweden, United Kingdom, United States, Uruguay.

Against:

Armenia, Bahrain, China, Cuba, Gabon, India, Libya, Malaysia, Pakistan, Russian Federation, Saudi Arabia, Sudan, Syrian Arab Republic, Ukraine, Viet Nam, Zimbabwe

Abstaining:

Algeria, Brazil, Burkina Faso, Cameroon, Democratic Republic of the Congo, Kenya, Senegal, Sierra Leone, South Africa, Swaziland, Thailand,

whether or not these changes will actually be put into practice. Most international observers remain sceptical.

A year later, freedom of expression and independent media remain severely restricted. In their Annual Report for 2003, Reporters Sans Frontières recognised "the lack of press freedom

Turkmenistan has invited a delegation of experts of the OHCHR to provide technical assistance in the area of human rights. However, this is only one small step towards implementing the resolution passed at the 59th CHR session. There have been no invitations to the CHR's special mechanisms, and the Government has not submitted compliance reports to the treaty bodies.

in the country, [as being] one of the most repressive in the world." The request of the UN Special Rapporteur on the right to freedom of opinion and expression to visit the country is still pending. Two journalists from Radio Free Europe's Turkmenistan service were arrested on 26 February and 1 March 2004. Access to the internet in Turkmenistan is still available only through state-owned Turkmen Telecom.

A year later, education in Turkmenistan continues in its downward spiral. Despite the CHR's specific concerns over "the number of years of compulsory education," the level of general education remains reduced from eleven to nine years. The lack of educational opportunities in Turkmenistan has the potential to create serious problems and fuel future unrest.

Failure to Comply with UN Mechanisms

Turkmenistan has been a member of the United Nations since 1992. Even though Turkmenistan is a party to: the Convention Against Torture, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention of the Rights of the Child, the Convention on the Elimination of Discrimination Against Women and the International Covenant on Economic, Social and Cultural Rights the government has yet to file a single report with any UN treaty body.

A year after the CHR's resolution, Turkmenistan's attitude towards and engagement with the UN remains unchanged. The country's continued decision to not

submit reports to the appropriate UN bodies or "ensure the full [or partial] implementation of their recommendations" highlights Turkmenistan's lack of respect for the CHR's resolution itself.

A commendable step taken by the Government of Turkmenistan, as mentioned in the recent GA resolution, is the invitation extended by Turkmenistan to "a delegation of experts of the OHCHR to provide technical assistance in the area of human rights." Although this is a step towards the fulfillment of Turkmenistan's international obligations, it fails to adequately address the specific recommendations outlined by the CHR and the subsequent GA resolution.

If the Government of Turkmenistan was truly committed to improving human rights it would fully engage with the CHR's special mechanisms. Turkmenistan's lack of cooperation with the special mechanisms is evident by the country's refusal to extend invitations to UN thematic rapporteurs to conduct investigative missions within Turkmenistan.

Moreover, and of additional concern, is whether or not "technical assistance" will be used by the Government of Turkmenistan to further restrict substantive action and/or access to adequate information. Given this, and recognising Turkmenistan's lack of compliance with the UN in general, the integrity of Turkmenistan's "technical assistance" gesture should be viewed with scepticism.

During the 59th session, the representative of Turkmenistan claimed an improvement in Turkmenistan's human rights situation, and stated that in order "[t]o continue the process... [Turkmenistan] needed more time and the help of the international community in finding ways to develop the political, civil, social, economic and cultural rights of its citizens."

What the government of Turkmenistan fails to acknowledge is that this is and was the intention of the international community last year in passing their resolution. The recommendations, as outlined in last year's resolution, were an attempt by the international community to provide such a roadmap.

Unfortunately, the actions of the Government of Turkmenistan make it clear that it wishes to do the very least to protect and ensure the fundamental rights of its citizens, reinforcing the need for the international community to further engage the Government of Turkmenistan.

Uncertainty

Niyazov's cult of personality permeates all facets of Turkmen life. The control he exercises over the people of Turkmenistan and society's subsequent decline raises serious concerns over future developments. Niyazov's glorification of Turkmen ethnic identity through the suppression of minority groups and a poorly educated populace only adds fuel to the potential fire. With the ingredients for social and political disaster, the future of Turkmenistan looks grim, indeed.

The time has come for the international community to show Niyazov that it will no longer support business as usual in Turkmenistan. In passing an additional and more critical resolution, the international community will further its commitment to acknowledging and assisting those who face the brunt of Niyazov's policies. It is through such action that change, however small, will take place.

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HUMAN RIGHTS DEFENDERS

Need for a resolution to protect funding

GAUGING by the increased global application of laws designed to stifle and suppress the functioning on NGOs, the right to receive and utilise resources for human rights defenders barely exists as a right at all. This is a critical problem for NGOs in Russia, India, Egypt and other countries where they happen to be the most vital actors in holding States publicly accountable for violations of human rights. The meagre protections that international law presently affords human rights defenders in the course of their work is of no use whatsoever if defenders are starved of access to funding. It is on this basis that any resolution presented at the Commission on Human Rights on human rights defenders should focus attention on the issue of funding as a prerequisite.

The Present Limitations of International Law

In 1999, the UN General Assembly adopted the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms ("Declaration"). At the time, it was heralded as constituting "a clear commitment on the part of all UN member states to respect the rights of human rights defenders at the national and international levels."

In fact, the Declaration's worth is entirely compromised by its status as a non-binding instrument. The majority of its provisions are mirrored in other international human rights Conventions, and apply equally to human rights defenders as to all individuals. Therefore, the Declaration offers no new protections to defenders specifically in this regard.

To illustrate a few examples, Articles 1 and 5 of the Declaration reaffirm the right to association and assembly, as provided for by Article 21 and 22 of ICCPR, Article 5(d)(ix) of ICERD, and Articles 2, 3, 5 and 11 of ILO Convention No. 87.

Articles 2 and 4, concerning the responsibility and duty of States to promote and protect human rights, including the rights of human rights defenders, simply reaffirm the principle upon which the Universal Declaration of Human Rights (UDHR) was founded, and is repeated in all human rights conventions that derive from the UDHR. This is the general character of the Declaration on Defenders.

How Protection of Funding is Circumvented by the Declaration

It is on a convoluted path from Article 17 to Article 3, and on to Article 13, that the weakness of the Declaration is understood. Article 17 posits the rights and freedoms referred to in the Declaration as limited rights. Limiting certain rights is, of course, a standard feature of international conventions and declarations. Article 17, however, allows for limitations of all of the rights of the Declaration as "determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of the meeting of the just requirements of morality, public order and the general welfare in democratic society". This is irrespective of whether or not these rights are derogable.

The criteria for limiting any or all rights of the Declaration on the grounds of the "general welfare of society" is also a new grounds for limitation and is a lower threshold than previously allotted to States. This affords considerable leverage to oppressive States to determine what they consider to be in the interests of the "general welfare of society."

If one appreciates the potential of Article 17 for interference by States in the activities of human rights defenders, then Article 3 compounds this problem. It positions domestic law as the "judicial framework within which human rights and fundamental freedoms should be enjoyed".

This may appear, at first glance, as reasonable, as it would suggest the alignment of

domestic legislation with States' international treaty obligations and other norms of customary law. However, these international obligations are not explicitly stated in Article 3. The concession to domestic law as the arbiter of human rights thus further curtails the possibility of the Declaration introducing any new protections outside the scope of existent human rights law instruments.

The adverse effect of Article 3 is best illustrated in Article 13, which happens to constitute the only unique contribution of the Declaration towards the specific rights of human rights defenders. Article 13 states: "Everyone has the right, individually and in association with others, to solicit, receive and utilize

The value of the Declaration on Human Rights Defenders is entirely compromised by its status as a non-binding instrument. The majority of its provisions are mirrored in other international human rights Conventions. The Declaration offers no new protections to defenders specifically.

resources for the express purpose of promoting and protecting human rights and fundamental freedoms, through peaceful means, in accordance with article 3 of this Declaration."

However, as discussed above, this is subject to the limitations of Article 3 and domestic law, which, in those countries where human rights defenders are most active, and in most need of funding, is rarely in conformity with international standards. All that is required to contravene the rights of human rights defenders from receiving international funding is to brand them 'politically motivated' organisations or allege that they constitute a threat to national security, public order, or even the 'general wel-

Article 17 of the Declaration allows for limitations on all the rights in the Declaration. Article 3 posits that domestic law is the judicial framework within which human rights must be enjoyed. The potential for subverting these clauses renders redundant any protection that the Declaration could conceivably offer.

fare of society'.

The potential for subverting these clauses renders redundant any protection that the Declaration could conceivably offer. Such control of funding by governments has served as an effective means to crush human rights organisations whilst still acting in compliance with the limitations of international law.

The Funding Crisis in Real Terms

The following two cases of India and Egypt are select examples of a global problem. In India, the government has resurrected the Foreign Contributions Regulation Act (FCRA), an anachronistic, Emergency era statute which was passed under the Defence of India Rules, in itself a criminal statute. Restricting funding to either directly or indirectly political organisations, Section 10 of the Act permits the Government, at its discretion, to prohibit altogether, or require prior permission for, the receipt of foreign contributions by any individual, group of individuals, or organisation if the Government "is satisfied" that the acceptance of such foreign contributions would be prejudicial on one or more of the five enumerated grounds of "the sovereignty or integrity of India; the public interest; freedom or fairness of election to any Legislature; friendly relations with any foreign State; or harmony between religious, racial, linguistic or regional groups, castes or communities."

The expansive nature of the last two

grounds - the likelihood of prejudicial effect to "the public interest" or to "harmony between religious, racial, linguistic or regional groups, castes or communities" - extends the Government's discretion well beyond the limits of this first category. This potentially encompasses individuals and organisations far removed from participation in government or in electoral politics, and whose activities may be wholly legitimate.

The Home Ministry has already been using ambiguous language in the FCRA to make arbitrary decisions. Armed with a set of 'guidelines' that are equally ambiguous and are not even reflected in formal legislation, officials are renowned for refusing access to international resources, without any required explanation, to those that it deems critical of government policy. On occasion, by way of punishment for criticism, the FCRA has been directly applied as a political weapon by the ruling party. No objective criteria for the definition of a "political" organisation are applied.

In Egypt, the situation is perhaps even more critical. According to Human Rights First, "by a series of deliberate policy measures and acts of persecution over a period of years the Egyptian government has all but destroyed an independent human rights movement that had developed in Egypt in the late 1980s and early 1990s."

As early as January 1995, the Legislative Department of the Ministry of Justice issued a ruling declaring that non-profit civil companies were illegal and that all such companies must seek registration under the law on associations, or face prosecution. This Law 32 of 1964 gave the government intrusive powers to control the work of NGOs. Refusal upon application, as happened to the Egyptian Organisation for Human Rights, amounted to NGOs being classified as "illegal organisations."

The government's further restriction of the independent activities of NGOs was laid down by Law 153 of 1999 which outlawed "political" activities by NGOs, again without determining any criteria and thus allowing official discretion to penalise legitimate activities by human rights defenders. Article 75 of the law, also prohibited the receipt of international funds or domestic fundraising without prior permission from the authorities. The law was suspended in June 2000 on procedural grounds but the government has expressed its intention to apply the law without substantive change when the procedural aspects are clarified.

Governments have a legitimate interest in holding NGOs accountable for financial or other wrongdoing. However, normal regulatory and criminal justice procedures provide sufficient institutional resources to accomplish this task. Similarly, narrowly tailored financial reporting requirements for NGOs serve legitimate governmental interests and should remain in place.

However, the administration of such laws should be the task of Finance Ministries, rather than Home Ministries. And to the extent that the direct channels of political participation are to be reserved for citizens, the targets of regulation should be political parties and the candidates they field for office, not NGOs and advocacy groups.

These indefensible practices are not only contrary to the democratic principles of transparency, accountability and independence, but impinge upon the legitimate right of defenders to exercise their function by curtailing freedom of association and expression.

It remains to be seen how States sympathetic to the plight of defenders on the ground - those who Irish Minister for Foreign Affairs Brian Cowen referred to as "the brave individuals around the world who risk discrimination, imprisonment or worse to ensure that governments live up to their human rights obligations" - act upon their words by addressing human rights defenders' most immediate and pressing concern.

TOGO

Dictatorial notions of democracy

Togo's membership of the CHR this year is another example of the use of a seat in Room XVII to deflect criticism

TOGO is a country quick to adopt international conventions on human rights, as its ratification of all the core UN conventions, and its acceptance of the competency of the Human Rights Committee to consider individual complaints under the first optional protocol of the ICCPR, all attest. Its membership of the Commission on Human Rights for the last three sessions may likewise be (mis)interpreted to indicate a commitment to the principles of international human rights law. Yet, despite its rhetorical willingness to accede to international and regional treaties on human rights, Togo's domestic practice points to a government that operates with impunity in persistent violation of its obligations. The election of Togo to the Commission might be more accurately understood as an insidious opportunity to deflect attention from its own record. Dictatorships, after all, are rarely advocates of international best practice.

Despite attempts to introduce a democratic multiparty system in 1991, Togo continues to exist under the rule of Africa's longest serving dictatorship. Human rights violations, engineered primarily to protect President Gnassingbe Eyadéma's regime, are widespread. Inquiries into allegations of human rights violations have been met with strong government denials, best illustrated by their refutation of allegations presented in Amnesty International's 1999 report 'Togo: Rule of Terror', following the repression of demonstrations opposing the fraudulence of the 1998 elections. This resulted in the establishment of a joint UN and OAU International Commission of Inquiry, which fully confirmed the findings of Amnesty, and further publicised the atrocities committed against the Togolese population. Nonetheless, the same violations and the same culture of impunity have persisted to the present day as those detailed by the Commission, and as have existed for the past 37 years.

The June 2003 elections highlighted two particular forms of existent violations: firstly, the right of every citizen to take part in the conduct of public affairs, the right to vote and to be elected and the right to have access to public service, as prescribed by Article 25 of the International Covenant on Civil and Political Rights (ICCPR), to which Togo is a party; and secondly, the collective rights to freedom of expression, assembly and association, as prescribed by Articles 19,21 and 22 of the ICCPR. These rights are inextricably linked.

As the general comment of the Human Rights Committee on political participation explains: "Citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize

themselves. This participation is supported by ensuring freedom of expression, assembly and association." In Togo, this is anything but the case.

Free Elections

Elections in Togo have traditionally been marred by violent intimidation, repression of all criticism, and widespread corruption. To prevent a repeat of the 1998 elections, the government of Togo, in co-operation with the EU, accepted the 1999 Lomé Framework and established an Independent National Electoral Commission

Togo continues to exist under the rule of Africa's longest serving dictatorship. Human rights violations, engineered primarily to protect President Eyadéma's regime, are widespread. Inquiries into allegations of rights violations are met with strong denials by the Government.

(CENI). The process of erosion began in 2001 with the modification of the Electoral Code to prohibit the registration of persons in exile, or those with double nationality, as electoral candidates. This was chiefly designed to prevent Gilchrist Olympio, the main political opponent to Eyadéma in exile, to run for election. In December 2002, the Constitution was amended in order to allow Eyadéma to run for a third mandate. Finally, a new Electoral code was adopted in February 2003, transferring the responsibility for the preparation of elections from CENI to the interior minister.

Following allegations by Amnesty International of ensuing fraud at the election poll, and the general use of "heavily armed soldiers circulat[ing] in the country and commit[ting] exactions on the population", Eyadéma secured a strong majority, to nobody's surprise.

Freedom of Expression, Assembly and Association

The June 2003 elections were preceded by a calculated campaign against members of opposition parties and the media. Freedom of expression was gravely undermined, with journalists subjected to arbitrary arrest, and subjected to unfair trials for defamation against the State or President whilst attempting to exercise their duty to provide information.

Multiple examples have been reported concerning the editors of newspapers or weekly magazines. Franciscans International reported

the arrest on 19 June 2003 of Dimas Dzikodo, editor of the weekly newspaper *L'Evènement*, released after the payment of 500,000 CFA. Journalist Komlan Dodji Djilan was also arrested on grounds of defamation and disturbance to public order. This followed the release on 7 May 2003 of Sylvestre Djahlin Nicoué, editor of *Le Courrier du Citoyen*, who had been detained without trial for four months at Lomé Civil Prison for "inciting citizens to take up arms against the state authority."

Pressure was also applied to the Foreign Press. According to the Fédération Internationale des Droits de l'Homme (FIDH), Radio France International (RFI) was prevented entirely from covering the elections. Additionally, the Special Rapporteur on freedom of opinion and expression noted in last year's report to the Commission on Human Rights that the change in the Press Code (2002) permitted the Togolese authorities to censor all publications and broadcasts that they deemed to be 'offensive' or 'controversial' Togolese journalists consequently work under the continual threat of arrest for criticism of any form of government activity.

Freedom of assembly has also been effectively curtailed. Preceding the June elections, marches and meetings organised by political opponents to the president or students were banned or repressed by the security forces, preventing any visible displays of dissent against the authorities before the elections. To give two examples, on 15 March 2003 a march organised by the New Popular Dynamic, an umbrella organisation of young opposition party activists, was banned without explanation; in March 2003 30 people were arrested for meeting peacefully at the residence of an opposition party representative. All were released without charge, and without explanation for their arrest. These are indicative of a systematic policy.

In 1993 the EU suspended its allocation of aid to Togo on account of its record of persistent human rights violations. The EU position was reviewed in 2003, whereby aid was again granted on condition of the government's commitment to the 'reinforcement of democracy'. On the contrary, this renewal of aid, in the immediate aftermath of Eyadéma's election, is tantamount to an endorsement of a patently anti-democratic regime. Togo's consistent flaunting of its international human rights obligations is antithetical to the aspirations of the EU in supporting "good governance".

It can only be hoped that Togo's membership of the Commission on Human Rights will shine a spotlight on their own flagrant violations of human rights, and not, as has happened in the past, be a shield behind which Togo can hide its true colours.

Russia intends to rivet much attention to the negative humanitarian situation in Latvia and Estonia at the upcoming 60th session of the U.N. Commission on Human Rights, sources in the Russian Foreign Ministry told Itar-Tass. Russian representatives "intend to use their participation in the 60th session of the U.N. Commission on Human Rights to rivet the international community's attention to the negative situation in Latvia and Estonia," the sources said.

- ITAR-TASS News Agency, 15 March 2004

ZIMBABWE is among 25 countries that have not ratified the conventions and agreements of the United Nations Commission on Human Rights.

... Zimrights executive director Munyaradzi Bidi in an interview this week slammed [the] government's reluctance to ratify the conventions.

"Zimbabwe's human rights record has grown worse," he said. "The government is aware that if it ratifies (the conventions), it will be accountable to the international community. With the general elections coming, international scrutiny is the last thing the regime would want," he said.

- The Independent (Zimbabwe), 19 March 2004

...[R]ights watchdogs... are concerned about a softening of the approach to country resolutions by the countries which are normally the main proponents of reform -- the United States and members of the European Union. There has been more support in recent years for statements instead of resolutions concerning countries of concern.

- Radio Free Europe / Radio Liberty, 12 March 2004

WORLDView

Russian and Iranian diplomats met in Moscow on Wednesday for consultations on human rights within the U.N. system.

"Special attention was paid to the preparation of the 60th session of the U.N. Commission on Human Rights in March-April of this year," the Foreign Ministry told Itar-Tass.

...

"The sides expressed satisfaction with Russian-Iranian interaction in the Commission which is aimed at overcoming 'double standards' and confrontation in the work of this U.N. body," the ministry said.

- ITAR-TASS News Agency, 3 March 2004

MALDIVES

Trouble in Paradise

Tiny, idyllic island conceals a disturbing pattern of human rights violations and suppression of political freedoms

FOR most, the Maldives is associated with images of an idyllic paradise - palm trees, white sand and turquoise waters. Until recently, the size (a population of less than 300,000) and lack of geographic and political importance of this popular holiday destination has aided the government of the Maldives in avoiding international scrutiny. However, recent violent civil unrest has given the outside world a glimpse of the festering anger and disillusionment of the Maldivian people that is simmering beneath the surface.

A 'Unique Democracy'

Re-elected in October 2003, following presidential elections in which he was the only candidate, President Maumoon Abdul Gayoom is Asia's longest-serving leader, having governed the Maldives since 1978. The President has been reported as describing the Maldives as a "unique democracy", and the government claims that since assuming the Presidency, the governance of the Republic of Maldives has been conducted in a style and manner that it compatible with an atmosphere of "openness", press freedom and guided by the principles of universal adult suffrage. Unfortunately, however, a more accurate description of the political situation in the Maldives is that the country is suffering under the rule of a repressive dictator.

President Gayoom's rule is characterised by complete government control of the media, rampant nepotism and corruption, executive control of the judiciary and the legislature, a brutal National Security Service (NSS), a prohibition on opposition political parties and repression of all forms of criticism and political dissent. The people of the Maldives live in a climate of fear and intimidation as arbitrary arrests, imprisonment and torture are commonplace, and the laws of the country prohibit public statements "contrary to government policy" and prohibit the practice of any religion other than Islam.

Not only is Mr Gayoom President of the Republic of Maldives, he also holds the positions of Commander-in-Chief of the Armed Forces and of the Police, Minister of Defence and National Security, Minister of Finance and Treasury and Governor of Maldives Monetary Authority. The President appoints the Cabinet and one-sixth of Parliament, and under the Constitution, he is given the "supreme authority to propagate the tenets of Islam". President Gayoom also has control over the judiciary, enjoying the power to appoint and dismiss judges, and to review and overturn decisions of the High Court.

The Maldivian Government's disregard for the human rights of its citizens is further exemplified by the fact that the Maldives has not ratified or signed the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, nor the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Repression of political opposition

Although article 27 of the Maldivian Constitution provides for freedom of association, the President has discouraged the formation of political parties on the grounds that they cause disharmony and are inappropriate to the homogeneous nature of society. In 2001, the President refused to register the Maldivian Democratic Party (MDP) as a political association, and the government banned the MDP website in December last year. The MDP is now operating in exile out of Sri Lanka.

Supporters of the MDP and their family members were arrested last month in overnight raids prior to an organised march to protest the government's failure to curb the deteriorating

law and order situation in the country. According to Amnesty International, it is believed that they were arrested for their involvement in the election of the Governing Council of the MDP, which had taken place some three hours prior to the arrests. It was also reported that the Government placed a 24-hour ban on SMS messages throughout the country in an attempt to disrupt the planned protest.

Arbitrary Detention and Torture

Amnesty International has reported an endemic pattern of arbitrary detention of government

Not only is Mr Maumoon Abdul Gayoom President of the Republic of Maldives, he also holds the positions of Commander-in-Chief of the Armed Forces and of the Police, Minister of Defence and National Security, Minister of Finance and Treasury and Governor of Maldives Monetary Authority.

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The President has been reported as describing the Maldives as a 'unique democracy'.

critics and their continued imprisonment before and after convictions in grossly unfair trials where they were denied access to a lawyer or to an independent appeal mechanism.

Amnesty International has also reported a pattern of torture and ill-treatment of prisoners and the failure of the government to investigate reports of torture. Many prisoners are held in solitary confinement without adequate food or access to medical treatment.

President Gayoom's rule is characterised by complete government control of the media, nepotism and corruption, executive control of the judiciary and the legislature, a brutal National Security Service, a prohibition on opposition political parties and repression of all forms of dissent

Repression of Press Freedom

Public statements contrary to government policy and Islam, that threaten the public order or are libellous are prohibited by law. The government ignores the constitutionally enshrined guarantee of freedom of expression, imposing severe restrictions on media independence through stringent registration requirements and bureaucratic processes. Editors and journalists practice self-censorship due to the threat of being arrested and imprisoned for publishing articles critical of the government. Radio and television stations are government owned or controlled. The country's main daily newspapers and magazines are controlled by friends and relatives of the President.

In 4 March 2003, the Government announced that it had amended the law to make it easier to revoke newspaper and magazine

licences. That same day 22 publication licences were cancelled due to a failure to comply with the new law, with no opportunity having been given to comply with the new requirements.

In July 2002, three men were sentenced to imprisonment for life, and a woman to 10 years imprisonment, for publishing an email newsletter that was critical of the President and government. The Working Group on Arbitrary detention was of the opinion that the deprivation of liberty of the four persons was arbitrary, being in contravention of articles 9 and 10 of the Universal Declaration of Human Rights.

The September Riots

In September last year, a prison inmate, Hassan Evaan Naseem, was beaten to death by guards, sparking riots within Maafushi Jail. Three more prisoners died when NSS guards fired upon the inmates. The incident provoked unprecedented civil unrest with riots breaking out in Male, as angry Maldivians took to the streets, targeting and burning government buildings and electoral offices. Amnesty International reported a wave of arbitrary arrests following the civil riots.

A Presidential Commission was set up to inquire into the death of Naseem and the shootings at Maafushi Jail. On 27 January 2004, the President presented the findings of the Commission, however significant sections of the report were removed "for reasons of national security", including the names of those responsible for the deaths. There is a widely held belief that the President manipulated the findings of the Commission to protect senior officers of the NSS and Ministry of Defence and National Security.

Earlier this month, the trials of six people, who are accused of causing disturbances during the September 2003 civil riots, commenced. The six are being tried under anti-terrorism laws. Given that one of the accused, Ms Jennifer Latheef, is the daughter of Mr Mohamed Latheef, the spokesperson for the MDP in exile, some have expressed the view that the trials are a politically motivated attempt to attack Mr Latheef.

A Sham Human Rights Commission

In a response to criticisms on the need for reform following the September 2003 riots, the Human Rights Commission of the Maldives was formed in December 2003, purportedly based on the Paris Principles. However, concern has been expressed about the independence and effectiveness of the Commission, as the Commission members will be appointed by the President, will report their findings directly to the President and cannot investigate alleged offences that occurred more than 12 months prior to the establishment of the Commission. It is feared that the Human Rights Commission, which has received funding from the United Nations Development Program, will be used as a mere tool to legitimise the President's rule.

International Scrutiny Needed

The recent riots gave a glimpse of the festering anger and disillusionment of the people of the Maldives that is simmering beneath the surface. Given the rising discontent within the population and the growing political opposition to Gayoom's regime, it is feared that President may take drastic measure to cling to power.

The deteriorating law and order situation and reported rising of discontent within the ranks of the NSS will only add to the President's woes. In the lead-up to the upcoming general elections, scheduled for later this year, it will be vital for the international community to closely monitor the situation in the Maldives to ensure that the human rights of Maldivians are protected.

ROMANIA

Regulating religion: Matter of faith?

Registration of religious institutions has its pros and cons; the issue is safeguarding the freedom to worship

RELIGIOUS activities flourished in Romania after the fall of the totalitarian communist regime in 1990. The Special Rapporteur on freedom of religion or belief, Abdelfattah Amor, who visited Romania in September of 2003, found no serious violation of freedom of religion or belief or serious acts of religious intolerance or violence. He even noted that most religious minorities maintain good relationships with the central Government, including with the Minister of State for Religious Affairs. Moreover, freedom of religion is enshrined in the Constitution of Romania, and Romania has signed the major international human rights instruments.

That said, there are certain trends in the Romanian Government's treatment of religious minorities that are troubling.

The large majority of Romanians (86.7 percent) belong to the Romanian Orthodox Church. The second largest group is composed of Roman Catholics (4.7). The 200,000 strong Greek Catholic Community represents only 0.9 percent of the Romanian population today. A substantial diminution compared to 1.5 million, before 1948. The Protestant Church also represents 3.2 percent of the population. The rest of the population is distributed between smaller Christian communities, Muslims, Jews, atheists, and other small religious communities.

The main areas of concern regarding freedom of religion in Romania are: the regulation of religions and religious groups; the return of confiscated property to religious communities; and instances of discrimination from non-state actors against religious minorities.

The legal framework governing religious institutions is complex and contradictory. Outdated legislation, new decrees and decisions from the courts compete to define the scope of religious activities. Although the Special Rapporteur does not consider that Romanian laws have directly infringed upon freedom of religion or belief, it is clear that they have the potential to restrict the exercise of this freedom in ways that are incompatible with international law.

Romanian legislation distinguishes between recognised and non-recognised religions. In order to be recognised as a religion, groups must register with the State Secretariat for Religious Affairs and present a list with the names, age, identity card numbers, addresses, and signatures of their followers. The State Secretary of Religions and the President must approve all registration applications. Recognised faiths, for example, enjoy the right to establish schools and teach religion in public schools, receive funds to build churches and pay clergy salaries. They can also access religious programming on radio and television, apply for broadcasting licenses for denominational frequencies, and enjoy tax-exempt status.

Religious groups that do not obtain the status of independent religions can exist legally only as religious and charitable foundations or as cultural associations. Religious groups registered as foundations or charitable organisations are allowed to rent or build office space. They are not permitted to build churches or other buildings designated as houses of worship or to have their rites of baptism, marriage, or burial recognised.

As noted by the Special Rapporteur, regulation of religious institutions through a process of voluntary registration is not per se a violation of freedom of religion. By granting advantages compared to secular associations, registration may enhance the capacity of individuals to practice their faith. It can also support the rights of individuals in case of abuse perpetrated in religious associations. Conversely, regulation has the potential to infringe on freedom of religion when it engenders threats to freedom of worship.

Registration procedures have been

streamlined but the criteria remain obscure and appeals in courts are costly and not readily enforced by the Romanian administration. Fears of unacceptable conditions for registration have also surfaced with the drafting of a new bill on religions in 1999. The actual registration process is also subject to allegations of irregularities linked to, for example, the validity of the census of 2002. The recognition of the Jehova's Witnesses as a religion by the Supreme Court and the subsequent implementation of the ruling by the central state administration constitute a step forward.

In the end, the Special Rapporteur recommends that the distinction between recog-

Managing sacred space

ONE way of dealing with the issue of use of religious sites could be to delink the actual ownership of the disputed locations with the enjoyment of it. New schemes should be established that consider giving ownership to one legal entity and usufruct to another or to different legal entities. The Government could create an independent organisation that would own places of worship and distribute use rights to those places. Such an organisation could be modelled on independent central banks or electoral boards, which have been held as models of good governance by the international community. Recognised religions would be asked to remit ownership of their places of worship to that independent entity in exchange of permanent maintenance by the entity. Conversely, the independent organisation could also manage use rights and rents on property owned by religious communities which has been settled by state offices, schools or hospitals.

The benefit of multiple usufructs of places of worship would be to allow different faiths that share similarities in their practice to share the same place of worship. At the same time, the distinction between ownership and usufruct could allow religious associations to benefit from adequate places of worship even without recognition as a religion. Finally, this scheme could help the various actors reach agreements based on actual use and need.

nised and non-recognised faiths be abolished. He also advises the Romanian Government to use the opportunity of the drafting of a new bill on religions to enhance the implementation of international obligations relating to freedom of religion or belief.

The regulation of religious institutions takes three forms in Europe: registration; association status; and, the conclusion of agreements and concordat, which in the case of the latter places religious legislation within the remit of international law. Considering the special relationship of the Orthodox Church with the State but also the fears of religious minorities, Romania should ensure that the Orthodox Church does not enjoy a particular status on account of its historical role.

In this respect, Romania could consider setting up mechanisms to study legislation concerning religious institutions in other European countries and endorsing a system of registration or association status through the adoption of new legislation. The Government must also refrain from adopting a special agreement with the Orthodox Church and ensure that the Orthodox Church does not exercise undue *de facto* influence on local governments to the detriment of other denominations.

Another issue of concern is the question of the restitution of religious property confiscated under the previous regime, which has led to direct conflicts between religious communities, particularly between the Orthodox Church and the Greek Catholic Church. On this matter, the Special Rapporteur has denounced the "hands-off" policy of the State in matters of restitution

of religious property which has left religious communities to settle their dispute among themselves.

In June 2002, the Parliament passed law 501 restituting religious properties confiscated by the Communist regime. Law 501 finally legislated on a contentious issue which had so far been the subject of ad hoc decree. Prior to the passing of this law, some religious or communal property had already been returned to former owners as a result of government decrees, or with the agreement of local religious leaders. But, as noted by the US Department of State, in many cases religious minorities had not succeeded in regaining actual possession of the properties despite restitution by these decrees.

Although law 501 has clarified the process of restitution, it has encountered two major difficulties. First, many properties returned by decree house state offices, schools, hospitals, or cultural institutions. Thus, even if in practice, the properties are restituted, the organisations that use them would require relocation and religious communities would not enjoy the immediate benefit of ownership change. Moreover, lawsuits and protests by current possessors have delayed restitution of the property to the claimant owners.

Second, the Orthodox Church has been unwilling to hand over property to the Greek Catholic Church. The Orthodox Church, in turn, has stressed that, as a matter of faith, religious sites cannot be ceded by other actors than the communities of believers themselves, and has opposed the idea of taking turns to hold religious services. In 1990, the Government of Romania adopted a decree that called for the creation of a joint Orthodox and Greek Catholic Committee at the national level to decide the fate of churches that had belonged to the Greek Catholic Church before 1948.

However, the Government has not enforced this decree, and the Orthodox Church has consistently resisted efforts to resolve the issue in that forum. As a consequence, the Committee has rarely met, and has not permitted a resolution of the conflict. Rather, it has entrenched it, leading to the restitution of only eight contested properties. For example, the courts have generally refused to consider Greek Catholic lawsuits seeking restitution, citing the 1990 decree establishing the joint committee to resolve the issue. This stalemate has occurred in spite of substantial concessions from the Greek Catholic Church, which has reduced its claim from the initial property list of 2,600 seized properties to fewer than 300.

It is clear that the peaceful issue of restitution will not be solved in the near future without the intervention of the State. Presently, restitution, especially in the case of contested property between the Orthodox Church and the Greek Catholic Church, may lead to further tensions and may endanger freedom of religion in the future. The Government must consider innovative schemes of property ownership that would reconcile the claims of the different parties and enhance the enjoyment of freedom of religion and freedom of worship. (see box)

The distinction between property rights and use rights does not however solve all the problems linked to the denomination of particular religious sites. Two questions must be answered: Would use rights be determined by a process of negotiation between the parties? If so, how would the process differ from the present one that has led to stalemate?

Given the conflict between religious groups, it is clear that negotiation is unlikely to lead to a fair settlement. In this regard, use rights on place of worship must be given on the basis of periodical review of attendance.

In addition, use rights on property owned by religious organisations could be distributed through a process of competitive review.

HUMAN RIGHTS DEFENDERS

View from Latin America & the Caribbean

What concerns will human rights activists from the Latin American and Caribbean region bring to the 60th CHR?

PATRICIO RICE

FIRST, let us hope that our colleagues will come to Geneva. There is long standing disillusionment with the CHR among activists that has its origin in the late seventies and eighties when Latin Americans crowded the Serpentine lobby. We seemed to achieve too little, too slowly. A faithful band has continued, such as FEDEFAM which has now been pushing for more than 20 years for an international instrument against enforced disappearances. And we have many from Colombia who make the annual pilgrimage to raise much-needed international concern about their country. But Central Americans and activists from the Southern Cone have largely stayed home during the recent decade or more.

However, now, I see a change. Democracy arrived in the region. That absorbed energies and the focus was on the Inter American system. But democratic governments failed dismally to deliver on the social front. And the recent economic collapses in several countries has pushed activists once again to focus on the global arena. The tremendous success of the World Social Forums after its inaugural gathering in Porto Alegre Brazil in 2001 up to its recent gigantic assembly in Mumbai, India, shows there is a renewed interest among the grassroots in the international community. Moreover the very good work done in the region under Special Procedures by Theo Van Boven (on torture), Asma Jahangir (on arbitrary executions), Hina Jilani (human rights defenders) and the Working Group on Arbitrary Detention (Guantanamo), to name just a few, has regenerated that interest.

Then there are CHR issues such as migrant workers, trafficking, norms for transnational companies and discrimination on the grounds of sexual orientation which find an echo in the region. I believe that there will be an increase in input relating to Latin American concerns and issues during the 60th CHR session.

However to effectively lobby at the CHR, activists from GRULAC countries really need an *aggiornamento* (a re-strategising). In our region there is a perception that the United States also rules the roost at the CHR and we tend to ignore the rest of the world.

I saw that reflected in a recent joint statement in defence of Cuba signed among others by Nobel Peace friends Adolfo Perez Esquivel and Rigoberto Menchu. We know the

US with Bush is a bull in its own backyard and so we must unite to defend Cuba from aggression and the embargoes. But we cannot subscribe to the longstanding Cuban foreign policy of siding with the violator countries merely because of their support for Cuba. As human rights defenders, we must

never put our principles in jeopardy and we might end up doing that unwittingly if we look at the world only from a Latin American perspective.

It is absolutely necessary to suggest to our Cuban friends a coherent human rights policy both internally and externally. Our solidarity with Cuba may be unconditional but our adherence to human rights principles must be above everything else. We need *aggiornamento* to build alliances, particularly with human rights defenders from countries that are "friends" of Cuba.

Moving on to substantive issues, I believe there can be a very rich input from the region in the matter of Social and Economic Rights which could greatly enhance the work to be done. Many countries have reaped the dire harvest of the application of International Monetary Fund (IMF)/World Bank (WB) structural adjustment policies with their devastating consequences for basic human rights.

There can be very rich input from the [Latin American] region in the matter of Social and Economic rights, which could greatly enhance the work to be done. Many countries have reaped the dire harvest of the application of IMF/World Bank structural adjustment policies with their devastating consequences for human rights.

We must suggest to our Cuban friends a coherent human rights policy, both internally and externally. Our solidarity with Cuba may be unconditional but our adherence to human rights principles must be above everything else. We need 'aggiornamento' to build alliances with defenders from countries that are 'friends of Cuba'.

However the human rights issues underpinning those crises have yet to be clarified. When Argentina last week paid over three billion dollars to the IMF in debt arrears, the Kirchner Government brought social demands to the negotiating table and that significantly strengthened his position. However the Bretton Woods financial institutions totally ignore a rights approach to debt payment and demand the unconditional draining of much needed resources away from satisfying basic needs to international finance resources. Unless that vicious circle is broken, poverty will continue to spread dramatically in Latin America and elsewhere.

There is potential for further addressing those issues by the UN human rights mechanisms. The building blocks are in the right to development, the right to food, housing and health and past studies on the consequences of structural adjustment. However, we need more input. I would like to see a broader study undertaken of crises such as Venezuela (1991), Mexico and Argentina (2001) because of their consequences for human rights in those countries. An early warning system could also be devised and specific recommendations made to international financial institutions. Let us hope for a GRULAC initiative in that direction in the 60th CHR.

In the seventies, as a wave of US-sponsored military dictatorships swarmed the region, human rights defenders were able to seek recourse at the CHR. Now that US / IMF sponsored social exclusion and poverty is sweeping the region, the time has come once again for activists to approach the CHR. In the Commission there is a broader arena for debate and decision making than in the Inter American system and we can build up that much-needed solidarity with colleagues and friends from other regions.

Patricio Rice is Senior Adviser, FEDEFAM & Permanent Assembly for Human Rights (Argentina)

from page 4...

Dark side of 'shining' India: No light on rights of women, children

of human rights violations to which women are routinely subjected - domestic violence, rape, abduction, dowry deaths, torture and molestation.

Incidents of rape, molestation and extortion are increasing - statistics show that on average, a woman is raped every hour in India. This in itself illustrates how much progress needs to be made before the rights of women to life, liberty and dignity are protected in India.

This is another area in which an activist Indian judiciary has taken significant steps to affirm India's international obligations, only to have its progress undermined by apathetic State and Central Governments. In accordance with Article 11 of CEDAW, the Supreme Court in *Muthamma v. Union of India* and *Air India v. Nargesh Mirza* struck down discriminatory service conditions requiring female employees to obtain government permission before marriage and denying married and pregnant women the right to be employed.

Moreover, looking to remedy the inaction of State authorities, in *Vishaka v. State of Rajasthan*, the Supreme Court issued guidelines to ensure women have equal working conditions

and are protected from sexual harassment. This was endorsed in *Apparel Export Promotion Council v A K Chopra*. However, as the National Human Rights Commission has noted, these guidelines are not being followed in either the

The plight of India's most vulnerable citizens, including women and children has not improved. Where the Government has committed itself to these standards, it has not taken tangible measures to give effect to these rights.

public or the private sector.

The practice of trafficking women into India for the purposes of forced prostitution also continues unabated, with between 12,000 and 50,000 persons being trafficked into India annually.

Another recent development that threat-

ens to further compromise the rights of women is the introduction of a draft Criminal Law Amendment Bill (Bill No. LX of 2003) into Parliament which seeks to make the offence of subjecting a woman to cruelty bailable.

Providing for the accused to be released on bail will only make victims less likely to file a complaint for fear of harassment by the accused.

Conclusion

The plight of India's most vulnerable citizens - women, children, and individuals in detention - has not been improved by the establishment of international instruments recognising their fundamental human rights. Where the Government has purported to commit itself to these standards, it has not taken tangible measures to give effect to these rights.

With respect to the prevention of torture, the Government has chosen to shirk its responsibilities altogether. As long as the Government continues to pay lip-service only to its international obligations, both India's citizens and its international reputation will continue to suffer.

...from page 3

'CHR must not be undermined'...

includes combating child labour, combating human trafficking, although we have minor problems. One area in which we have a serious problem is domestic violence. It is widespread, and working with the UN, and also with the Church, we try to curtail this problem.

HRF: Now that you are a member of the Asian group in the Commission on Human Rights, what is East Timor's view on China's proposal to suspend consideration of agenda item 9 and subsequently go to ECOSOC for its deletion altogether? Wouldn't this mean the emasculation of human rights in the Commission? After all, the East Timor issue was kept alive because of agenda item 9.

JRH: I have not personally studied the Chinese proposal, but I would caution the international community, in general, not to undermine or curtail the competence of the Commission on Human Rights to hear [reports of] human rights situations around the world. If member countries undermine the work of the Commission, as it has been for many years now, the Commission will lose all its credibility and *raison d'être* and it would severely undermine the whole UN system.

One of the greatest achievements of the last 50 years is in the field of promotion of human rights, with UN bodies like the Commission making themselves accessible to NGOs. We know from the examples of the last few years how increasingly important NGOs and civil society are in shaping world public opinion. Developing countries should be the very first ones to nurture relationships with civil society and NGOs, both NGOs in the South and in the North, because developing countries that are vulnerable to outside pressures, including from multinationals and financial institutions, do not have much of a defence or protection. And it has been the civil society and NGOs that have been forefront in the

battle against the international trade barriers, against all the protectionist barriers that deny poor countries access to rich countries. Developing countries would be shooting themselves in the foot if we continue in undermining the NGOs. I can speak for myself as Foreign Minister of East Timor, and I will resist any attempt at setting back the tremendous gains the UN has made in the last 50 years.

HRF: Now that East Timor has freedom, what are your views on other oppressed nationalities in Indonesia, such as the Papuans, and the Acehnese?

JRH: I hesitate to offer comments or prescriptions for problems in each individual country. The human rights situation in Aceh particularly has been widely reported. The Indonesian side, fresh from the East Timor experience, probably should know that the use of force is not the best way to obtain the allegiance of people or to resolve a conflict. Therefore, I hope that Indonesia, or any country facing similar problems, would not give up peaceful means.

But at the same time, the rebels, the insurgents, wherever they are, are not all angels. Sometimes, we tend to put all the blame on the government security forces and ignore human rights violations caused by insurgents themselves. I am far too familiar with many insurgents around the world, and I would not want to see them in power, because in their fight for their freedom they have already committed such gross abuses of human rights. Can you imagine what will they do when they have the whole state machinery in their hands? I am not naïve to simply make a blank negative judgement about one side or the other.

The rebels in Aceh, like in many other countries, they themselves have to clean up their act if they want to take the moral high ground to argue with the government.

PALAIS Intrigue**Get Cracking**

The Commission got down to business on Friday 19 March after the end of the high-level segment. Some delegations, however, will probably need more time to adjust to the charged atmosphere of Room XVII, and will have to learn to stay on their toes. The US delegate, for example, was cut off by the Chair bang in the middle of a sentence as his allotted time ran out. Just when he was warming to his theme. If the delegation thought it would get some allowances from the Western Group Chair, it was clearly mistaken. Ambassador Smith's no-nonsense gavel strikes hard and fast.

It's Hard Being a Democracy

Speaking of pet themes, the US is pushing what it considers a brilliant idea - to invite the "democracies" in the Commission to form a Democracy Caucus. The privileged countries will then attempt to "encourage membership for other democracies", with the apparent aim of setting off a chain reaction of sorts. If only the delegation would realise how hard it will be to get India, for example, to operate outside the complex - and fascinating - machinations of the Asian Group. Or, to "encourage" Chile and Costa Rica to "discourage" Cuba from standing for membership of the Commission. And how about South Africa, which wouldn't hear a thing against Zimbabwe last year? No action, remember?

A State To Belong To

The Israeli ambassador characteristically tore into the Special Rapporteur for Palestine, John Dugard, after Mr. Dugard's presentation of his report, even as the Palestinian delegate waffled his way through a thoroughly inadequate counter-response. With the attention the Palestinian issue gets at the Commission, one would think the Palestinians would find a spokesperson who can hold his/her own against Israel with reasoned, eloquent arguments, instead of letting the rhetoric fly. Anyway, while Mr. Dugard was not allowed to give a counter-reply to the statements by the concerned countries (having arrived in Geneva ahead of schedule, and having item 8 opened specially for his benefit), he made a valiant attempt at tackling the accusations he was sure would follow after his statement. "I am not a UN official," he pointed out. "I am an independent human rights expert... I owe allegiance to only one State, the State of Human Rights."

"I have a bias, he added, "and that is towards ensuring that both Israelis and Palestinians live in peace."

EVENTS**International Commission of Jurists (ICJ) parallel events**

- Monday March 22: The separation barrier/wall in light of international law (with FIDH and Save the Children)
Room XXII, 1-3 pm

- Thursday March 25: Fundamental Challenges regarding Human Rights in Colombia (with the Colombian Commission of Jurists. Franciscans International, the Coordinacion Colombia-Europa-Estados Unidos, ODHACO)
Room XXV, 1-3 pm

TRIAL (TRack Impunity ALways www.trial-ch.org/en)

TRIAL is an NGO created in Geneva in 2002, whose aim is to fight against impunity of the perpetrators, accomplices and instigators of genocide, war crimes, crimes against humanity. TRIAL is organising a meeting on Tuesday March 23 at Uni-Mail, 40 Bd. du Pont d'Arve, Genève (Salle S160) at 18h.30.

Main speaker: Prof. William Schabas, former Chairman of the Truth and Reconciliation Commission of Sierra Leone: "Between Reconciliation and Justice: the Truth and Reconciliation Commission of Sierra Leone". (Prof. Schabas will speak in French). This is an open meeting.

Financing the Human Right to Water

With a growing world population and the already existing lack of access to water and sanitation services to everyone on the one side and ever shrinking public budgets on the other, there is need for alternative solutions in how to achieve the required investment. A panel discussion of representative experts will meet on:

Monday 22 March at the Palais des Nations, Room XXVII (Door 40)

1:00 - 3:00 pm

Introduction and Moderation: Nils Rosemann, Friedrich-Schiller-University Jena, Attorney/Consultant

Panelists:

David Boys, Public Service International (PSI), Utilities and Pensions Officer
Silvano Silvério da Costa, ASSEMAE, President (Brazil)
Joseph K. Ingram, World Bank, Special Representative to the UN and the WTO
NN, Veolia Water (formerly Vivendi Water, France) (requested)
Henri Smets, French Water Academy

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