

HUMAN RIGHTS FEATURES

Weekly series for
the 60th CHR
session

12 PAGES

A SOUTH ASIA HUMAN RIGHTS DOCUMENTATION CENTRE PUBLICATION

ISSN NO. 1541-2482

GENEVA, 19-23 APRIL 2004

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Mexican draft: No cause for objection

Arguments against the proposed appointment of an independent expert revolve around illusory obstacles

THE draft resolution of Mexico on the protection of human rights and fundamental freedoms while countering terrorism is notable this year as a resolution that seeks to address a global problem with a reasonable and workable response. The drafters' proposal to designate an independent expert for one year in order to assist the High Commissioner is a moderate one, made in a stated attempt to obtain consensus. Yet, despite the protestations of certain states that have made their obstructionist positions abundantly clear over the last four weeks, the appointment of an expert is also absolutely necessary as a bare minimum. The drafters are well aware of this, and have publicly stated that although they are eager to obtain a consensus, it is not their main aim. Such a principled stance is refreshing at this year's Commission on Human Rights.

The Draft Resolution

The general content of the draft resolution is a restatement of both the previous year and that of General Assembly resolution 58/187, and is inclusive and constructive. The US, however, was the first to raise concerns that the updating of Operative Paragraph (OP) 3, which took note

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of the Secretary General's report pursuant to General Assembly resolution 58/187 and its general contents therein, was based on only a preliminary report (addressing the limitations that presently exist at the international level, as well as proposals on future action). OP 3 was adjusted in an attempt to placate the US by "tak-

The appointment of an independent expert, as proposed by the Mexican draft resolution, is absolutely necessary as a bare minimum. The drafters have stated that although consensus is preferred, it is not their main aim. Such a principled stance is refreshing at this year's CHR.

ing into account the views expressed by Member States and pending a more detailed study", yet, at the time of writing, it is still conceivable that the US may attempt to hang its abstinence on the technical basis that the Secretary General's report is incomplete, and therefore should only be noted without reference to its general content.

The main obstacles towards consensus however derive from Operative Paragraphs 8, 9, and 10, the latter two being new additions to the earlier resolution. OP 8 again requests the High Commissioner to continue the work of examin-

ing the protection of human rights while countering terrorism, to make general recommendations regarding the obligations of States and provide assistance in that respect. OP 9 requests that the High Commissioner finalise the study undertaken pursuant to General Assembly resolution 58/187 concerning the extent to which the human rights special procedures and treaty monitoring bodies are able, within their mandates, to address the compatibility of human rights and national counter terrorism measures.

Following from this, OP 10 delivers the draft resolution's core contribution. It "decides to designate for one year an independent expert to assist the High Commissioner for Human Rights in the fulfilment of the mandate spelled out in OPs 8 and 9 of this resolution and to present to the sixty-first session of the CHR on how to strengthen the institutional mechanisms..."

The emphasis is thus on assistance. Mexico has tirelessly explained that this is not a decision in the traditional mould to establish a Special Rapporteur, but to establish an independent expert to assist the High Commissioner, and in so doing, *strengthen* the existing mechanisms already in place.

The draft resolution has received widespread support from States that appreciate its importance, including the European Union (EU) states, Canada, Norway, Switzerland, Chile and

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OP-CAT on a hot tin roof

IN recent years the Danish sponsored resolution on 'Torture and other cruel, inhuman and degrading treatment and punishment' (the torture resolution) has been adopted without a vote and this year is unlikely to be different. But with consensus comes compromise, and once again this resolution shuffles forward rather than taking the confident strides required to strengthen the prohibition on torture in the context of increasingly corrosive counter-terrorism measures.

To be welcomed is inclusion of wording recalling that the prohibition on torture is a non-derogable right that "must be protected under all circumstances, including in times of internal [or international] disturbance or armed conflict" (PP2); although it is regrettable that once again a statement of the *jus cogens* nature of the prohibition of torture in international law failed to make even Take 1 of the draft resolution. It is also to be welcomed that co-sponsors have included a new paragraph in the preamble dealing with non-refoulement: "no State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture" (Take 2, PP4).

However, on the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (OP-CAT) the resolution looks much the same as last year. Last year, the co-sponsors started optimistically, calling upon States to "consider as a matter of urgency" signing and ratifying the OP-CAT.

Australia, China, Cuba, India, Japan, Morocco, Malaysia, Pakistan, Russia and the United States may be strange bed-fellows elsewhere at the Commission, but not, it seems, when it comes to weakening the torture resolution, on which they speak as one.

Predictably, certain delegations could not live with this; to name names, Australia, China, Cuba, India, Japan, Morocco, Malaysia, Pakistan, Russia and the United States. States who may be strange bed-fellows elsewhere at the Commission, but not, it seems, when it comes to weakening the torture resolution.

By Take 4 of the draft resolution co-sponsors were desperately suggesting alternative formulations such as "as a matter of priority", "with a view to achieve speedy entry into force", and "with a view to achieve timely entry into force". In the event, co-sponsors' efforts were to no avail, the Like Minded Group (LMG) and its unlikely allies prevailed. The Commission decided not even to "take note" of the General Assembly's adoption of the OP-CAT, let alone "welcome" it, and the best the Commission could agree on, after seven rounds of negotiations, was the sterile "Calls upon States parties to *consider* signing and ratifying the Optional Protocol" (emphasis added).

Co-sponsors' suggestion this year (Take 2, OP21) is to adopt last year's language but to try again to include the words "so that it enters into force in a timely manner".

Not urgently, nor speedily, nor as a matter of priority, but "timely", whatever that means - the weakest of last year's offerings. China and Cuba were the first to get hot under the collar about the re-emergence of "timely", before Australia, the US and Russia quickly leapt to their side. According to the US delegation, the OP-CAT "lacks universality" and is

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OP-CAT on a hot tin roof...

"not quintessential". An interesting position, given that in the General Assembly 127 states voted in favour of the OP-CAT, with only four voting against.

When it comes into effect, the OP-CAT will establish a system of regular visits to places of detention to be carried out by independent international and national bodies. In practice, this means States Parties accepting unannounced visits to places of detention by these bodies. For those States that genuinely wish to take positive steps to prevent torture or ill-treatment one would expect such an instrument to be welcomed wholeheartedly. For a few intransigent States, however, the thought of unannounced visits makes hairs stand on end. They would rather see the OP-CAT put in a bag and left to drown; urgently, as a matter of priority, speedily - any of those would do.

When it comes to unannounced visits, ears prick up and certain States start to twitch like a cat on a hot tin roof. The same phenomenon occurs when co-sponsors start to talk of "standing invitations" to the Special Rapporteur.

For those states that genuinely wish to take positive steps to prevent torture, one would expect an instrument such as the OP-CAT to be welcomed wholeheartedly. For a few intransigent states, however, the thought of unannounced visits makes hair stand on end.

Last year, co-sponsors' opening gambit was bold and positive, proposing "all Governments to issue standing invitations or respond favourably". Australia, China, Cuba, Egypt, India, Malaysia, Pakistan and Russia bristled. The co-sponsors ended up capitulating to an

Australian compromise, with the Commission settling on all Governments to give "serious consideration to responding favourably".

This year the co-sponsors adopted more cautious wording, proposing that all Governments should "respond favourably" to requests from the Special Rapporteur (OP 33, Take 2). This would represent a subtle shift away from States merely giving "serious consideration" to responding favourably, instead they would be asked not to consider but to "respond favourably". Such delicate semantics ought not to create a stir, but even this is too much for some. As a result there is unlikely to be any change. Thus, whilst there are one or two welcome additions, this year's torture resolution will remain largely unchanged. The most significant omission is an unconditional endorsement of the OP-CAT. Like last year, co-sponsors will quietly slink away, leaving the LMG and its new-found friends to once again feel like the cats who stole the cream.

But as the saying goes, cats have nine lives, and there is life in the OP-CAT yet.

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Objections to Mexican draft have no basis...

New Zealand. Nonetheless, it is being stonewalled by what is now developing into an unlikely caucus of belligerents; namely China, the US, India and Australia. Their arguments against an independent expert revolve around the illusionary obstacles of time, money, inconsistency as to the express role of the expert in view of both OPs 8 and 9, and the proliferation of special procedures. Each concern has been answered competently by the Mexican delegation, yet the above States are bent on sticking to their position in order to somehow justify their opposition to the idea of an independent expert.

Bad Excuse

The argument that takes centre stage is that of the proliferation of special procedures. India has taken the position that the Commission is in the process of adding mandates when it should be trying to rationalise or streamline the process. This view is supported by China, which considers the designation of an independent expert as premature. Australia is the most explicit on this point. Its delegation declared firm support for the general thrust of the resolution before proceeding to object to OP 10 on the grounds that existing treaty monitoring and thematic mechanisms have sufficient scope to cover the issue. And the US has concluded that it would prefer to see the completion of a comprehensive study on the capabilities of the existing bodies before committing to OP 10.

How much evidence and how much "study" do these States need? Additional to the Secretary General's preliminary report as mentioned in OP3, it has been sufficiently well documented that the existing treaty monitoring bodies and Special Rapporteurs are incapable of examining and responding to the enormous increase in violations of human rights in the name of counter-terrorism.

As has been discussed in more detail before in *Human Rights Features* (see "CTC: Counter Human Rights Committee?", in *HRF* Issue 1 dated 15-21 March 2004, p. 3), treaty monitoring bodies can only cover issues relative to their respective treaties, and the reports of States party to them. State party reports are submitted on a periodic basis, and many are seriously overdue. Furthermore, the Committees are only capable of considering an average of 15 reports per year. Accounting for all other issues that need to be covered, a concluding observation by the Human Rights Committee or the Committee Against Torture condemning certain counter terrorist actions two years after the fact does not constitute an adequate response.

Likewise, all Charter-based mechanisms

are severely limited in their capabilities. Special Rapporteurs work under particularised and "circumscribed" mandates, whereby certain aspects of counter-terrorist activity may fall under several mandates, whilst others are not covered at all. Moreover, the "more humanitarian than judicial" nature of certain urgent action procedures and the ineffective means of following up on recommendations means that the input of Special Rapporteurs is peripheral.

If Australia, India and others are not convinced, they may care to consult with the Special Rapporteurs or treaty body members themselves, or direct their attention to the International Commission of Jurists papers from their 'Conference on Human Rights and Counter-Terrorism: International Monitoring Systems'. The views of Nigel Rodley, Fernando Mariño Menendez, Leila Zerrougui and Françoise Hampson may help clarify any lingering doubts. The High Commissioner's report, due for presentation before the General Assembly in October, will confirm what is already widely known. The proliferation argument is, therefore, a non-starter.

As mentioned, Mexico has emphasised the central importance of strengthening the existing system, or "filling in the holes". It is entirely reasonable to state that if there is one developing issue that needs immediate and particular attention under international human rights law, it is the impact of counter terrorist measures on the protection of human rights. It is for this reason that the majority of other Rapporteurs would gladly welcome the establishment of a Special Rapporteur on Counter-Terrorism and Human Rights. Civil society has been strongly committed to the establishment of such a Rapporteur, and certain States such as Switzerland have already expressed their support.

Mexico, however, is well aware of the Commission's present political character, and the sensitivity of the issue, and thus is only requesting an assistant to the High Commissioner for an initial period of one year. Even so, this is a bridge too far for some. And this, it should be kept in mind, derives from States that are responsible for the establishment of certain mandates, best left unspecified, that may certainly be accused of proliferation.

Other Empty Vessels

Both India and the US have also raised questions about the time available to the expert. India does not think an expert could contribute a great deal given the deadlines set. The US delegation has shown considerable difficulty in coming to grips with the idea that an independent expert could juggle a mandate incorporating both OP 9, which is finite (concerning assistance to the High Commissioner's Report to be presented before the GA in October), and OP 8, which is ongoing. The US expressed concern that certain special procedures simply "never die".

Mexico explained simply that a formal appointment of the independent expert would be made at ECOSOC in late June/early July, and that the General Assembly report was due in October, giving the expert two to three months of input. Once this part of the mandate under OP 9 was completed, OP 8 still remained, although of course this did not mean that the expert's mandate was indefinite. It would be reappraised, as OP10 explicitly states, after one year. The US, unfortunately, still appeared not to fathom precisely how this worked.

Finally, Egypt raised the issue of resources, a theme later echoed by Australia. Mexico has responded that any financial implications will be marginal. Given the seriousness of the issue at hand, it is disconcerting that States might find the funding of a single voluntary independent expert for one year to be a justifiable deterrent, raising very strong suspicions about their general commitment to the cause.

Conclusion

If the Security Council and the Counter-Terrorism Committee can come to an agreement on the need to appoint a human rights expert to the CTC, it

would be cynical on the part of certain States to oppose the designation of a single voluntary independent expert to aid the Office of the High Commissioner in its present task.

Yet as long as certain States insist that black is white, or feign incomprehension of the logic that two plus two equals four, Mexico will be compelled to carry their resolution without consensus. We can expect to hear the above mentioned delegations offer statements in the Commission explaining their abstentions or negative voting for the above reasons, all unfounded. Nonetheless, sound reasoning and the support of 56 co-sponsors, 22 of whom are Commission members, are likely to carry the day. For this the Mexican delegation must be congratulated.

In addition to the SG's preliminary report, it has been sufficiently well documented that the existing treaty monitoring bodies and Special Rapporteurs are incapable of examining and responding to the enormous increase in violations of human rights in the name of counter-terrorism.

Mexico has pointed out that any financial implications will be marginal. Given the seriousness of the issue at hand, it is disconcerting that States find the funding of a single voluntary independent expert for one year to be a justifiable deterrent, raising suspicions about their commitment to the cause.

China Dialogues: Need to revise talking terms

To succeed, human rights dialogues with Beijing must be transparent and have measurable benchmarks

ONCE again, the United States has sponsored a resolution highlighting the human rights situation in China. Similar resolutions have been introduced almost every Commission session since China's violent suppression of pro-democracy demonstrators at Tiananmen Square fifteen years ago.

The United States did not offer a resolution criticising China at last year's session because of what the US termed China's "limited but significant progress" in human rights reform.

However, the United States seems to believe the situation has changed since the 59th session. The United States' State Department spokesman Richard Boucher noted that the United States has become, "...concerned about [China] backsliding on key human rights issues..." Areas of concern include extrajudicial killings, torture, repression of religious and political groups and arrests of Internet dissidents and HIV/Aids activists. Mr. Boucher noted that despite a promise of improvements made by China in December 2002, China's human rights record actually got worse.

China's response to the United States sponsored resolution was to break off contact on human rights issues with the United States. The BBC reported that the United States' ambassador in Beijing was told China "cannot but immediately halt bilateral human rights dialogue and exchanges."

In a perfect world, the multilateral approach epitomised by the Commission would work in conjunction with bilateral human rights dialogue processes to encourage China to implement human rights reform. Unfortunately, we do not live in a perfect world.

History has shown that multilateral attempts to highlight the human rights situation in China are not effective. No resolution targeting the human rights situation in China has ever passed. Political pressure and interest in China as a potential marketplace or trade partner make it unlikely that the multilateral approach will succeed. Rory Mungoven, global advocacy director for Human Rights Watch, noted that "[a]busive governments have long used their membership of the [C]ommission to block criticism of each other's human rights records." China, as well as Cuba and Zimbabwe, have used procedural motions to block the discussion of their human rights practices.

The dialogue process is also imperfect. The United States and China have sporadically engaged in a bilateral dialogue on human rights

for the past fourteen years. The dialogue was interrupted for four years from 1995 to 1998 and resumed in January 1999. The most recent dialogue session between the United States and China was held in December 2002.

The dialogue covers a wide range of human rights topics but has no formal list of objectives or benchmarks. In addition, no official reporting of the dialogue's results exists. Government issued press releases are the only information source released to the public regard-

The history of the US-China human rights dialogues has been characterised by closed-door diplomacy and a lack of any clearly defined or measurable objectives. The lack of transparency means there is no way to ensure the accountability of the whole process. It is virtually impossible to monitor progress and assess the efficacy of the approach overall or in specific cases.

ing the dialogue's content. The dialogue's format consists of government-to-government meetings, with two or three days of formal sessions and more informal one-on-one or side meetings on particular topics.

The history of the United States-China human rights dialogues has been characterised by closed-door diplomacy and a lack of any clearly defined or measurable objectives. The lack of transparency means there is no way to ensure the accountability of the whole process. It is virtually impossible to monitor progress and thus assess the efficacy of the approach overall or in specific cases. The lack of clear benchmarks for acceptable progress, or a time frame within which certain measures should be taken, cloud the dialogue process.

The abovementioned issues are not restricted to the human rights dialogue between the United States and China. China has intermittently engaged in such dialogues with Australia, Brazil, Canada, Chile, the European Union, Germany, Hungary, Norway, Switzerland, Japan and the United Kingdom. Dialogues between China and these other states are plagued by similar problems.

The dialogue process may be the most appropriate approach to encourage improvement of China's human rights situation. Clearly, states and the Commission are not prepared to utilise multilateral approaches.

However, at this time, the dialogue process is not functioning effectively. Even outside observers have expressed concern about the dialogue process. Human Rights Watch notes there "is growing debate about the efficacy of the [dialogue] process." Now is the time to revise the bilateral human rights dialogue to encourage true reform of China's human rights situation.

Revisions to the bilateral human rights dialogue process should include concrete and measurable benchmarks, transparency and accountability within the process and the involvement of international NGOs, independent Chinese scholars, lawyers, activists and other individuals in the process.

First, concrete and measurable benchmarks must be added to the dialogue process. Generally, there are no publicly stated benchmarks and irregular or non-existent evaluation programs. While the European Union and the United Kingdom announced some benchmarks, neither have a stated timeframe for fulfillment nor a formal evaluation program.

Benchmarks should be specific and relate to action by China rather than agreements to talk about an issue, provide information or accept visits from partners. Failure by China to meet the objectives must be accompanied by a dialogue partner's willingness to seek alternative measures.

Second, transparency and accountability within the process is essential. From the bilateral dialogue's origin in 1990 to the present, only the participant states have been in a position to describe and review the dialogue session's outcomes. The general theme has been of a process "behind closed doors."

A review of the press releases and other statements by China and the United States demonstrates that each country refrains from describing specific results or outcomes. There is no way for the UN, the international community or human rights activists in either country to know what is or is not happening at the dialogue sessions. Transparency and accountability may be accomplished if independent, accountable bodies conduct regular, scheduled, transparent evaluations of the dialogue's efficacy. The results of this evaluation must then be publicly reported.

The lack of transparency, independent reporting and accountability makes it imperative that independent, accountable bodies conduct regular evaluations to determine the efficacy, or

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Impunity in the CHR: A challenge for Ms. Arbour

ADRIEN-CLAUDE ZOLLER

RWANDA, ten years ago. On 7 April 2004, the Commission on Human Rights devoted a special meeting to mark this shameful anniversary. A few days later, it returned to business as usual. During this special meeting to mark the International Day of Reflection on the 1994 Genocide in Rwanda, Secretary-General Kofi Annan launched an Action Plan to Prevent Genocide. He insisted that 'no one should ever forget the collective failure to protect at least eight hundred thousand defenceless men, women and children who perished in Rwanda', that 'all should acknowledge their responsibility for not having done more to prevent or stop the genocide'. He further stated that 'when asking "why did no one intervene?", the question should be addressed not only to the UN, or even to its member States'. In this connection, Mr. Annan voiced his grave concern at the scale of reported human rights abuses unfolding in Darfour, Sudan.

During the same celebration, African Group Coordinator, Ambassador Roger J. Menga (Congo), reminded the delegates that in 1993 the Special Rapporteur on extrajudicial executions had visited Rwanda; that his report to the Commission described the preparation for the genocide; and that

no measures had been taken during the 1994 session. He invited 'the international community to reflect on the profound causes of this collective failure to protect humanity from this odious crime, and to learn from it. All should be vigilant, he said, to ensure that such situations were not repeated'.

Kofi Annan hardly had left Geneva when the Governmental delegations entered in the process of voting draft resolutions under item 9 of the agenda dealing with cases of flagrant and massive human rights violations. The draft resolution on Chechnya obtained 12 votes (out of 53), with the Cuban Representative stating that 'there are no human rights violations in Chechnya'.

Showing that it had not learned the lesson from the Rwanda tragedy, the African group of member States, under the leadership of Ambassador Menga, continued to oppose any country resolution under this item. No draft was tabled on the situations in Burundi and in Congo-DRC, and the mandate of the Special Rapporteurs on these countries were therefore terminated. Over the last few years, four to five million persons have been killed in the DRC, and then the Commission terminates its mechanism. No single State introduced a draft on Iraq. Motions of no action were introduced and accepted concerning the situations in China and in Zimbabwe.

And the huge delegation of China (occupying most of the seats for NGOs and press) simply proposed to delete item 9 from the agenda. Business as usual.

In the Commission, African (15) and Asian (12) member States have the majority. With the support of Cuba and the Russian Federation, they constitute a powerful group opposing systematically each country resolution, except for the Arab Occupied Territories. The African Group demands that all these resolutions be examined under 'advisory services' and 'technical assistance' (item 19 of the agenda). But technical assistance will not stop the killings in the DRC, the ongoing ethnic cleansing in Sudan, or bring President Mugabe to suddenly understand the value of human rights standards.

States don't like scrutiny, more so for those where systematic human rights abuses exist. They try to avoid condemnation. Over the years, having learned the rules of the game, these regimes have multiplied diplomatic initiatives and got themselves elected to the Commission to protect themselves. Most argue that public condemnations are counter-productive, but at the same time they oppose decisions under the confidential procedure. They use the Commission as a Chamber of Impunity. Exit Mr. Kofi Annan and the fine statements of 7 April!

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GOOD GOVERNANCE

Development in the Solomon Islands

KATHY RICHARDS

IN the last decade, multilateral and bilateral overseas development programs have considerably increased their focus on fostering good governance. Yet good governance, in both theory and practice, has come to embrace a wide range of diverse and sometimes conflicting approaches. Internationally, there is a high degree of ambiguity and inconsistency on the understanding of 'good governance' in a development context. Investments in good governance development activities need to be focused on building the capabilities of the state on various levels. This requires a whole of society approach, working at the community level, addressing problems in poor corporate governance, assisting to improve national government structures and confronting poor global governance practices. Therefore good governance development programs must not only focus on supporting government to operate with transparent and accountable systems. These development activities must also build the capacity of communities from the ground up to hold their government accountable and demand protection for their fundamental rights.

Governance is more than the operations of government. Governance refers to how civil society, government, the business sector and all other institutions and bodies interrelate to manage their affairs. Governance systems need to operate at all levels, from the local and national, to the transnational and global.

Good governance is where there are transparent and equitable systems, clear lines of accountability that outline everyone's responsibility in the community, effective participation and representation of civil society - including the poor and marginalised, and the capacity to be responsive to all people's rights and needs, in a sustainable manner. Good governance is important for ensuring that a state's political and economic activities benefit the whole of society, not just selected groups of individuals.

The governance issues facing communities in the Pacific Islands are complex. Poorly functioning post-colonial government structures, grand and petty corruption, lack of skills in the public sector, misappropriation of public funds, inadequate representation of communities, gender inequity, lack of basic service delivery - these are some issues in the Pacific Islands depreciating the standards of governance. In any development program for Pacific Islands these issues must be understood, as poor governance reduces the sustainability of development assistance and infringes on the protection of human rights.

Good governance agendas for the Solomon Islands

The Solomon Islands represents a diverse and disparate archipelago with approximately 80 different language groups in current use. Most Solomon Islanders are aligned to their clan or village, rather than identifying themselves as Solomon Island nationals. Each clan or village developed unique systems of ensuring social order and organisation. After being granted independence from the British in 1978, the newly unified state of the Solomon Islands was left with an imposed Westminster system of government, in which there was no consideration given to traditional or indigenous governance systems. Consequently the Solomon Islands were governed by an ill-fitting and inexperienced national government, administration and judiciary structure. Gordon Leua Nanau soberly suggests from the first day of independence there was "frustration, confusion and desire by distinct groups to secure more power and to be autonomous". National governing structures were seen as 'alien bodies', operating externally from the communities' needs and rights. Western coordination for community participation and liaison with government conflicted with tradi-

tional systems that were used for the diverse ethnic groups to discuss and arrive at consensus on matters of importance.

Over the decades since independence the Solomon Islands' government and communities have increasingly become divided by long standing ethnic tensions, aggravated by spiraling economic crises. Heavy borrowing and mismanagement of natural resources throughout the 1990s left the country with an uncertain economic future. By 2000, conflicts between Islanders from Malatia and Guadalcanal had resulted in the internal displacement of tens of thousands of persons and created a severe breakdown in law and order.

This served to intensify the serious government instability and further weakened a volatile economy as foreign investment dried up. In response to an appeal for assistance from

While good governance programs in the Solomon Islands, and the broader Pacific region, continue to rely on top-down reform strategy, a grim prediction of unsustainable outcomes will remain highly likely. To address this inconsistency, donors must seize the opportunity to move towards a balance between necessary government and institutional reform, and community participation and representation.

the Solomon Islands' Prime Minister Kemakeza, an Australian-led coalition launched a Regional Assistance Mission in Solomon Islands (RAMSI) in August 2003 to address the perpetual violence and lack of law and order plaguing the island communities. The operation also committed to long-term reform of the flagging public sector, weak economy and failing judiciary. Given the problems facing the Solomon Islands, is the RAMSI good governance agenda its modern-day development panacea?

Development that aims at attaining the attributes of good governance and protection of human rights must focus on a balance of two broad types of programs. First, citizens and communities - especially the marginalised and disenfranchised - need to be empowered to demand good governance. 'Demand-led' programs work from the ground up to foster the capacity of communities to hold their own governments accountable for delivery of basic services and protection of human rights.

In parallel, 'supply-side' programs help to build the necessary structures or systems - for instance programs to address judicial reform, eradicate corruption from the public service, provide public access to information on budgetary spending or assist with holding fair and equitable elections. These programs are more likely to be top-down programs, aimed at personnel in middle to senior levels of bureaucracy or government.

As a process to achieve an end goal of eradicating poverty and upholding human rights, good governance strategies must focus on both 'supply-side' and 'demand-led' governance programs. Yet while both types of governance programs are important and necessary for long-term impact, the current emphasis from donors is on 'supply-side' programs.

It is indisputable that institutionalising good governance requires government ownership and cooperative political will. Building structures to promote (for instance) sustainable macro-economic growth is vital for the Solomon Islands, where the economy is fragile and weakened through decades of mismanagement and corruption. However, an inundation of 'supply-type' programs risks omitting local support or understanding of reform. It also risks imposing outside donor agendas on Solomon Island communities that conflict with the traditional means of livelihood and lifestyle for local citizens. Top-down policy, the conventional wisdom of good

governance strategies, maintains, according to Jane Prasetyo, a "primacy on the role of the state and the external energies that can be applied to a community" even if positively working with civil society as a voice for citizens. In contrast, well-researched, long-term community-level governance can be a 'by-the-people' process, able to foster the inherent capacity and 'internal energies of the community'. Ted Cnossen suggests that civil society in the Solomon Islands can act as a 'safeguard for good governance' by informing citizens of the types of economic policies being pursued. Governance activities must augment the processes for hearing the voices of Solomon Islanders - especially the marginalised - on the issues that impact on their lives.

This all leads to the imperative for the governance debate to expand the crucial role that the civil society of the Solomon Islands plays in building good governance. Civil society lies at the cornerstone of demanding and securing transparency, accountability and equity. Furthermore, civil society involvement in governance reform offers the opportunity to highlight the specific issues of gender, religion and culture within Solomon Island communities, rather than adopting a one size fits all approach.

The concerns of the inconsistency and flaws of a good governance agenda imposed on the Solomon Islands have been documented by academics and development practitioners, but more importantly local communities themselves have expressed concerns. While tentatively welcoming interventions to curb law and order problems, Solomon Islanders working in development have been left disenfranchised, ill-represented and frustrated with the burden of a social reform agenda that is not owned by the local community.

Meanwhile, the power dynamics between those elites who benefit from the current poor governance systems, and the wider population have not been addressed. These divisions between urban and rural, and elite and impoverished populations will not only remain but may continue to worsen if the current governance agenda rests on institution building or financial reform. If donors are committed to achieving long-term sustainable development in the Solomon Islands, then traditional means of trade, communication and representation must be included in the agenda for building good governance.

It is undeniable that poor governance restrains and obstructs the positive impact of development assistance and increases the risk of human rights violations. A holistic approach to development assistance to address the human rights violations of poverty and marginalisation must inevitably demand systems that uphold good governance. Yet it is imperative that any strategy to build transparent, accountable and participatory systems commences with a clear focus on the involvement and representation of local civil society.

While good governance programs in the Solomon Islands, and the broader Pacific region, continue to rely on top-down reform strategy, a grim prediction of unsustainable outcomes will remain highly likely. To address this inconsistency, donors must seize the opportunity to move towards a balance between necessary government and institutional reform, and community participation and representation. Only by offering a means for Solomon Islanders, including the poor and marginalised, to make a contribution alongside government and donors in the decision-making processes affecting their lives can the good governance agenda build real human security, protect human rights and achieve lasting change.

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Conformité, Égalité, Fraternité?

New French law confuses secularism with paternalism

ON 15 March 2004, French President Jacques Chirac promulgated the Law (2004-228) Delineating in Application of the Principle of Secularism the Wearing of Signs or Dress Manifesting Religious Belonging in State Schools, Medium Schools and High Schools. In article 1, law 2004-228 stipulates: "In state schools, medium schools and high schools, the wearing of signs or dress through which pupils ostensibly manifest religious belonging is prohibited. The internal code recalls that the application of a disciplinary procedure is preceded by a dialogue with the pupil."

This law, and the three-month long debate that preceded it, have occasioned much controversy abroad. In France, the debate has focused on the role of secularism in combating 'communitarianism'. The law restricting the wearing of religious signs purported to address the rising tide of intolerance and re-establish French unity. In the end, however, it makes a mockery of secularism, hampers freedom of religion and further marginalises the Muslim community in expectation of short-term political gains.

The right to manifest one's religion

The ban unquestionably breaches fundamental human rights standards. This is so obvious that the beginning of the operative paragraph as proposed by the Commission on the Application of the Principle of Secularism in the Republic (Stasi Commission), which started with the words "in respect of freedom of conscience", was amended. Every French citizen has the right to choose freely how to manifest his or her religion - in private or in public - subject only to reasonable limitations. This is the separate effect both of Article 18 of the International Covenant on Civil and Political Rights (ICCPR), to which France acceded on 4 February 1981, and of Article 9 of the European Convention on Human Rights. The wearing of a religious symbol - even a conspicuous symbol - falls squarely within the conventions' very general contemplation of the manifestation of religion in worship, practice and observance. The Human Rights Committee confirmed this in its General Comment 22 of 30 July 1993. In considering Article 18 of the ICCPR, the Committee commented: "The observance and practice of religion or belief may include not only ceremonial acts but also such customs as... the wearing of distinctive clothing or headcoverings..."

Legislating on the wearing of religious signs is not in and of itself contrary to human rights standards. However, under both the ICCPR and the European Convention, such a draconian restriction, as the one adopted in the French text, can only be justified on the basis that it protects the rights or freedoms of others, or that it defends public safety, order, health or morals. In its General Comment, the Human Rights Committee cautioned that this exception "is to be strictly interpreted... Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated."

But one can also find a specific condemnation of the terms of Law 2004-228 in French legislation itself. In November 1989, the Conseil d'Etat, or the Council of the State - which acts as the supreme administrative judge and an adviser to the Government - assessed whether the wearing of religious signs in schools was compatible with the principle of secularism. First, it recalled children's right to education and the right to freedom of conscience entrenched in both national and international law. Second, it ruled that reli-

gious signs were not incompatible with secularism and set the limits and the circumstances in which religious signs could eventually be prohibited. Then, the advice of the Conseil d'Etat stipulates: "The freedom recognised for pupils includes their right to express and manifest their religious belief inside educational infrastructures, in respect of pluralism and the freedom of others and without hindering teaching activities, of the content of programmes and of the obligation of assiduity." In other words, the Conseil d'Etat considered that the wearing of religious signs was not incompatible with secularism or public order unless it was accompanied by an act of "pressure, provocation, proselytisation or propaganda".

Of course, it is no answer that Mr. Chirac and his supporters concede to all students the right to wear discreet symbols of their faith (such as a small Christian cross, Hand of Fatima or Star of David). A small Islamic pendant forms no consolation for any Muslim girl who wishes to cover her head, a Star of David no comfort to a Jewish boy who seeks to wear a yarmulke. If the French Government were truly committed to the ideal of secularism, it would respect the fundamental secular standard - that the state cannot demand that any individual surrender an unobtrusive religious observance for a practice that the state paternalistically deems to be merely good enough.

But let us, for the sake of the argument, accept the rationale of the proponents of the law - namely, that ostensible religious signs do breach and disrupt public order - and scrutinise its logic. Then, a number of questions arise: If it was to protect secularism, why limit the application of the law to schools and not include institutions of higher education, which are also governed by the principle of secularism? The Stasi Commission pointed to the particular environment of schools, of both high social interaction and of socialisation and education. If religious signs disrupt public order in schools more particularly, why limit a ban on pupils only and not on teaching and administrative staff? If the intention was to protect women's rights - as is often claimed - why ban the headscarf only in schools and not generally? Surely young women would be oppressed and discriminated against as soon as they left the protective walls of schools. In short, the legislation cannot be justified as being directly related and proportionate to any legitimate specific policy objective. The French Government's unwieldy and nebulous assertions of public benefit cannot be squeezed through these narrow criteria. Indeed, proponents of the legislation have hardly even tried. Instead, they have contented themselves in making inflammatory comments, often conflating conservative Islam with Muslim militancy.

Politicisation of intolerance and prejudice

In 1992, school directors had been empowered to ban any headscarf they considered to be "aggressive or proselytising" leading to the much-publicised expulsions of Muslim girls who had refused to comply. With the rise of anti-Muslim sentiment, anti-Semitism, and xenophobia due to prolonged economic depression and international tensions, headscarves became the symbol of the perceived regressive nature of immigration and Islam. The increasing occurrence of expulsions of Muslim girls and the perception that schools had become the theatre of

societal conflicts, led the President of the Republic to appoint the Stasi Commission). The Stasi Commission echoed the prevailing mood: "Today, it is not anymore a question of freedom of conscience, but of public order. The context has changed over the years. The tensions and conflicts in educational institutions around questions of religion have become too frequent. The normal occurrence of teaching is not ensured. Young girls are pressured into wearing religious signs". In this context, the wearing of headscarves was constructed as an act of defiance against public order. The Stasi Commission itself pointed out that the problem of ostentatious religious signs had received excessive media attention and noted other problems leading to pupils leaving schools for religious motives.

But more than media attention, it is the failure of the state to act effectively in promoting integration of immigrant communities and their equal treatment in the social, economic and political spheres that made the exercise of one's religion an uncivil act. Even the Stasi Commission noted this, in its own paternalistic way, stating: "The veil offers [young girls] the protection that the State should have guaranteed them." In other words, Law 2004 is really just the admission by the State of its incapacity to mitigate outright discrimination in society and promote understanding and tolerance.

Short-term political interests compounded the failure of the State. At a time when the Government was facing increasing public dissatisfaction regarding economic performance and the direction of reforms, the ban on ostensible religious signs attracted widespread support across the political spectrum at the expense of the Muslim community. (The Cabinet however has just been refurbished by the President following the Government's electoral defeat in

regional elections). Jean-Claude Casanova in the columns *Le Monde* noted: "a simple political calculus inspires this law: voters on the left are wary of religion, those on the right are hostile to immigration. Everyone will be satisfied because it is about religion and Muslim immigration." The proposal was debated and approved in the French National Assembly and the Senate with an overwhelming majority. Because it could not promote tolerance and fight discrimination effectively, the State sought to ban the symbols that identified in the eyes of everyone the communities that were marginalized and ostracised. In fighting 'communitarianism', the Government would however promote the stigmatisation of the Muslim community and hindered further their integration. It would achieve one thing: rallying an electorate around the banner of 'us against them'.

Religious equality

The professed motivation for President Chirac's proposal is to ensure that French society treats different religious groups equally. The proposal itself, however, amounts to nothing less than discrimination on religious grounds. First, even if the legislation treats different religions the same, this does not amount to treating different religions equally - because different religious traditions make different demands on their followers, and the individual right to manifest one's religion embraces these differences.

For example, any analogy drawn between proscribing a conspicuous Christian crucifix and a Muslim headscarf is false - the former is generally worn as a matter of religious expression, while the latter is often worn as a part of strict religious adherence. The ban is

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KAZAKHSTAN

In reverse, and heading downhill

Kazakhstan's 'irreversible' human rights policy is in fact quite flexible

LOCATED in the midst of the Central Asian steppe, Kazakhstan is recognised as Central Asia's most economically successful republic. The country has received international praise for economic and political reform as it makes a transition towards a market-based economy. And as time goes, by the 'land of Kazakhs' becomes increasingly important to both the world community and the stability of Central Asia itself.

In his opening statement to the Commission on Human Rights this year, Mr. Kassymzhomart Tokaev, Kazakhstan's Minister of Foreign Affairs, reaffirmed his country's commitment to democracy, fundamental freedoms, and Kazakhstan's obligations under international law. The Minister stated, that "although facing a number of challenges and difficulties, [Kazakhstan] has firmly embarked on the path of promoting basic human rights." He added, "this policy is irreversible."

It is true that significant steps have been taken to promote human rights within Kazakhstan. Two recent examples include criminalising human trafficking and Kazakhstan's accession to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights in December 2003. Steps have been taken, but fundamental problems remain. Chief among them is the lack of freedom of expression.

The Deterioration of Media Protection

A new draft media law was formally introduced to Parliament on 21 October 2003. After months of negotiation the controversial draft law was approved by Parliament on 18 March 2004, and waits to be signed into law by President Nursultan Nazarbayev.

The new media law has been severely criticised by the international community and has been characterised as a retrograde step for Kazakhstan's media protection. According to Article 19, a UK-based media freedom NGO, the new media law "retains virtually all the defects of the previous draft, and adding to these a number of serious new defects, inimical to freedom of expression." Letters of concern have recently been sent to President Nazarbayev by both the Organization for Security and Cooperation in Europe (OSCE) and the US State Department.

It has been reported that on 23 December 2003, President Nazarbayev scoffed at the OSCE's invitation to assist with and ensure the draft law's compliance with international human rights standards. Nazarbayev has reportedly stated that the international community should "not dictate which laws to pass and which laws to reject." The President has further rationalised this position by attempting to connect such international action to control over the country's internal affairs. Yet, this justification lacks credibility given Kazakhstan's recent accession to ICCPR. For, if Kazakhstan did not wish to uphold or subject the country to the tenets and protections embodied in ICCPR, one must wonder why they acceded to the Covenant in the first place.

One of the most fundamental problems with the new media law is the process of registration and journalist accreditation. Under Article 33(4), journalists who derogate the "honour and dignity of the government agencies, public associations and organizations that accredited him/her" risk losing their accreditation.

The problem with such an ambiguous stipulation is that the new media law does not tie the use of this principle to published information that is false. The new law's lack of clarity on this issue unfortunately opens the door to potential abuse. When the new laws are implemented, a

journalist will risk the loss of his/her accreditation for publishing material that defames the honour and dignity of government officials - even if it is true. Furthermore, an additional provision gives government agencies an unbalanced right to refute statements made by the media. Under Article 29(7), public officials are given the right to respond to "information containing analysis or evaluation of imperfect activities of public agencies or officials."

Similar to Article 33(4), Article 29(7) does not ensure that the law applies only to information that is false. Thus, public agencies or officials enjoy the right to publicly refute statements even if the information that was published is true or justified. Problematically, journalists do not enjoy the right to publish a

The fact that the new media law is a retrograde step is illustrated by the lack of protection it provides against media monopolies. A previous law on mass media, promulgated in 1991, prohibited such activities. Another example is the new law's prohibition of foreign-based editors, some of whom no longer live in the country due to their treatment by Kazakh authorities.

response to the public official's refutation. Unfortunately, such legislation lacks equitable accountability and does little to ensure and protect freedom of speech and the integrity of journalists. Rather one can argue that Article 29(7) promotes government impunity.

The fact that the new media law is a retrograde step is also illustrated by the lack of protection it provides against media monopolies. A previous law on mass media, promulgated in 1991, prohibited such activities. Another example is the new law's prohibition of foreign-based editors, some of whom no longer live in the country due to their treatment by Kazakh authorities. All things considered, the new media law is a backwards step in Kazakhstan's "irreversible" human rights policy.

An example of the mistreatment of the press is the harassment of editor-in-chief of the Assandi Times, Irina Petrushova. A warrant issued by the Kazakh authorities lead to the arrest and detainment of Ms. Petrushova by Russian police in March 2004. She had left Kazakhstan in 2002 to avoid harassment, but still faces intimidation in Russia. The Assandi Times office was firebombed and the journalist was sent a funeral wreath.

Treatment of Outspoken Journalists

The government's tight control over free speech is exemplified by the country's treatment of Sergei Duvanov, the chief editor of *Human Rights in Kazakhstan* and the *World* (a news bulletin published by the Kazakhstan International Bureau for Human Rights and the Rule of Law (KIBHRL)). Mr. Duvanov, an individual known for his criticism of the President, was the subject of two official investigations in 2002.

The first investigation, which began in July 2002, accused Mr. Duvanov of publicly defaming the President, an illegal act under Article 318 of the country's criminal code. The investigation itself was focused on an article published by Duvanov on an opposition party's website on 6 May 2002. In the article, Mr. Duvanov repeated allegations that the President

was involved in laundering over US \$1 billion from the state's oil revenues to various Swiss bank accounts. This followed a US Federal Court's indictment of James Giffin, merchant banker, for his alleged role in laundering money from Kazakhstan's oil revenues to high-ranking Kazakh officials in April 2002. Proceedings were dropped on 3 October 2002.

The second investigation involved accusations that Duvanov raped a fourteen-year old girl. He was officially charged on 6 November 2002, and convicted of statutory rape and sentenced to three and a half years in prison on 28 January 2003. The conviction sparked an outcry by the international community, already skeptical of the rape charge, its timing and its relation to freedom of expression. A long list of international organisations including the OSCE, European Parliament, US State Department, Human Rights Watch and Reporters Without Borders have all expressed concerns over the fairness of Mr. Duvanov's trial. The head of KIBHRL and one of Duvanov's lawyers, Evgeny Zhovtis, characterised the trial as a "political sentence." Reports indicate that out of the 91 motions made by the defence over procedural violations, the court upheld zero.

Moreover, the UN Special Rapporteur on freedom of expression sent two urgent appeals concerning the actions taken against Sergei Duvanov in 2002. It appears to be more than a mere coincidence that the rape charges were filed just one day before Mr. Duvanov was scheduled to leave the country to report on Kazakhstan's human rights record in the United States. International pressure seems to have paid off, however, as Duvanov was released from prison on 15 January 2004. He now remains under restricted house arrest.

A more recent example of the mistreatment of the press is the harassment of journalist and editor-in-chief of the *Assandi Times*, Irina Petrushova. A warrant issued by the Kazakh authorities lead to the arrest and detainment of Irina Petrushova by Russian police on 9 March 2004. The journalist left Kazakhstan in 2002 to avoid similar harassment, but still faces intimidation in Russia. The office of the *Assandi Times* was firebombed and the journalist was sent a funeral wreath in 2002. Irina Petrushova continues to edit the *Assandi Times* from Moscow.

An Irreversible Policy?

Given Kazakhstan's record of media freedom, one should heed the country's pronouncements with caution. A perfect example, as announced by Foreign Minister Tokaev at the start of the Commission, is Kazakhstan's policy of individual human rights engagement.

Kazakhstan's basic policy "with regard to those states that are making efforts to improve their human rights situations...is to encourage those efforts rather than condemn any shortcomings." Yet, one must ask whether the Kazakh government has made any "real" efforts to protect media freedom or whether the state's reduction in media protection is masked by other so called "efforts." An equally important question is how a step backwards can be recognised as a step forward in relation to Kazakhstan's "irreversible" policy?

The statement made by Mr. Tokaev should be read as an attempt by Kazakhstan to curtail international criticism and mask pertinent abuses and governmental control. Unfortunately, the Foreign Minister's statement embodies the politicisation and "picking and choosing" of human rights issues that plague the Commission. What the international community should continue to do is follow the suggestions made by Mr. Tokaev himself and give "responsible and down-to-earth recommendations" by calling Kazakhstan's new media law what it is - a retrograde step.

SINGAPORE

Song and dance about bar-tops and freedom

SINGAPORE believes it has finally made the city-state an even better place to live in. It has achieved this extraordinary distinction by legalizing the apparently innocuous activity of bar-top dancing. Dance on bar-tops, it appears to say, if you want to know what "liberalisation" feels like.

Singaporeans, one might imagine, would be jumping, or rather dancing, for joy. But are they?

Singapore is one of the least democratic countries in Asia. The proddings to its citizens to go out and have fun is only the voice-over for the actions of an authoritarian State that does not permit its citizens to speak their mind. This is how Singaporeans want it, the authorities argue. A paternalistic State that treats them like school-children, telling what to do, when and how. And more importantly what not to do.

It is just that nobody knows what Singaporeans want, because Singaporeans can't talk about it.

Singapore's human rights record is deplorable. And the recent legalisation of bar-top dancing, bungee jumping and employment of homosexuals is being seen as an attempt by the ruling People's Action Party (PAP), to mollify the few that dare to voice agitation over the deplorable human rights violations that occur on a daily basis in Singapore. Predictably, all these 'liberalisation' measures are superficial, doing nothing to change what really ails Singapore - the lack of popular participation in political, economic and social issues.

The Constitution of Singapore grants freedom of speech, association and assembly to citizens. However, according to the Public Entertainment Act, Singapore's citizens are obliged to apply for a permit in order to make a public speech. It is a peculiar contradiction, which makes one wonder about the abilities of those governing 'Asia's gilded cage'.

A non-adversarial and pro-government media is the only kind that is tolerated and allowed to function (see box). Only state sanctioned companies are permitted to operate all broadcast television channels and almost all radio stations. The British Broadcasting Corporation (BBC) World Service, was the only radio station fully independent of the Government. However, this was short-lived as the government also banned satellite dishes.

Death Penalty

The use of the death penalty in Singapore of particular concern. Singapore's Misuse of Drugs Act contains several clauses which are inconsistent with the universally guaranteed right to presumption of innocence, and allows for a mandatory death sentence for at least 20 different drug-related offences. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has articulated concern about these articles and has appealed to the government to amend the Misuse of Drugs Act in order to bring it into line with international standards. Similar suppositions of guilt are also included in the Arms Offences Act.

The Government of Singapore maintains that the use of the death penalty is not a human rights issue, and has defended its position that executions have been effective in crime prevention, particularly drug trafficking.

In 2002 the Government of Singapore criticised the work of the Special Rapporteur, claiming she had "repeatedly exceeded her mandate and degraded the credibility of her office" when she articulated concern about the case of two men facing the death penalty for drug trafficking.

Despite this the Singaporean authorities have claimed, "Singapore recognises that the death penalty is a severe penalty and cannot be remedied in the event of any mistake in its application. That is why we have used it sparingly and only for the most heinous crimes."

The 59th Session of the UN Commission on Human Rights adopted a resolution calling

for a moratorium on executions and asserting that the abolition of the death penalty aids the progressive development of human rights. Singapore has since signed a statement registering its opposition to the resolution.

In a BBC interview in September 2003, Prime Minister Goh Chok Tong stated that 70 or 80 executions had been held last year. He allegedly added that he was unsure of the precise figure because he had more important issues to worry about. The Singaporean government subsequently declared the actual figure to be ten.

In response to questions about the death penalty Wang Kai Yuen (Chairman of the public

Far cry from 'freedom'

MEDIA freedom is further restricted by the fact that all of Singapore's newspapers are owned by Singapore Press Holdings (SPH), a private holding company with close ties to the PAP. One journalist recently remarked that "[w]here the issue in question is one over which the government has taken a determined stand, there is no doubt whose view will prevail. Should any journalist feel that he cannot accept such an outcome, then resignation is the only honourable course open to him. This is just one of the harsh realities which the press faces here."

In November 2003, Minister for Information, Communications and the Arts (MITA) Lee Boon Yang illustrated this point clearly when he was quoted as saying that local journalists need to remain firm in serving the national interest and "to attract more international media". Obviously unafraid of appearing inconsistent, he went on to issue warnings to foreign journalists, saying that the local media should not be used to amplify their ideas of government and media policies.

feedback committee) maintained that "any change in Singapore government policy will depend on the response of its citizens, in this case the use of the death penalty as a deterrent, we haven't got strong feedback from the residents or citizens of Singapore that would cause us to call for a review of this problem". Easy to say when the authorities continuously suppress all debate on the death penalty.

According to a recent Amnesty International report more than 400 prisoners have been hanged in Singapore since 1991, possibly the highest execution rate in the world relative to its population of approximately four million people. The majority of those executed were on charges of drug trafficking while others were executed for murder or firearms offences. These offences bear a mandatory death penalty, meaning that trial judges have no alternative but to impose a death sentence on those who are found guilty.

Amnesty International has condemned the fact that official information about the death penalty in Singapore is "shrouded in secrecy". Some executions, but certainly not all, are reported in the media, and state control of the media and civil society limit freedom of expression, thereby impeding the independent monitoring of human rights, and of the death penalty.

In response to this Amnesty report, a spokesperson for the Ministry for Home Affairs commented that "it is widely recognised that Singapore has one of the most fair and transparent legal systems in the world. All trials involving capital cases are tried in an open court and reported in the press... Furthermore, no person is executed until all avenues of appeal for clemency have been exhausted".

Although the Government of Singapore has not released figures for the number of foreign nationals executed in recent years, the total number is understood to be disproportionately high. Amnesty International recorded, a total of 174 executions between 1993 and 2003 (from media reports), the number of foreign nationals in this total was 93, accounting for more than half of the total.

Several of those executed are thought to have been migrant workers.

Foreign nationals sentenced to the death penalty are faced with additional obstacles threatening their fundamental right to life and a fair trial. For example, they may not always have an understanding of the laws of the country where they are on trial, and they may have problems in comprehending the charges brought against them or participating in the proceedings if interpretation services are inadequate.

Vignes Mourthi, a 23-year-old Malaysian national, was arrested while carrying approximately 27 grams of heroin. At his trial he stated that a friend, Moorthy Angappan, had asked him to carry the bag from Malaysia to Singapore, on his daily commute for work. He stood by his initial claim that he was ignorant of the bag's contents.

Amnesty International expressed concern about the number of alleged indiscretions during the trial. On 25 September 2003, Chief Justice Yong Pung How rejected Mourthi's final appeal for a re-trial, on the basis that the case had previously been dealt with by the courts, and therefore could not be reopened. He apparently told the lawyer, "You can say he is an innocent man, but as far as the law is concerned, he has been found guilty and convicted. You better say goodbye to him, that's all you can do." Vignes Mourthi and Moorthy Angappan were hanged the following morning at dawn.

The emerging consensus view under international law is that the death penalty is not acceptable under any circumstances. But let us examine the consequentialist justification proffered by the Government of Singapore.

The Government of Singapore has argued that the death penalty has served as a deterrent to drug dealers and users, reporting a general decline in the number of drug abusers arrested between 1994 and 2001. Nevertheless, drug addiction continues to be a problem, especially among the most marginalised or vulnerable members of society, in spite of the use of the death penalty and the high execution rates.

The use of the death penalty as a means of punishing drug abuse and trafficking is absurd. Execution is in no way going to prevent drug abuse, trafficking and related crime. The only effective way to deal with these social problems is to address the underlying reasons for drug abuse, trafficking and related crime in Singapore. There is an urgent need to tackle the social conditions, which cause and support drug abuse and addiction, rather than employing executions as the only "solution".

The fact remains that all justice systems are at risk of error in imposing the death penalty. In the United States for example, 107 prisoners have been released from death row since 1973 after evidence emerged of their innocence. Other US prisoners have been executed despite serious doubts over their guilt.

A spokesperson for the Ministry of Foreign Affairs commented: "It is widely recognised that Singapore has one of the most fair and transparent legal systems in the world... Most Singaporeans know that our tough but fair system of criminal justice makes Singapore one of the safest places in the world to live and to work in."

Safe for whom? The death penalty is used with frightening frequency and there is no evidence to suggest that it deters crime in any way. Crime is related to other social problems such as poverty, drug abuse, unemployment and the disintegration of the family, issues which cannot possibly be solved by executions. The authorities exercise total control over every facet of civil society, and this domination even extends to members of the political opposition. Media freedom and freedom of expression in general is repressed to the point of non-existence, and lame attempts at "liberalisation" such as the establishment of a Speakers Corner - subject to terms and conditions.

The legalisation of bar-top dancing and bungee jumping is fooling no one.

FEEDBACK

'How to be a national institution - no fixed model'

IN *Human Rights Features* 13-18 April 2004, p. 5, under the headline "How not to be an NHRI", it is claimed that the Danish Institute for Human Rights, because its mandate to hear complaints is restricted to cases involving discrimination on the grounds than race or ethnic origin only, can not be said to have a multi-disciplinary approach in this area of its work. This, then, casts a shadow on the Institute's claim that it is a national human rights institution in accordance with the UN Paris Principles.

The Danish Institute very much appreciates constructive criticism and dialogue in this area, and welcomes the opportunity to respond with a clarification on a number of issues:

In 2001, the Danish Institute for Human Rights was recognised as a fully developed and competent national institution when it was given A-status by the Accreditation Subcommittee under the International Coordinating Committee of National Human Rights Institution. This body is a self-regulatory mechanism, unique in character, which ensures that only national institutions who fully comply with all of the requirements spelled out in these Principles are recognised as "true" institutions. This means that to describe the Danish Institute as anything else than "a national human rights institution in accordance with the UN Paris Principles" would be a factual error. In fact, the recognition of the other institutions was expressed clearly on 15 April, when the institutions unanimously appointed the Institute as the new Chair of the International Coordinating Committee.

In relation to the complaints mechanism of the Danish Institute to Human Rights, it should first and foremost be kept in mind that the Paris Principles clearly spell out that this function is not a requirement for a national

institution to possess. Instead it is an optional mechanism which those who create the institution, and therefore not the institutions themselves, may or may not include among its mandate, in most cases in the founding legislation. In the case of DIHR, the power to hear and investigate complaints was given in 2003, i.e. after the full accreditation in 2001. As of 15 April, the Institute has been further mandated to investigate complaints relating to discrimination in the labour market, an area previously excluded from its competence. In addition, the mandate is formulated broadly enough that a wide range of complaints could in fact be dealt with by the Committee.

It is true that most European national institutions do not have a complaints handling mandate. It is also true that it should be considered a strength to have such a mandate, as it allows the institution to address, at the very concrete level, key human rights issues in society. However, the experience from all over the world have shown that having such a mandate can in fact be a two-edged sword, particular when it is successful. We have seen that when the number of complaints increases beyond a certain degree, especially viewed in relation to the size of the institution in question, the burden of handling them often stretches the limits of even a well resourced institution beyond its capacity. When an institution has to prioritise its resources, it will be hard pressed not firstly to respond to complaints already submitted to it, having generated an expectation in society, and may therefore find itself working in a response driven manner. This is particularly serious in cases where e.g. serious human rights violations are committed against persons in detention or the mentally ill are not dealt with at a systemic level because the bulk of an institutions

resources are spent on handling and mediating complaints e.g. related to conflicts between individuals and private employers or landlords. In such a case the institution may be seen by some individuals as providing an effective remedy, but when the larger systemic issues are not addressed, which may require the cultivation of a long-term strategy e.g. with the police, including training and awareness raising, this is not helped by, and may in fact even be adversely affected, by the effects of an individual complaints mechanism in this field.

Looking at the broader picture, the consideration on whether to establish a complaints mechanism with a national institution needs to take into consideration what other institutions already exist in society to provide members of society with access to justices and a legal remedy for human rights violations. In a society such as the Scandinavian countries, characterised by well functioning legal institutions, Ombudsmen, and other specialised bodies e.g. in relation to gender issues, a national institution with a broad complaints mandate may in fact be at an ongoing risk of overlapping with other such bodies. Instead, the key decisive criteria should be whether the establishment of such a body provides an effective avenue of redress for groups in society otherwise excluded, either because of a limitation of mandate of existing institutions, or because other factors such as language and cultural barriers are at play. Of course the need for further strengthening and broadening of the complaints handling mandate will be continuously explored in a dialogue between the government, the DIHR, civil society and other similar bodies.

**The Danish Institute for Human Rights
Geneva, 16 April 2004**

Human Rights Features replies...

WE welcome the response of the Danish Institute, titled 'How to be a national institution - no fixed model', and its comments to the HRF article 'ICC of NHRIs: Quality required, not quantity', and we appreciate its continued openness to constructive criticism and dialogue. We would just like to briefly respond to two points.

First, it appears to be suggested by the Danish Institute that because it is a member of the ICC then it is a "factual error" to suggest that it may not be in full compliance with the Paris Principles.

We would respectfully suggest that this misses the point of the central theme and conclusion of the HRF article; that is, that the work of the ICC's accreditation sub-committee is not beyond scrutiny and should be reviewed by the National Institutions Team of OHCHR, and the ICC itself, to determine whether the accreditation sub-committee is being tough enough in its assessment of NHRIs and their full compliance with the Paris Principles. As the Danish Institute itself points out, the ICC is a "self-regulatory mechanism", whose mandate includes "assessing conformity with the Paris Principles". We trust that the Danish Institute would agree that the work of the ICC and the accreditation sub-committee must be - and as a matter of fact is - open to external criticism and scrutiny; not least by the UN Commission on Human Rights, the UN General Assembly, the National Institutions Team of the OHCHR, and hopefully civil society as well.

The HRF article does not question that the ICC considers the Danish Institute, or any other member of the ICC, to be in full compliance with the Paris Principles, as ICC rules provide that it must consider NHRIs to be in full compliance with the Paris Principles as a prerequisite of membership. What is argued in the article is that in some cases the application of the ICC's accreditation standards, in particular its interpretation of full compliance with the Paris Principles, may have been too generous, and that

this is something worthy of some self reflection by the ICC, together with external scrutiny by the National Institutions Team of OHCHR and stakeholders in general.

Secondly, the Danish Institute points out that under the Paris Principles a complaints mechanism is optional. We accept that the Paris Principles state that national institutions "may be authorized to hear and consider complaints"

The HRF article does not question that the ICC considers the Danish Institute, or any other member of the ICC, to be in full compliance with the Paris Principles, as ICC rules provide that it must consider NHRIs to be in full compliance with the Paris Principles as a prerequisite of membership. What is argued is that in some cases the application of the ICC's accreditation standards, in particular its interpretation of full compliance with the Paris Principles, may have been too generous, and that this needs some self-reflection by the ICC.

and that therefore it is technically correct to say that a complaints mechanism is not a formal requirement of the Paris Principles. Our point, however, is that most independent observers and practitioners consider that a complaints mechanism is an essential characteristic of an effective NHRI and, therefore, is at least within the spirit of the Paris Principles. We apologise if this was not made sufficiently clear in the article.

However, we appreciate the Danish Institute's candour in relation to complaints mechanisms when it states: "It is also true that it should be considered a strength to have such a mandate, as it allows the institution to address,

at the very concrete level, key human rights issues in society." We therefore appear to be in agreement that, at least, in principle, complaints mechanisms are desirable features of NHRIs. We also appreciate the observation that "most European national institutions do not have a complaints handling mandate".

We also believe that we are in agreement that each NHRI needs to be looked at according to its own national context, and that it is not desirable to have a risk of overlap with other complaints bodies, or to overwhelm the capacity of an NHRI. We are therefore broadly in agreement with the Danish Institute's assertion that "the key decisive criteria should be whether the establishment of such a body provides an effective avenue of redress for groups in society otherwise excluded." We would only add to this criteria that an effective avenue for redress must be read to include all human rights contained in the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights, and not only a select few.

It is to the credit of the Danish Institute that it is able to announce a broadening of its complaint handling mandate and that "the mandate is formulated broadly enough that a wide range of complaints could in fact be dealt with by the Committee." The broadening of the Committee's mandate is welcomed. We hope that the Danish Institute will advertise this broadened mandate on its website, and by other promotional means, and in doing so that it will consider adding to its existing list of practical examples of what type of complaints the Committee envisages fall within the "wide range" of this mandate, in order that the protection of human rights in Denmark will be further enhanced.

Finally, we welcome the appointment of the Danish Institute as the new Chair of the ICC, and look forward to a continuing dialogue as to the role of NHRIs and the work of the ICC.

FEEDBACK

RESPONSE OF CHAIR PURIFICACION QUISUMBING TO *HUMAN RIGHTS FEATURES* ARTICLE ON CHRP (PHILIPPINES HUMAN RIGHTS COMMISSION)

THANK you for inviting me to submit my comments on the article published in the Human Rights Features (13-18 April 2004, page 4), "Is Auto Theft Part of the Mandate?", on the Commission on Human Rights of the Philippines (CHRP). Indeed, in the interest of truthful, balanced and responsible journalism, as well as in the spirit of building bridges between National Institutions and NGOs, I am submitting this and hope it merits space in your publication.

I. Mr. Max de Mesa (primary source of the interview), of the Task Force Detainees of the Philippines (TFDP), is one of our consistent partners, recently in relation to the implementation of a new program thrust on the Right to Development, a component of a Government-UNDP Country Programme which has adopted the rights-based approach to development and governance. This is a result of combined lobbying of CHRP and partners. He is quite correct in pointing out that CHRP has open relationship with NGOs, and in highlighting some problems including staff shortages and lack of adequate financial and other resources. Where he is off base is when he offers proof of lack of independence from government, including from the military and police.

II. The Barangay Human Rights Action Centers (BHRAC) have been considered strategic vehicles for reaching grassroots communities. An innovative flagship programme of the Commission, it is based on a memorandum of understanding between the Local Government Units and the Commission. It has no legislative status and no funding and depends on partnerships with local governments, civic organizations and NGOs. Barangay human rights officers (BHRAOs) are elected by the community and in theory ought to be independent. But, indeed the reality is that local elections tend to affect the choices and their actions. Can the CHRP effectively utilize the more than 40,000 barangays as vehicle for the promotion and protection of human rights? The answer should be obvious: with approximately 650 staff and 200 million pesos annual budget spread out in an archipelago, how much effective monitoring be done? But any failing in this regard is definitely not because of lack of will or lack of independence, as Mr. De Mesa suggests. In fact, to address this problem, CHRP is pushing in Congress for a legislation to give BHRAC mandate and resources.

II. In this context, this is where NGOs, including Mr. De Mesa, could and should play their rightful role. He suggests that NGOs should be deputized by CHRP. Let me remind him that NGOs do not need to be deputized to carry out their work. NGOs are our partners, not our deputies, and deputizing them may even compromise their very independence.

III. On the lack of "true independence" (3rd paragraph) from the government, Mr. De Mesa is cited as saying that "the Department of Foreign Affairs prepares PCHR's final report." He must be confused. If he is referring to the annual report of the Commission, there is no way the DFA could prepare it. If he means the country report to treaty monitoring bodies, he should know that this is a government report and therefore is prepared by the appropriate agency and coordinated by the DFA. In this connection I quote from my statement to the Commission on Item 18:

(b): "The (Philippine) Commission commends the Government for ratifying key human rights treaties but notes with concern the substantial delay in the submission of period reports to the UN monitoring bodies and the lack of effective, monitored compliance with recommendations thereof. ...For instance, it took 14 years for the Government to submit its periodic report to the International Covenant on Civil and Political Rights, which report was recently considered by

the Human Rights Committee in October 2003." We hope that Mr. De Mesa was simply misquoted, and not evidence of lack of knowledge of the human rights monitoring and reporting system. We therefore categorically state that DFA neither prepares, edits nor censors CHRP's final report. May we suggest that he reads our report for 2002-2003.

IV. Regarding the assertion that the Commission is an "apologist for the military," we also recommend that Mr. De Mesa and anyone else interested read the Commission's decisions on military and police cases as well as its advisories on human rights issues. Of course, strictly speaking, I can only speak of the period under my watch.

V. We invite the Lawyers Committee on Human Rights to bring to our attention their information on alleged "existing resources... (being) grossly misused by the national office." There are auditing requirements to which CHRP must submit annually. As to staff distribution, of the approximately 650 staff, 300 are in the central offices which services ALL 15 regional offices. The fact is that regional offices could use more resources and this has been consistently the message we bring to Congress. NGO partners could help in this regard.

VI. Human Rights violations and abuses are committed by government as well as non-government actors. CHRP has the duty to point this out even if it has no real capability to bring to justice those who operate outside of the law, such as terrorists and insurgents. Non-state actors, armed groups and private armies have human rights obligations too.

VII. Speaking of terrorism, the article states that there is "Nothing in the PCHR's website indicates that the PHRC has provided any input regarding this (anti-terrorism) legislation, despite the clear impact such legislation would have on human rights. The PHRC's recent focus on development issues could lead one to believe there will be no input from the PHRC." Once again, let me quote from my statement on Item 18(b) delivered on 14 April before the UN Commission on Human Rights: "The Commission is faced with a new serious challenge. Terrorism, whether domestic or international, is a threat to human rights. A draft anti-terrorism law was considered by Congress. The Commission's position paper (presented to Congress during several public hearings) pointed to provisions adversely affecting rights against discrimination, arbitrary detention, illegal arrest, and torture, as well as issues on rights to privacy, due process and equal protection of the law. Muslim communities have filed protests claiming that they are singled out unjustly." Clearly, the article is outright wrong on this.

VIII. There is room and indeed NEED for multiple bodies working on promotion and protection of human rights. While there can be only one accredited national human rights institution for human rights in a country (under the rules of the International Coordinating Committee for National Human Rights Institutions) in accordance with the Paris Principles, nothing prevents other government bodies to work on the implementation of the government's legal obligation to promote, protect and, especially, to FULFILL human rights. The essential difference is the monitoring function of the Commission's mandate to ensure that these government bodies perform their obligations according to human rights principles and norms, and even to assist them when appropriate.

VIII. Finally, I reiterate here the suggestions I put forward in the recent Geneva meetings between National Institutions and NGOs in the spirit of building bridges and strengthening partnerships:

1. "Human Rights Features" take the opportunity of interviewing NI representatives when they are in Geneva for the Commission Session, specifically during deliberation on Agenda 18.
2. More thematic discussions be organized with NI-NGO participants and that these be conducted in dynamic, candid and participatory manner than the usual "presentations." Examples: partnership in investigation procedures, lobbying for strategic legislation such as on death penalty, anti-terrorism, juvenile justice, issues on human rights and globalization, and fulfillment of economic, social and cultural rights as well the right to development.
3. Strategic planning sessions on how to advance human rights agenda in the entire UN system, especially taking advantage of the UN Reform Programme of the Secretary General and the Millennium Goals with the common objective of obtaining more resources and more effective implementation of the rights-based approach in UN planning and operations. It would seem that some serious discourse should be spent on systemic changes to advance the human rights agenda, in the international as well as the domestic spheres.

In conclusion, may I ask: If, as the article concludes, that "The PHRC does not serve the intentions and objectives for which it was created and does not enjoy the respect and trust of those it was intended to assist," would we all be better off without it? With all due respect to Mr. De Mesa and the author, I say that we should be more circumspect so that we do not "throw the baby with the bath water." As wisely put by our colleague, Rosslyn Noonan, Chief Commissioner, New Zealand Commission on Human Rights at the meeting of NGOs and NIs, "We are not your enemies, we are your partners." On this note, it is my ardent hope that we do indeed build our bridges, sincerely, candidly and constructively. Once again, thank you for giving me this opportunity to say our piece. More power and looking forward to working together--next September, perhaps in Seoul at the meeting of the International Coordinating Committee on National Institutions.

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HRF replies...

WE welcome Ms. Quisumbing's comments on the HRF article which have been reproduced in full above. In view of the short time lag between the receipt of Ms. Quisumbing's comments and their publication, we were unable to contact Mr. Max de Mesa for his comments. However, as regards the issue of whether and to what extent the Department of Foreign Affairs of the Philippines has a say in the final report of the Philippines Human Rights Commission, we will be in a position to provide further clarification during the meeting of the ICC of National Institutions, to be held in Seoul, South Korea, in September 2004.

As regards the position paper on the draft anti-terrorism law submitted by the Philippines Human Rights Commission to Congress, as claimed by Ms. Quisumbing, we have so far been unable to find any reference to such a document. Nevertheless, we thank Ms. Quisumbing for drawing our attention to this, and hope that the inputs to Congress will have a positive impact.

Finally, we concur with Ms. Quisumbing on the need to build bridges between NHRIs and NGOs, and in that spirit, look forward to working closely and constructively with the Philippine Human Rights Commission at the domestic as well as the regional levels.

RIGHT TO FOOD

‘Justiciability is feasible’

PROFESSOR JEAN ZIEGLER, the Special Rapporteur on the Right to Food, presented his general report to the 60th session of the Commission on Human Rights as well as country reports of his visits in Bangladesh (E/CN.4/2004/10/Add.1) and in the Occupied Palestinian Territories (E/CN.4/2004/10/Add.2).

During the session, the Special Rapporteur was attacked by the Delegation of Israel on his report on the Occupied Palestinian Territories. While this debate attracted most of the attention, it is important to note that the main innovation introduced by the Rapporteur is the concept of food sovereignty - a concept which seems to aim at both protecting countries (especially in Europe) from genetically modified crops and promoting trade from developing to developed countries.

In an interview with **HUMAN RIGHTS FEATURES**, Prof. Ziegler spoke about some pressing issues facing developing countries, namely food aid and the practice of food sovereignty...

Human Rights Features (HRF): Angola refused American food aid on the grounds that it contained genetically modified grain....

Jean Ziegler (JZ): They are right. They did not refuse... they asked for it to be milled, and this for a very good reason. The European Union is not accepting imports of genetically modified corn...and everywhere in the world they take part of the grain to make seeds. So if the next crop in Angola is normal crop and there is a surplus, and they want to export to Europe, they will not be able to do it.

HRF: But the Americans argue that they have to feed their people...

JZ: I think the whole rhetoric of the Bush regime is very ambiguous. First of all, they should give money to WFP [World Food Programme] and not use WFP to dump their agricultural surplus. What should be done ideally is to get money to buy the food locally. In Ethiopia from where I just came back, there are 18 surplus regions... thousands of dollars worth of food is rotting, but WFP is importing from Djibouti. WFP is doing a magnificent job but it costs a lot of money to import food. So WFP just put out an appeal to say, just give us the money... it will be much cheaper, it will not contain genetically modified food, and it will go directly to the people.

Thus, the whole motive of the American food surplus donation is very ambiguous. You

know, if America wants to help they should give money to WFP. Secondly if you give genetically modified food, there is a trade problem and a potential health problem. I cannot judge about it but the scientific community is divided. So, if someone in Africa decides to stop genetically modified food on the basis of the precautionary principle, he has the right.

Moreover, once genetically modified food is accepted, it transforms the agriculture of the whole country. Then the dominance of Monsanto - Monsanto controls 91 percent of genetically modified seeds in the world - means that Monsanto can ask for patent rights under international law. If President Chirac or any European head of State has the right to apply the principle of precaution then an African president has also this right. I am not against genetically modified food, but I do not believe that it will solve the problem of hunger in the world today.

HRF: So, is there an obligation to provide adequate food aid?

JZ: General Comment No. 12 of the Committee

INTERVIEW

Jean Ziegler

on Economic, Social and Cultural Rights is very articulate on adequate food, in terms of quality, cultural acceptability and long term sustainability. This would suggest that if you import food aid into countries where there is no cultural acceptability, or where there are regulations against genetically modified food, then principle of adequacy is violated.

HRF: You mention multinational corporations, but they always exist within a national framework. Isn't there a case to strengthen national legal frameworks, especially in developing countries instead of developing new international instruments?

JZ: There is a theory, which says that States can deal with the whole problem of the behaviour of multinational corporations in the Third World because they can regulate the activities of their corporations outside their frontiers. However, in my experience, this is just wishful thinking. For a long time, I was a member of the Parliament from Geneva, but to think that the Swiss Parliament could monitor, in any sense, the activities of Nestlé for instance is a complete illusion because those multinational corpora-

tions have power well beyond the power of the State...

HRF: But shouldn't you then help South Africa monitor the subsidiaries of Nestlé in South Africa?

JZ: The example you take is a good one, because South Africa is one of the very few States among the 52 States of Africa that may eventually be able to impose its sovereign will on a multinational company. But think of Niger, think of Burkina Faso, think of Senegal... of three quarters of the world....

HRF: In the case of India, they banned Coca-Cola and Pepsi for a while...

JZ: Yes but you take India, China, or Brazil, which managed to challenge the patent for AIDS tri-therapy... perhaps they will impose normative behaviour. But out of the 122 so-called developing countries perhaps ten will be able to impose their will.

HRF: On the justiciability of the right to food, do you envision a role for National Human Rights Institutions?

JZ: Yes. You have the example of South Africa. First of all, there is a Human Rights Commission provided by the Constitution, a very strong Human Rights Commission composed with half of its members from civil society and half from parliament. This National Human Rights Commission can receive pleas for any violation of the right to food. And then, the Commission can challenge any Government decision, any law voted in Parliament, or any administrative decision which is contrary to the right to food. And they can go to the Supreme Court, they plea their case and they have won several times already.

They are very concrete cases where the State can do something. In the Indian Constitution, the member States have to have food reserves for times of hardship, for times of famine. In times of famine, there is a whole mechanism... how to sell, where to sell it. It is a constitutional obligation but two member States in India failed to provide food to starving people.

And there are two judgements of the High Court, after action by NGOs, not a National Human Rights Commission. The High Court of India imposed on the States to open their food reserves, and the fight goes on. Justiciability is feasible.

Are LGBT Rights destined to be left out of UN agenda?

ROSANNA FLAMER-CALDERA

ONCE again, the resolution on Human Rights and Sexual Orientation has been postponed till the 61st session in 2005. The presenters of the resolution were faced with the dilemma of 'should we or shouldn't we' as the Organisation of the Islamic Conference (OIC) and the Vatican turned the screws of economic embargo and religious righteousness and forced them to take a step back and reassess their enthusiasm.

But are human rights only the domain of some persons and not others? Time and time again the UN has dodged the issue of Lesbian, Gay, Bisexual and Transgender (LGBT) rights and has proved once again that the rights of sexual minorities are expendable. This is not the first time that LGBT rights have been placed on the backburner and hopefully, next time around, the issue will get the notice and attention it deserves. Our rights cannot be bought and sold like sheep in a market. At the end, whether it takes one year or ten, we will still be here, campaigning and lobbying for our rights.

It is interesting to see how this issue has unfolded over the years. In 1992, the first statement

by an openly gay person was made by Douglas Sanders at the Sub-Commission on Prevention of Discrimination and Protection of Minorities (now the Sub-Commission on the Protection and Promotion of Human Rights). (see "Human rights and sexual orientation in international law" by Professor Douglas Sanders, sanders@law.ubc.ca, April 28, 2003, <http://www.ai-lgbt.org/international.PDF>). Made in the name of Human Rights Advocates, a San Francisco based NGO, and International Lesbian and Gay Association (ILGA), the statement was received at best with stupefaction, and at worst with open hostility.

A year later, on 13 August 1993, Mr. Louis Joinet, a member of the Sub-Commission, proposed that the mandate of a study on new forms of racism and xenophobia be expanded to include consideration of discrimination on the basis of sexual orientation. The proposal was not accepted.

Two years later, on 24 August 1995, in the same Sub-Commission, Louis Joinet proposed an amendment to a resolution condemning discrimination on the basis of HIV/AIDS. The resolution mentioned nine examples of groups "suffering from disadvantaged economic, social or legal status" who

were, as a result of that marginalisation, more vulnerable to the risk of HIV infection. The list did not include male homosexuals, or "men having sex with men", even though gay men had been the first victims of the pandemic, which had even been called at first the "gay cancer" or the "gay plague". Mr. Joinet moved the addition of that category. The amendment was strongly opposed by two experts, Ms. Warzazi and Ms. Gwanmesia. Mr. Joinet argued that the Sub-Commission could not retain its title if it failed to protect this particular minority, nor could it act to prevent discrimination on them (in this case, in the frame of AIDS). Finally, the amendment was passed with ten affirmative votes, five negative votes and six abstentions. Ms. Warzazi and Ms. Gwanmesia withdrew their names from the co-authors list. This was the first substantive resolution of the Commission or Sub-Commission to refer expressly to homosexuals.

In 2003, when Brazil presented the resolution to the Commission, NGOs and governments were taken by surprise. Although this submission arose from the World Conference Against Racism in Johannesburg in 2001, Brazil's submission in 2003

CONTINUED ON PAGE 12

ETHIOPIA

Tenuous peace masks conflict within

Human rights violations within Ethiopia go unnoticed as border tensions with Eritrea stay in spotlight

FROM 1998 to 2000, a war raged between Eritrea and Ethiopia over their shared border, resulting in 100,000 deaths and over a million people becoming refugees. In June and December 2000, the Governments of Ethiopia and Eritrea signed cease-fire agreements, paving the way for the two years of calm that followed under the United Nations Mission in Ethiopia and Eritrea (UNMEE), which has been described by some as a "model peacekeeping operation."

However, trouble began to brew again in April 2002, when the Boundary Commission, created under the peace agreements to delimit the border between the two countries, handed down its decision. Although both States had agreed to accept the decision of the Boundary Commission as final and binding, Ethiopia rejected the decision last year due to the fact that the village of Badme, the starting point for the war, was deemed to be on the Eritrean side of the border. Since then the peace process has stalled and relations between the two countries have become increasingly tense.

On 30 January 2004, the Secretary General appointed Lloyd Axworthy, former Canadian Foreign Minister, as Special Envoy for Ethiopia and Eritrea to encourage the normalisation of diplomatic relations between the two countries. However, Eritrea has refused to engage with Mr Axworthy, insisting that the Boundary Commission's demarcation decision be implemented in full. In a progress report recently submitted to the Security Council, the Secretary General reported a potentially dangerous political stalemate between the two countries due to the lack of progress in marking the border. In accordance with the Secretary General's recommendation, the Security Council adopted resolution 1531 (2004) on 12 March extending UNMEE's mandate for a further six months.

Unfortunately, whilst the continuing impasse in the peace process, and the rising political tensions between the two nations have attracted the attention of the international community, the human rights abuses perpetrated by the Ethiopian Government have been allowed to go largely unnoticed. Throughout 2003, national and international human rights organisations continued to report widespread state-sanctioned violations of human rights throughout Ethiopia.

Explosion of Recent Violent Ethnic Clashes

The Gambella region in Western Ethiopia has seen an explosion of violent ethnic clashes in recent months. On 17 November 2003, five people working for a construction company were killed by unidentified gunmen in Abebo, 40 kilometres from Gambella. Then, soon afterwards, in mid-December, eight people were ambushed and killed whilst travelling in a UN plated-vehicle. The Ethiopian Human Rights Council (EHRCO), a prominent NGO, claims that following the attack, the mutilated bodies of the victims were paraded through the town of Gambella by the defence forces, provoking outrage and exacerbating existing tensions between minority groups in the region. Existing tensions include those between ethnic groups that originally inhabited the area (including the Anuak, the Nuer, the Komo and the Medjender) and groups that have moved to the region from other parts of the country, who are known as "highlanders". The local Anuak tribe were blamed for the murders.

The ambush killings set-off violent attacks on the Anuak in the Gambella region over the following weeks. Conflicting estimates as to the number of people killed in these attacks range from 60 to 300, hundreds of houses were burnt to the ground and thousands of people fled to Sudan. Then, on 30 January 2004, a further 196 people, most of whom were highlanders, were killed in a Anuak revenge attack in and

around the town of Dimma. The UN World Food Programme and the UNHCR evacuated their staff from a refugee camp near Dimma following the incident.

The EHRCO says that "the failure on the part of both the Federal and Regional Governments to take urgent and lasting measures to bring an end to ethnic conflicts and the repeated attacks on civilians by unidentified armed groups has resulted in the disastrous attacks recently mounted against members of the

on 24 May 2002 when police opened fire on a peaceful demonstration of 3,000 people.

The Ethiopian Government implements a policy of harassing the press and restricting freedom of expression. Journalists and editors are frequently arrested and convicted on charges such as defamation, relating to articles that they publish. Last year, the EHRCO reported the case of Ato Araya Tesfa Mariam, a journalist for the *Ethiop* who was assaulted by three men dressed in police uniforms in front of his home in October 2003, abducted and thrown off a bridge onto rocks 5 to 6 metres below.

In November 2003, the Government cancelled the registration of the Ethiopian Free Journalists Association (EFJA), claiming that it had failed to file financial reports. The president of the association claims that the cancellation was a political move, sparked by the EFJA's opposition to the draft press law which would increase government control over the press. The EFJA's bank accounts have also been seized by the Government.

Time for Action

The Constitution of Ethiopia specifically requires the Government to establish a Human Rights Commission and an Ombudsman. Although the Government has repeatedly promised to establish the bodies, and despite the Speaker of the House of Representatives selecting a nominating committee to elect members in July 2001, neither the Human Rights Commission nor the Ombudsman is operational today. It is time for the Government to deliver on its promises, and to establish a Human Rights Commission and Ombudsman to investigate all allegations of human rights violations in the country.

The human rights abuses perpetrated by the Ethiopian Government have been allowed to go unnoticed for long enough. The international community must closely monitor human rights abuses throughout the country, and must continue to apply pressure on the Government of Ethiopia to take urgent and lasting measures, to bring an end to ethnic conflicts, and to re-establish stability in the Gambella region, and to bring those responsible for the repeated attacks on civilians to justice.

Behind the frontlines

SECURITY forces reportedly use force to disperse demonstrations. There have also been repeated reports of mass arrests.

In 2001, the Government enacted a law to deny bail to those charged with corruption, which has been used against the Prime Minister's political opponents.

Extrajudicial killings by security forces have been reported by the Special Rapporteur.

Freedom of expression is restricted through harassment of, and assaults on, journalists.

A Human Rights Commission and an Ombudsman as required by the Constitution are yet to be appointed.

Anuak tribes." The government policy of allocating seats in local administration units on the basis of tribes acted to raise tensions.

On 25 March, the EU issued a declaration expressing its concern at the "sporadic but persistent outbreaks of violence in the Gambella Region of Ethiopia which have resulted in hundreds of deaths over recent months". The EU called for a public and independent inquiry, into the suggestions of involvement of members of the Ethiopian military in the violence directed against innocent civilians. The US has also called for transparent, independent inquiries.

Widespread Human Rights Violations

Throughout the past year, there have continued to be reports of widespread state-sanctioned human rights violations perpetrated across the country. NGOs have documented killings, disappearances, torture and mass arrests on an alarming scale.

The security forces often use force to disperse demonstrations, and there have been repeated reports of mass arrests. Of particular concern is the arrest of between 330 and 350 Oromo students at the Addis Ababa University in January 2004. Prominent NGOs report that the students, who had peacefully protested against the arrest of eight of their fellow students a couple of days earlier, were transported to the Kolfe Police Training Academy and tortured by being forced to run and crawl over gravel for hours. After they were released, the students were suspended without an investigation and were denied access to the University despite the fact that many of them resided there. Similar mass arrests and torture have been reported in the recent past, an example being the arrest and torture of at least 34 Ledita Church members in February 2003. There have also been repeated reports of the arrests of teachers.

In 2001, the Government enacted a law to deny bail to those charged with corruption, which has subsequently been used against the Prime Minister's political opponents. Extrajudicial killings by security forces are also regularly reported. For example, the UN Special Rapporteur on extrajudicial executions reported the case of 38 farmers who were killed in Awasa

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from page 10... LGBT RIGHTS

even surprised the many LGBT organisations in their own countries as well as worldwide. On 15 April 2004, Ambassador Mike Smith, chairing the Commission session noted that there was no objection nor opposition to the Brazilian request dated 31 March 2004 to defer consultation of the draft resolution. No votes or debates arose from the chair's request for postponement. Activists' concerns were high at one point that the resolution could have been defeated or completely withdrawn from the UN agenda. The news of the postponement was to induce some breathing space and some hope that perhaps in 2005, the resolution would, in fact, be tabled and passed.

It will be interesting to see how the UN will act in 2005. Will it again ignore the pleas of the hundred of thousands of Lesbian, Gay, Bisexual and Transgender persons worldwide? Or will it recognise their rights as being long overdue? Only time will tell.

Rosanna Flamer-Caldera is Co-Secretary General of the International Lesbian and Gay Association (ILGA).

from page 3... IMPUNITY IN THE CHR

One thing is clear: human rights organisations and defenders cannot wait ten years for the next commemoration of the next massacre. Action is required.

If it is to be implemented, Kofi Annan's Action Plan to Prevent Genocide should include either a change in the composition of the UN Commission (in which hardliners regimes are currently over-represented) or a change in the strategy - since the Commission constitutes an obstacle, the General Assembly and the Security Council in New York might provide for a more effective channel to realise this indispensable Plan.

A Commission on Human Rights which would no longer adopt country resolutions would no longer fulfill its original man-

date. It would lose its very 'raison d'être'. Fighting against impunity inside this "august body" (as pronounced by the Ambassador of Zimbabwe) will therefore be the first major challenge for the new High Commission, who will pay her first visit to Geneva in the beginning of May.

The second challenge will be to strengthen the thematic procedures of the Commission. And both issues are closely linked - diplomatic observers in the Commission note with concern that the current offensive against country resolutions and mandates only constitutes the first stage of another major offensive which will soon affect the thematic procedures. The debate on many thematic resolutions next week is likely to illustrate this.

...from page 3**China Dialogues...**

lack thereof, of the dialogue. Dialogue objectives should always be made public and be linked to a timeframe of compliance by China. Ideally, objective, accountable bodies should undertake the evaluation and incorporate submissions by NGOs. Several NGOs have recommended that such evaluations be performed by national parliaments with the help of NGOs. If during the course of dialogue evaluation, the objectives or timeframe for compliance are altered, reasons should be given for doing so.

Multiple states and the European Union have engaged in bilateral dialogues

with China throughout the 1990s up to the present. To increase accountability and efficacy within the process, more communication is needed among those states that have engaged, are engaging, or plan to become engaged in bilateral dialogues with China.

In order to avoid duplication of efforts and potential waste of resources, each of the countries in dialogue with China should work together whenever possible to focus pressure on China. To increase transparency and shared communication, a website could be created to publish information about all bilateral dialogues with China. The site should include a timetable of meetings and dialogue sessions, reports and NGO submissions.

Third, those who participate in the bilateral dialogue process should be reconsidered. High-level officials, preferably at least on the vice-ministerial level, should participate in the dialogues. The higher the level of delegates participating in the dialogue process, the more likely meaningful results will be achieved on the ground. In addition, sessions should include independent social groups, experts, scholars, lawyers and other individuals. NGOs should be self-

selecting and should be guaranteed the right of free expression. Dialogue partners should encourage the Chinese government to engage in a genuine and uncensored dialogue on human rights domestically, rather than only internationally.

In addition to benchmarks, transparency, accountability and expanded dialogue partners, the process should highlight China's adherence to domestic laws that support human rights. Specifically, China has failed to comply with its own Constitutional guarantee of human rights. In March 2004, China amended its Constitution to add the provision that "the state respects and safeguards human rights." China should be held accountable for their lack of compliance with this basic law.

Even as the National People's Congress discussed the human rights clause in the Constitution, hundreds of peaceful petitioners and other activists were reportedly being detained in Beijing for exercising their rights to freedom of expression, association and assembly, freedoms protected in international standards and included in China's own Constitution.

Despite its failings, the bilateral human rights dialogue process is the best approach to encourage human rights reform in China. Multilateral approaches have proved to be ineffective. The United States has tried and failed numerous times to pass a resolution condemning China's poor human rights record. History has shown that political pressure and trade considerations will prevent the passage of any such resolution.

Shifting focus from the multilateral approach to the bilateral dialogue process is the best way to improve China's human rights situation. Without revisions, the bilateral dialogue process will surely stall. But, if a serious revision effort is made, an effort that includes concrete and measurable benchmarks, transparency and accountability within the process, and expanded dialogue participants, true progress can be made.

...from page 5**Conformité, Egalité...**

wrong in both cases - but to proscribe Muslim headscarves (or indeed many other conspicuous religious symbols) goes beyond prevention of proselytism and into the active restriction of unobtrusive religious adherence.

Second, the proposed legislation allows extraordinarily broad discretion - and this is necessarily open to discriminatory application. The current draft legislation proscribes "ostensibly" religious symbols, a deeply ambiguous benchmark that is left to school administrators to interpret on a case-by-case basis. Luc Ferry, the then Minister of Education, justified this approach on the basis that any narrower formulation would be open to abuse. The opportunities for discriminatory application are self-evident, and are illustrated even by Mr. Ferry's statements. In response to Sikh complaints, the Minister declared that Sikh turbans - which are, after all, quite conspicuous - would be allowed if they were "discreet". The Minister's own attitude reveals a striking double standard: a conspicuous Sikh turban can be tolerated as "discreet", while a conspicuous Muslim headscarf is nothing less than "a militant sign that calls for militant countersigns".

Accommodation of the law was also sought for Muslims in the Island of the Reunion at the request of their representative in Parliament. (Tellingly, they pointed to the particular experience of the island where Muslim Indians are well integrated). Lhaj Thami Brezi, President of the Union of French Islamic Organisations, suggested young girls use bandannas as 'discreet headwear'. The new Education Minister, François Fillon, in a recent radio interview on the other hand, observed that "there were bandannas in school before the question of the headscarf came up." In other words, the law was sufficiently vague so that two successive ministers appointed by the same President interpret the meaning of the word "ostentatious" differently. And the discretion that this proposed law grants to school administrators will inevitably allow this and other double standards to become the norm.

Supporters of the law asserted that it would further the cause of multicultural integration in France. The legitimacy of this end is beyond question but the law has only harmed the cause of mutual respect and tolerance. If there is an obstacle to the goal of integration, it is that some groups feel alienated from French society - and, by implication, from the French state. This law will serve only to confirm their worst fears.

French leaders are right to be concerned about the status of religious minorities in France. They are right to emphasise French unity, and they do well to highlight France's long-standing commitment to secularism. But telling individuals how and when and where to manifest their religion is not secularism, and drafting draconian and discriminatory policy on the basis of inflammatory accusations of religious extremism is no way to unite a nation. Instead, they should reflect on how to combat discrimination through dedicated urban policies, encourage the social promotion of immigrant communities, and encourage immigration itself.

Dialogue partners should encourage Beijing to engage in a genuine and uncensored dialogue on human rights domestically, rather than only internationally. The process should highlight China's adherence to domestic laws that support human rights.

Printed and published by:

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