HUMAN RIGHTS FEATURES

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Absurd black letters?

Will the CHR wake up to the reality of those little words in all those documents?

Messages of solidarity and support may be sent to hrf@aphrn.org for onward transmission to Mr. Jai Kishor Labh

Dear Human Rights Activist friends and respectable Authorities,

Greetings, with the best regards.

Subject:- Request for further actions

Respectable all

First foremost I would like to offer my last greetings.

As I have been clutched between the horns of dilemma whether the principles, charters, optional protocols, accords, treaties, conventions and all the efforts to establish, promote and preserve Human Rights are nothing but only a lie and pretentious fictions to cheat the weak and to strengthen the powerful in disguise or a right way for preservation of Human Rights?

What does the words ' Human Rights ' mean if the Human Beings are forcibly and involuntarily made disappeared and the Human Rights abducted by the State? Is it not enough to prove the untiring efforts of the Rights Activists of Nepal [are] absurd, which the situation of Human Rights shows?

Now I think all the documents of Human Rights have become only absurd black letters for me.

I and all the members of my family have pursued almost all the Local, National and International Human Rights Activists and Organizations to put pressure on the authorities, flattered before all the authorities to provide only a chance to see my adored son Sanjiv to convince him [to] surrender before authorities if he proves to be a Maoist or a terrorist, wandered about hither and thither to search my son, spent a lot of money in [these activities], due to which I have reached to be just like a beggar, but, yet it resulted no more than nothing.

Hence, lastly, I greet you all with my last request to do something more so that we can see a glance of our adored son Sanjiv Kumar Karna (Dipu) before we die as I and my wife Vimala Devi have become a cardiac patient and of depression which may cause our sudden death.

Thanks, awaiting your kind response and quick reply.

Sincerely yours

Jai Kishor Labh

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Jai Kishor Labh is a lawyer based in Dhanusha district in Nepal. Mr. Labh's 25-year-old son, Sanjiv Kumar Karna, a Business Studies student, was arrested on 8 October 2003 by a joint force comprising personnel of the District Police Office, Dhanusha, police personnel of the Regional Police Unit Office, Janakpur Municipality, and personnel of the Army Camp, based in a guest house near Tirhutia Gachhi, Janakpur. He was not seen thereafter.

Eighteen months on, Sanjiv's whereabouts are still unknown.

The slow death of Item 9

AT the start of the 61st session of the Commission on Human Rights (CHR), the following mandates of Special Rapporteurs were up for renewal: Special Rapporteur on the situation of human rights in Belarus; Personal Representative of the High Commissioner for Human Rights on the situation of human rights in Cuba; Special Rapporteur on the situation of human rights in Myanmar; and Independent Expert on the situation of human rights in Uzbekistan.

It is apparent that as we enter the fourth week, only a few may survive. Belarus and Myanmar (Burma) may survive the night of the long knives wielded by the LMG. The EU has already been namby-pamby in dealing with Myanmar at the International Labour Organisation (ILO) last week. As expected, the ILO Governing Body reactivated the measures adopted in June 2000 relating to Burma (as the ILO refers to Myanmar). However, the Conclusions were wrapped in flim-flam and fudge, out of which the following substance emerged:

a) the "Measures" adopted in June 2000 are still in force,

b) there is no reason for governments or any other of the entities addressed by the 2000 resolution to suspend their "review of relations" (under Article 33) - the 'wait and see' attitude cannot continue. The EU had expressed the desire to continue to "wait and see" before taking action under Article 33, a stance firmly rejected by the Governing Body.

The Czechs may move the resolution on Cuba this year and get it through but the very fact that there were no Latin American movers of the resolution will make the victory pyrrhic in more ways than one. As for Sudan, the Security Council reference to the International Criminal Court has overtaken any importance that the CHR debate may have had. Uzbekistan will be a close call. And the US, of course, has withdrawn this year on China because corporate interests hold more sway in the State Department than human rights advocates. And giving credence to the LMG charge of selectivity, the EU will not raise the issue of Guantanamo even once.

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HUMAN RIGHTS FEATURES also on the Web at: www.hrdc.net/sahrdc/hrfchr60/index.htm

Inter-Parliamentary Union

IPU Committee on the Human Rights of Parliamentarians

PARLIAMENTS and the role they play in the promotion and protection of human rights have only recently come to the attention of the Commission on Human Rights. The Commission has been looking at the role of parliaments in the context of its work on democracy and its relationship with human rights. As the institution which represents the people, legislates, adopts the budget and holds the executive branch to account, parliament is indeed a key State institution when it comes to the promotion and protection of human rights.

However, in many countries, members of parliament run serious risks in performing their mandates, particularly if they belong to the political opposition. Instead of investigating and providing redress, governments are all too often tempted to silence members of parliament who criticise their policies or denounce malpractices and abuses. Moreover, when democracy breaks down in a country, parliament is almost invariably among the first victims.

As the world organization of national parliaments, the Inter-Parliamentary Union is naturally concerned with such situations. Indeed, if the human rights of members of parliament are violated, and if legislators cannot speak out without fear of persecution, how can they promote and protect the rights of those whom they represent ?

When, in the mid-seventies, military dictatorships in Latin America dissolved parliaments and persecuted their members, the IPU decided to endow itself with a mechanism for the specific defence of human rights of members of parliament. It established a Committee on the Human Rights of Parliamentarians to deal with complaints about human rights violations affecting members of parliament. The Committee, a unique institution of its kind, is composed of five parliamentarians representing the world's major regions. It meets in camera four times a year and adopts decisions on the cases which have been referred to it.

The confidential nature of the proceedings allows the Committee to work independently of any external pressure, being guided by national, regional and international human rights law and principles only. Its aim is not to denounce or condemn, but to put a stop to arbitrary measures affecting members of parliament, guarantee their protection, obtain redress, ensure that they recover their freedom of expression and avoid impunity in cases where they were killed or have been "disappeared".

However, if a settlement is slow in coming about at the initial confidential stage, the Committee can decide to "go public" by bringing a case to the attention of the IPU's plenary Governing Council. At this stage the support of the international parliamentary community, often transcending partisan considerations and national and cultural divides, can be instrumental in seeking a satisfactory settlement of a case. On many occasions, this parliamentary solidarity has indeed helped secure the release of imprisoned members of parliament.

In many countries, members of parliament run serious risks in carrying out their mandates, particularly if they belong to the political opposition. If legislators cannot speak out without fear of persecution, how can they promote and protect the rights of those whom they represent?

Unlike other international human rights procedures, the consideration of a case does not end once the Committee and the Council have issued their findings, but continues as long as a satisfactory settlement is within reach. In a case in Honduras, for example, concerning a parliamentarian who was assassinated in 1988 for having given testimony on disappearances in his country to the Inter-American Court of Human Rights, it took more than 10 years before trial proceedings against one of the presumed culprits started.

The Committee's procedure is not only written but also provides for hearings and on-site missions. Last year in March/April, the Committee carried out a mission to Zimbabwe to gather, through meetings with the authorities, the parliamentarians concerned and local human rights organizations, information on the situation of more than 20 opposition parliamentarians who were said to be the target of systematic harassment and human rights violations. The mission was able to collect a wealth of information which has since provided a solid basis for the IPU's views in this case. Likewise, the report which the Committee commissioned on the trial of Mr. Marwan Barghouti, a member of the Palestinian Legislative Council, who was arrested in April 2002 in Ramallah by the Israeli Armed Forces, transferred to Israeli territory and sentenced by a Israeli court in June 2004 on charges of murder, attempted murder and involvement in terrorist organisations, has guided its considerations and recommendations in this matter. The Committee also sent a trial observer to the hearings in last instance before the Federal Court of Malaysia in the sodomy case against former Deputy Prime Minister and Finance Minister Anwar Ibrahim. The Court quashed his conviction in September 2004 and ordered his release.

The Committee's caseload has been steadily increasing. When it held its first session in 1977, it examined the cases of 40 parliamentarians in 10 countries. At its last session in January 2005, it examined 52 cases concerning 205 parliamentarians in 29 countries all over the world. This increase is doubtless related to the fact that there are now more parliaments, and more parliamentarians, than there were 30 years ago. However, it also shows that members of parliament, like human rights defenders, need protection if they are to fulfil their mandate as guardians of human rights.

More information about the Committee's procedure and its work can be obtained from the IPU Secretariat,5 Chemin du Pommier, Case postale 330, CH-1218 Le Grand-Saconnex / Geneva, (Fax N°: +4122-91941 60; E-mail: postbox@mail.ipu.org).

The resolutions adopted by the IPU Council on public cases may be found at the IPU Website www.ipu.org.

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Slow death of Item 9...

As regards Nepal, the Swiss have been playing the cuckoo in the cuckoo clock. You see and hear them on the hour and then you do not. The Item 9 draft on Nepal seems to have been discarded. Instead, you now have them discussing an agreed text under item 19. "Special Rapporteur with International Monitoring" is the new mantra. The Geneva, London and New York based international NGOs seem to have gone along with this about turn. The Nepalese NGOs present at the Commission, being outside the magic circle, were not adequately informed about the shifts in the fate of the draft resolution, or the import of such shifts. International monitoring means little without powerful and well-intentioned national consultants, separate from the NHRC, on any monitoring panel. There is no reflection of this in the drafts so far.

The Swiss seem to have got their strategy wrong from day one. They kept dealing with the Ambassador of Nepal in Geneva not knowing that in feudal monarchies, messengers are given short shrift for bringing bad tidings. It is evident from the soundings from Sheetal Niwas, the headquarters of the Nepali Foreign Ministry, that Ambassador Acharya has been stenographical and a model of brevity in his telegrams. The gravity of the discussion in Geneva is clearly not being conveyed through his missives. Last week's call on the foreign ministry by the Swiss Ambassador in Kathmandu was an attempt to close the stable door after the mare had bolted.

The Swiss were also not reading the sphinx-like silence of the Indian Ambassador correctly. A leading light of the LMG, Ambassador Puri was not going to do a 90-degree volte face and support an item 9 resolution after India having opposed 'name-and-shame' resolutions for as long as one can remember. Playing Fabius Cuncator, he is more than aware that political developments in Nepal are making the bustle in Geneva nothing more than a sideshow.

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To add to this, the Nepalese delegation has brought in one flatfoot and one brass hat from Kathmandu. Not so much to dog the heels of the NGOs from Nepal at the CHR as to look over the shoulders of the most loyal diplomats of His Majesty's government. Lt. Colonel Anup Jung Thapa, is from the Royal Nepal Army (RNA) HQ and Mr Nawaraj Silawal is from Police Head quarters.

As for the Special Procedures, we are still waiting for the promised results of the Asian Group's consultation on a draft decision on enhancing the Special Procedures *(see* HRF *issue dated 29 March-3 April 2005; page 1)*. At a meeting called by the Czech delegation on Wednesday 30 March, where the Asian Group was represented only by its coordinator, who came to report the Group needed more time.

Meanwhile, the Eastern and Western Groups and GRULAC appear to have resolved to go on with their own consultations on potential scenarios for inter-sessional work on the issue. One can only hope that the Asian Group will display and discuss their ideas openly and not undertake furtive attempts to shove them through the back door.

Finally, one of the most significant events of last week was Mexico's presentation of its draft resolution on the protection of human rights while countering terrorism, which gives *Human Rights Features* the rare opportunity to congratulate a member State for a progressive and comprehensive initiative. The resolution calls for the establishment of a Rapporteur for three years not only to monitor the subject, but also to act as an early warning mechanism in order to prevent potential abuses. It formalizes the relationship of the Rapporteur with all relevant parties, including the CTC. It also requests that the OHCHR remained engaged in its capacity. It is commendable in every regard and, given the groundswell of support emanating even from the Secretary General's report on reform proposals, is increasingly difficult for belligerent states to obstruct.

The Mexican delegation should also be credited for holding their consultations in public from the outset. Its circulation of the draft only the night before its first meeting, however, left members unprepared to react, barring the Canadians who had trepidations that the draft was too ambitious. The Mexican ambassador laid bare such negativity as something that exists only if states wish it to, which he would not expect from co-sponsors such as Canada. We will await the bone picking of the resolution on Monday by the usual suspects.

Losing legitimacy: UK & the war on terror

"Those who seek to bestow legitimacy must themselves embody it; and those who invoke international law must themselves submit to it."

- Kofi Annan, address to General Assembly in New York, 21 September 2004.

IN its legal measures in response to the atrocities of 9/11 the UK government has been accused of discrimination, political grandstanding and a steady erosion of the civil liberties historically enjoyed in the UK. At the Commission on Human Rights (CHR) the UK government has stated that it is "firmly committed" to international human rights. But this is not so clear at home.

In 2004 the English courts showed that they were not afraid to scrutinise and criticise government anti-terrorism measures - although their application of international human rights principles has like that of the government been inconsistent and sometimes contradictory. The House of Lords judgment in *A (FC) v. Secretary of State for the Home Department* and the Court of Appeal judgment in *A & others v. the Home Secretary* show the tension between the English courts' attempts to apply international human rights standards, but at the same time show the traditional judicial deference to the executive and legislature in its chosen responses to matters of international security.

Indefinite detention without charge or trial

The primary focus for criticism against the UK government is the Anti-Terrorism Crime and Security Act 2001 (ATCSA). The ATSCA is Britain's primary legislative response to the attacks of 9/11. It introduced a number of exceptional emergency powers. The most controversial being part 4, in particular section 23, which empowers the Home Secretary to certify that he reasonably believes a foreign national to be a "suspected international terrorist" and to either deport or detain such a person indefinitely without charge or trial.

Over the past three years this has led to the detention of seventeen foreign nationals who could not be deported due to fear of torture or other inhuman or degrading treatment in their own country. To deport in such circumstances would breach article 3 of the European Convention on Human Rights ("European Convention"). The government therefore resolved to derogate from article 5(1) of the European Convention (right to liberty) and, to justify the derogation, declared a public emergency threatening the life of the nation by way of Derogation Order 2001.

To put this measure in context, the UK is the only one of 45 Council of Europe countries that has found it necessary to derogate from article 5 of the European Convention. In the UK itself this is the only time since the Second World War that the executive has been given the power of indefinite detention without charge or trial. The need for such a measure has been widely questioned; by the Council of Europe Commissioner for Human Rights, the Committee of Privy Counsellors (the Newton Committee), and the UK Joint Committee on Human Rights, among others.

ATCSA allows for appeals against the Home Secretary's decision to detain to the Special Immigration Appeal Commission (SIAC). The detainee is provided with a "special advocate" who is given access to all the evidence but is not allowed to discuss this evidence with the detainee; thus depriving the detainee of the right to know and challenge the evidence brought against him, a right provided for under article 14 of the International Covenant on Civil and Political Rights. SIAC's procedures have quite rightly been described by a leading judge as "the stuff of nightmares". Two of SIAC's special advocates have resigned in protest.

Disproportionate and discriminatory

In *A (FC) v. Secretary of State for the Home Department* nine of the ATCSA detainees challenged the lawfulness of their detention. The House of Lords by an eight to one majority quashed the UK government's Derogation Order 2001. It declared under the Human Rights Act 1998, section 4, that section 23 of ATSCA was incompatible with articles 5 and 14 of the European Convention, as it was disproportionate and discriminatory, because it only provided for the detention of foreign nationals. As Lord Hoffman put it: "Nothing could be more antithetical to the instincts and traditions of the people of the United Kingdom." In the leading judgment, Lord Bingham quoted both the UN Security Council and the UN Commission on Human Rights, which jointly require that measures taken to combat terrorism must be in accordance with international human rights law, as well as proportionate and non-discriminatory.

Now British nationals too

THE ATCSA detainees were released on 11 March 2005. However, they were immediately served with 'control orders' and put under house arrest. Control orders were introduced by the Prevention of Terrorism Act 2005 (PTA), which gives the Home Secretary a range of powers, from restricting communications to house arrest - all without the need for a trial.

The House of Lords judgment necessitated the PTA, if the government still wished to detain the foreign nationals held under the ATCSA. The PTA was therefore rushed through parliament in spite of very strong opposition. Amnesty International described the speed at which the PTA Bill was passed as "utterly unconscionable", in light of the controversy that surrounded the ATCSA, which was also rushed through in a month.

With grim irony, the new PTA retains the Home Secretary's power to indefinitely detain suspected international terrorists, but extends his power to also include British nationals. The government believes this will overcome the problem of discrimination against foreign nationals. But by massively extending the category of those subject to the Home Secretary's discretion, the PTA blatantly overlooks the spirit of the House of Lords judgment and continues to violate international principles of a fair trial. It seems highly likely that the government will find itself in court once again.

The UK Government should be under no illusion about its human rights credentials. Its approach in part 4 of ATCSA, and now the PTA, and to the use of evidence obtained by torture, is inconsistent with international rights law.

Moreover, are UK citizens now to live in an Orwellian 'near-permanent emergency' where fair trials rights are compromised and torture justified - provided someone else does it?

Turning a blind eye to torture?

The English Court of Appeal has taken a less robust stance to the government's approach to the war on terror.

In *A & others v. the Home Secretary* the Court of Appeal had to consider the consequences if evidence submitted by the government in support of detention under the ATCSA was derived from torture or ill treatment of a third party. The question arose from the brutal interrogation techniques used by the US military at Abu Ghraib and alleged elsewhere, which was being used as evidence in hearings before SIAC.

The UK has ratified the UN Convention against Torture and torture is criminalized in the UK by the Criminal Justice Act 1988. The Court of Appeal was therefore clear that the UK should not commit or connive at torture. However, surprisingly the Court of Appeal, accepting the submissions on behalf of the government, held that allegations of torture affect only the weight to be given to evidence and not its admissibility. Thus, the courts can hear evidence from a third party that has been extracted by torture committed by another state.

Bill Rammell, the UK Foreign Office Minister, speaking at the High-Level Segment of this year's CHR, said: "The UK is firmly committed to the absolute prohibition on torture, cruel, inhuman or degrading treatment". The statement was no doubt a response to the abuses committed by British troops in Iraq at Camp Breadbasket near Basra in May 2003.

Mr Rammell fairly pointed out that the allegations of abuse were duly investigated before a military commission, where three British soldiers were dismissed from the army and sent to military prison. However, the fear is that the events may not be a one-off, but are indicative of a pattern of falling human rights standards in the name of the fight against international terrorism. Indeed, the government invites such fears by its ambivalent approach to the use of evidence extracted under torture by other states.

It is difficult to understand why the UK government and the English courts accept that it is unlawful to deport foreign nationals to countries where they may be subject to torture, whilst it is apparently acceptable to use evidence in English courts that may have been extracted by way of torture, provided it is carried out by another country.

This is a bizarre and shameful anomaly, which is out of step with the absolute prohibition in international law of torture, cruel, inhuman or degrading treatment. On 26 November 2004 the UN Committee against Torture recommended that the UK government should make a formal undertaking that it will not rely on or present evidence obtained through torture in any proceedings.

Legitimacy diminished

At a recent lecture, leading UK human rights lawyer Professor Geoffrey Bindman said that: "in the guise of protecting the public [both Britain and the USA] are ready to abandon principles which are the hallmark of our democracies. These are the values that we seek to defend and to export to those countries that we see as less fortunate. We are entitled to expect our government to respect the rule of law and to understand the lessons of our history."

The UK government should be under no illusions that its human rights credentials are at stake. Its approach in part 4 of ATCSA, and now the PTA, and to the use of evidence obtained by torture, is clearly inconsistent with international human rights law. Moreover, are UK citizens now to live in an Orwellian "near-permanent emergency" where fair trial rights are compromised and torture justified - provided someone else does it?

If the UK is "firmly committed" to international human rights standards, as it says it is, then it must start by demonstrating a consistent commitment to these standards at home. It could start by charging suspected international terrorists with recognised criminal offences and trying them according to internationally recognised standards. It could also make a firm undertaking that it will not use any evidence in legal proceedings that is either known, or suspected to have been, extracted by way of torture.

These are not big steps: they are the most basic steps to preserve rights that have existed in the UK for several centuries. If the UK government does not act it will be faced with further scrutiny by the courts at home.

And at the CHR, its claim to be firmly committed to human rights will be seriously undermined, as will its legitimacy to influence other States.

MINORITIES

Ahmadiyyas at the receiving end

JENNIFER LANGLAIS

OVER the past year and a half, the Ahmadiyya community in Bangladesh has been the target of a politically motivated campaign of hate speech. The sentiments of antipathy towards the religious minority, perceived by mainstream Muslims as falling outside the purview of Islam, has been exploited by radical groups to pave the way towards an Islamic state. As a result, Ahmadiyyas have been victims of acts of intimidation, including attacks on their mosques, destruction of property, social boycotts, forced evictions and murderous assaults. The government of Bangladesh has failed to investigate the abuses perpetrated against the Ahmadiyyas.

Instead, it has surrendered to the most radical elements of its four-party coalition by promulgating a ban on Ahmadiyya publications. The persecution of the Ahmadiyyas in every form constitutes a flagrant violation of their freedom of religion both under the Bangladeshi Constitution and international law. The government of Bangladesh has the obligation under international law to ensure that the abuses against Ahmadiyyas are thoroughly investigated and that those responsible, including state officials and members of government, are duly brought to justice.

The Context

The Ahmadiyyas are a small religious minority of 150,000 members in Bangladesh. While Ahmadiyyas profess to be Muslims, they are rejected by orthodox Muslims who consider their belief in the prophethood of Mirza Ghulam Ahmad as contrary to a fundamental tenet of Islam, namely the finality of the prophet Muhammad.

While Ahmadiyyas have long been persecuted in Bangladesh, it is only recently that the government has been directly involved in abridging their religious freedom. In January 2004, after months of demonstrations and agitation throughout the country, the government conceded to anti-Ahmadiyya groups by announcing a ban on Ahmadiyya publications. The government action, alleged to be necessary to prevent further violence against the Ahmadiyyas, seems more likely to be a political strategy to appease its more radical electorate. This tactic has translated into more attacks and acts of intimidation being perpetrated against the Ahmadiyya community in an atmosphere of impunity.

The current composition of government provides the backdrop for understanding the sudden resurrection of the Ahmadiyya issue in Bangladeshi politics. Recent events have rehabilitated in the political arena fundamentalist parties (namely the Jamaat-e-Islami and the Islamic Okye Jote) whose alliance with the party in power, the Bangladesh National Party (BNP), has given them more influence in the government. While their involvement in some of the attacks targeting the Ahmadiyya community is well documented, the Bangladeshi government has failed to take appropriate measures to bring the culprits to justice. In this context, the age-old Ahmadiyya question appears nothing less than a political strategy used by extremist political parties to gain visibility in Bangladesh and advance an Islamic fundamentalist agenda. Regrettably, the BNP has yielded to the pressure of its most radical elements, trading the religious freedom of Ahmadiyyas for a firmer grip on power.

Ahmadiyyas have long been victims of harassment and acts of intimidation in Bangladesh. However, it is only in recent times that they have been the targets of a mass scale campaign of hate speech by fundamentalist organizations. The most notorious, the International Majlis-e-Tahaffuze Khatme Nabuwwat, has since 1991 steadily organized mass rallies and demonstrations to pressure the government into declaring Ahmadiyyas non-Muslims. Most of these rallies and demonstrations have catalyzed attacks on Ahmadiyya mosques all over the country.

In 2003, anti-Ahmadiyya agitation reached dramatic proportions when a group of local Islamic activists in Uttar Bhabanipur, Kushtia District, excommunicated seventeen Ahmadiyya families and held them illegally under house arrest. During 25 days, these families were prohibited from harvesting crops, selling or buying goods and even sending their children to school. The situation was resolved only after the Home Minister intervened. Despite the fact that the instigator of this social boycott has been positively identified, no action has been taken against him or against those who applied the edict.

BANGLADESH

Ahmadiyyas

Just a few days later, Ahmadiyyas were again plunged in horror and humiliation when a group of hardliners murdered a local imam in Jessore District. Shah Alam was savagely beaten by a group of extremists during a planned attack on an Ahmadi mosque. It was reported that the incident occurred just after a local Jamaat-e-Islami leader incited his followers to attack the Ahmadiyyas. Although several witnesses have identified the perpetrators of the attack, no one has been apprehended by the police. Further, despite evidence of its involvement, the government has not held the Jamaat-e-Islami responsible for the attack.

In November 2003, anti-Ahmadiyya agitation reached a second peak after Sunni extremists launched a virulent campaign in Dhaka. Anti-Ahmadiyya groups staged mass demonstrations in Dhaka, presenting to the government a series of ultimatums for declaring Ahmadiyyas non-Muslims and evicting Ahmadiyyas from the Nakhalpara mosque in Dhaka. Although the State Minister for Religious Affairs rejected the demand on 8 December, no one was arrested in relation to the aforesaid events.

On 8 January 2004, succumbing to pressure, the Government of Bangladesh passed a ban on all publications of the Ahmadiyya community. Unfortunately, this concession did not calm Islamic hardliners who continued to harass Ahmadiyyas throughout the country. Even if the ban has no legal force due to the failure of government to notify it in the Official Gazette, it was reported that Ahmadiyya publications were confiscated in some mosques around the country with the participation of local officials. In December 2004, at the request of human rights organizations, the High Court of Bangladesh issued an interim order suspending the ban. The full hearing is expected in 2005. It is unclear whether the suspension will remain in force should the government publish the ban in the Official Gazette.

Legal Obligations of Bangladesh

The acts of violence perpetrated against the Ahmadiyya community are in flagrant violation of the guarantees enshrined in the Bangladeshi Constitution and the International Covenant on Civil and Political Rights (which Bangladesh ratified in September 2000). Even if both documents allow states to impose restrictions on the manifestation of religion and the exchange of information, these restrictions must be prescribed by law and necessary to protect a legitimate interest, such as public order and morality.

These restrictions must further be directly related and proportionate to the specific ends for which they were prescribed and cannot be imposed for discriminatory purposes. The ban on Ahmadiyya publications cannot be said to be directly related or proportionate to the objective of protecting the Ahmadiyyas. If the ban serves any purpose, it is to appease the more fundamentalist elements of government and keep the alliance intact.

Far from being a measure necessary in the interest of public order or morality, the ban gives further munition to anti-Ahmadiyya groups in their political campaign for an Islamic state.

Minority Rights at Stake

Born a secular nation, Bangladesh has long resisted the pressure for an Islamic state. Over the years, however, conceding to its more fundamentalist elements, it has gradually shifted towards a more intolerant society, sacrificing in the wake some of its founding principles.

It is important that the international community does not underestimate the political significance of the current anti-Ahmadiyya agitation in Bangladesh and exhorts its government to reaffirm its allegiance to the rule of law and the supremacy of fundamental rights and freedoms. At stake is not only the freedom of religion of Ahmadiyyas but also the rights of all other religious minorities who live in Bangladesh.

The international community should therefore not hesitate to remind the government of Bangladesh of its obligation to investigate thoroughly the human rights abuses committed against the Ahmadiyyas and lift the ban imposed on their publications.

Empty seats, empty proclamations

ACCORDING to Adviser to the State Minister of Foreign Affairs of the Government of Bangladesh H.E. Mr. Reaz Rahman, in his statement at the High Level Segment, Bangladesh is "a country where respect for individual liberty is deeply engrained and vigorously defended." On this basis, he claimed, "we attach great importance to the work of this Commission and remain constructively engaged in the process in which the world seeks to give meaning and substance to human rights." A nice gesture, but one that is difficult to realize when Bangladesh's seats in room XVII remain empty every day.

Mr. Rahman displayed a very encouraging picture of Bangladesh to those who might not know any better. There is a place for recognizing the "privileged position" of women in Bangladeshi society through training and integration into the economic mainstream, praise for "our multi-party democratic system…that has proved eminently successful", and emphasis "that in Bangladesh be [sic] have an aggressive and free press, a vocal opposition and a vibrant civil society". Eloquent fiction all. No mention of the rise of fundamentalism and the hijacking of the allegedly democratic process, no reference to the assessment of the Committee for the Protection of Journalists, for instance, that Bangladesh represents one of the most violent and dangerous countries in the world for journalists.

Self-congratulation about having accepted three Rapporteurs to Bangladesh in the past might be complimented by a pledge to reply to the request of the Special Rapporteur on Freedom of Expression to visit, still forthcoming. And, of course, no mention at all of the persecution of minorities such as the Ahmadiyyas, despite the Government's commitment to "the creation of awareness among the common people about their individual rights." The same Government, it should be recalled, that is refusing to investigate the persecution of the Ahmadiyyas, and worse.

Bangladesh does "remain concerned with racial crimes and religious profiling", but only in other countries, where "there is an urgent need to improve understanding among countries, among peoples and a need [sic] emphasize tolerance and the benefits of richness of diversity." Could we attribute these quotes to the Jamaat-e-Islami and the Islamic Okye Jote? A little introspection and honesty would be a wonderful thing.

BELARUS

An illustrious new partnership

How Belarus is so suited to the LMG and well qualified to carry out the group's pernicious agenda

DON RASSLER

THE floor of the CHR was heated this past Wednesday following the presentation of the Special Rapporteur on the situation on human rights in Belarus' report. Further, rejecting both last year's CHR resolution and the mandate of the Special Rapporteur once more, the distinguished Ambassador of Belarus reaffirmed his country's commitment to international human rights and the rule of law.

Heeding the call, the LMG rallied in support of Europe's most dictatorial regime. Russia chimed in first, followed by China, Cuba and Kenya shortly thereafter. All four parties protested against the Special Rapporteur's "politically motivated" report, which Cuba claimed too closely resembled the US State Department's 2004 human rights report on Belarus. Predictably, the United States, Canada and the European Union further condemned the actions of the Lukashenko regime whilst they threw stones from the opposite side of the fence.

History Revealed

Since 1994, through two constitutional referendums, Belarus' President, Mr. Aleksandr Lukashenko has, according to the US State Department, "systematically undermined the country's democratic institutions", enabling him to further consolidate his control over key aspects of both the legislative and judicial process. Lukashenko's first referendum, held in 1996, effectively replaced Belarus' single parliamentary system (the Supreme Soviet) with a bicameral Parliament, despite the fact that Belarus' own Constitutional Court ruled that "the proposed amendments to the Constitution could not be introduced through the referendum" and was therefore only consultative in nature. Soon thereafter six judges of the Constitutional Court submitted their resignations in protest. During the most recent referendum the citizen's of Belarus allegedly "voted" to remove term limits for the Office of the President.

As early as 1992 the Committee against Torture remained concerned over the continual deterioration of human rights protection within Belarus. In 1997, the Council of Europe suspended its Special Guest status to the Parliament of Belarus and over the past eight years the Council of Europe has further affirmed this decision through successive resolutions in 2000, 2002 and 2004. In its resolution in 2002, the Council of Europe, believed that the "democratization process in Belarus appeared to be stagnant." On 4 October 2004, the United States House of Representatives unanimously passed the Belarus Democracy Act of 2004 to further promote human rights and Belarus' democratic development.

Unfortunately, for close to a decade the people of Belarus have had to face the brunt of Lukashenko's abusive policies. Indeed, overwhelming evidence indicates that since Lukashenko took office the deterioration of human rights within Belarus has continued unabated.

Lukashenko's crackdown on media freedom and freedom of assembly should raise serious questions about Belarus' so called adherence to international human rights standards. Although, the registration of NGOs is typically an important regulatory process, the Government's requirements placed on the registration of NGOs only seeks to further obstruct and restrict the work of civil society in general. Those NGOs who fail to abide by even the most trivial of regulations, such as changing the design of their letterhead, risk state harassment and possible de-registration. It is clear that these requirements only further promote government oppression.

Furthermore, the government has systematically failed to address numerous cases of enforced or involuntary disappearances: specifically, the disappearances of Yuryiy Zakharenko, Viktor Gonchar, Dmitri Zavadski and Anatoliy Krasovski. The State's use of torture and other forms of harassment against demonstrators and members of Belarus' political opposition are also reportedly widespread.

Tit for Tat

On one level - at least when compared to a country like Turkmenistan - it cannot be denied that the government of Belarus has taken important steps to cooperate with UN human rights machinery. As the government of Belarus suggests, the visits of two UN Special Rapporteurs and the Working Group on Arbitrary Detention attest to this. But, and although the government of Belarus claims to indeed be cooperating with international human rights mechanisms, in particular thematic UN human rights bodies, there is also significant evidence to the contrary. The obvious example is the Government's rejection of both the mandate of the Special Rapporteur on the situation of human rights in Belarus and last year's CHR resolution.

Moreover, an analytical review of Belarus' cooperation with UN human rights treaty bodies and the government's application of the subsequent concerns and recommendations of various treaty monitoring bodies will help to reveal wherein lies the truth. Although in this case it might be more obvious, the devil is also often in the details.

In 1997, the UN Human Rights Committee (HRC) remained concerned "that the human rights situation in Belarus has deteriorated significantly since the Committee's consideration of the State party's third periodic report in 1992." More specifically, the Committee remained particularly concerned about "the lack of legislative limits on the powers of the executive, and the growing concentration of powers, including legislative powers, in the hands of the executive, without judicial control", which have only increased.

Importantly, Belarus' October 2004 elections were reportedly marred by fraud and were largely recognized as neither free nor fair. On 28 April 2004, the Council of Europe also passed an additional resolution on Belarus, which formally rejected Belarus' request to regain its Special Guest status with the Council.

A review of the Council's reasoning reveals that the Council remained concerned about Belarus' "systematic harassment and intimidation" of journalists and members of the media. Furthermore, according to the Special Rapporteur on the situation of human rights in Belarus at least 160 registered print media institutions were closed down over the year. Additional sources illustrate a similar pattern throughout the year.

Recent Reports in Context - Arbitrary Detention and Independence of the Judiciary

Since at least 1997, the HRC has expressed concerns over the length of pretrial detention, which may last up to 18 months, and that the decision to extend or lessen one's pretrial detention lies exclusively with the Procurator and not with a judge. In 2004, the Working Group on Arbitrary Detention conducted an investigative visit to the country, and although the government should be commended for cooperating with the Working Group the Working Group remained concerned about the same problems as those discussed by the HRC.

According to the Working Group, the "[p]resumption of innocence in the Constitution is seriously undermined." Due to the fact that "[f]rom the very moment of arrest and the beginning of detention, detainees are often put under strong psychological pressure to incriminate themselves in crime they are accused of." Furthermore, the Working Group remained concerned about the restrictions placed on lawyers through their subordination to the Ministry of Justice. Again, these concerns are only the reiteration of specific concerns outlined by another treaty body, the Convention Against Torture (CAT), four years ago.

In 2002, the Committee on the Rights of the Child (CRC) remained concerned that a "comprehensive system [to adequately address juvenile justice needs] has not yet been established…that detention is not used as a last resort and that alternative measures to detention are seldom applied." Two years later, and despite their claims to UN cooperation, the government of Belarus has failed to establish "a specialized system for juvenile offenders", in contravention of various and pertinent recommendations outlined by the CRC, which was further recognized by the Working Group.

Of fundamental concern, as suggested by the Special Rapporteur on the situation in Belarus, Adrian Severin, is the pattern and duration of President Lukashenko's abuse of the judiciary in Belarus. Once again, as far back as 1997, the HRC remained concerned "that the judges of the Constitutional Court and Supreme Court can be dismissed by the President of the Republic without any safeguards."

Further, under article 84(10) of the new Constitution the President is directly responsible for the appointment of six out of the 12 judges of the Constitutional Court. The other six positions in the Constitutional Court are nominated to the Council of the Republic by the Chairperson of the Constitutional Court; both the Chairperson of the Constitutional Court and the members of the Council of the Republic are appointed by the President.

In 2001, after his investigative visit to the country, the Special Rapporteur on the independence of judges and lawyers remained concerned about the perpetuation of these problems and specifically recommended that the government of Belarus repeal article 84(11), which provides the President with the direct authority to dismiss judges. Moreover, the Special Rapporteur also recommended that the executive powers of the President be removed as his ability to meddle in the affairs of the judiciary seriously undermined the judiciary's independence. Unfortunately, even four years later, this

CONTINUED ON PAGE 9

Bad behaviour

BELARUS' fifth periodic report to the Human Right Committee (HRC) is over three years late. Plus, Belarus' third periodic report submitted to the Committee against Torture (CAT) and its fourth periodic report submitted to the HRC, were all submitted not "in conformity with the guidelines for the preparation of State party periodic reports".

Moreover, even in last year's CHR resolution the Commission remained concerned "[a]bout the failure of the government of Government of Belarus to cooperate fully with all the mechanisms of the Commission", which were specifically outlined in the Commission's resolution during the 59th CHR. Unfortunately, one year and another resolution later the majority of the recommendations outlined in last year's resolution have also not been adhered to.

Two pertinent examples are Belarus' obligations to: 1) "bring the electoral process and legislative framework into line with international standards"; and 2) to draw upon the expertise of the Council of Europe and the OSCE in order to ensure that Belarus draft law on media "does not, directly or indirectly, further restrict the printing or distribution of independent media in Belarus."

SLOVAKIA

Coercive sterilization of Romani women

New legislation by the Slovak Government is unlikely to eliminate the practice

THE coerced sterilization of Romani women in the Slovak Republic has received international condemnation. When the practice was revealed, the Slovak authorities did little to combat the problems illuminated, embarking instead on sham investigations that invoked further international criticism. Due to the inherently racist attitudes of the medical authorities and their reported ineptitude in adhering to legislative provisions concerning sterilization, it is unlikely that new legislation will have the desired effect of eliminating the practice.

International controversy arose in 2003 upon the release of a report entitled "Body and Soul: Forced Sterilization and other assaults on Roma Reproductive Freedom in Slovakia". It was the result of a fact-finding mission undertaken by the New York Centre for Reproductive Rights and Poradna pre obcianske a ludské práva (Centre for Civil and Human Rights, Slovakia). The report made allegations of coerced sterilization by the Slovakian medical authorities on Romani women of Eastern Slovakia. The team interviewed 230 women from Eastern Slovakian Roma settlements, 140 of whom indicated they were "coercively or forcibly sterilized or who have strong indications that they were forcibly sterilized." **(see box)**

There are many international authorities citing the need for informed consent to medical procedures. The Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the application of biology and medicine (which entered into force in the Slovak Republic 1 December 1998) states that "an intervention in the health field may only be carried out after the person concerned has given free and informed consent to it. This person shall beforehand be given appropriate information as to the purpose and nature of the intervention as well as on its consequences and risks".

Article 3(2) of the Charter of the Fundamental Rights of the European Union states that "[i]n the fields of medicine and biology, the following must be respected in particular: the free and informed consent of the person concerned, according to the procedures laid down by law." Article 5 of the Universal Declaration of Human Rights protects women from "cruel, inhuman or degrading treatment or punishment." The practice of coerced sterilization of women arguably falls within this description. Article II of the Genocide Convention outlaws "acts committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group, such as … [i]mposing measures intended to prevent births within the group."

Various international parties have also directly condemned the practice of coerced sterilization. It was found by the Committee on the Elimination of Discrimination against Women that the practice "adversely affects women's physical and mental health, and infringes the right of women to decide on the number and spacing of their children."

Slovakian authorities have traditionally discriminated against Romani women. The European Roma Information Office alleges that "[a]nti-Gypsyism is an aggressive, widespread and still acceptable form of racism in Europe." A report published by the Commission on Security and Cooperation in Europe states that the "Roma birth rate is higher than that of other ethnic groups in Slovakia" and it is believed by many that Romani women only have children so that they can claim social benefits.

A 2001 report submitted to the Open Society Justice Initiative alleges that there is unequal access for Roma to emergency medical services and segregation in maternity wards. The 1995 Health Minister Lubomir Javorsky "stated at a party rally in Kosice, that 'the government will do everything to ensure that more white children than Romani children are born.'"

Subsequent to the release of the report, the Slovak government's response was to immediately visit one of the Romani settlements mentioned in the report and question the local women. They threatened some women that a term of imprisonment may result on a conviction of "false charges" if the women were to file lawsuits against health care professionals.

The Government also threatened the authors of the Body and Soul report with criminal charges. In a press release, the authorities stated that if the "information in the report is found to be true, authors will be prosecuted for failure to inform law enforcement of criminal activities, and [if] the information is found to be false, authors will be prosecuted under section 199 of the Criminal Code for "spreading false rumors and creating panic in society." Barbara Bukovská, one of the authors of the report, told the Open Society Justice Initiative that there "have been constant threats from the government since the publication of the report."

After mounting international pressure the Slovak government launched a civil and criminal investigation into the report. The Government alleges that guidelines were issued on 28 January 2003 "regarding measures to be taken in order to unify sterilization procedures". These were sent to directors of hospitals under their governance, as well as regional self-governing bodies.

The Ministry for Health formed an internal expert committee to investigate the allegations raised in the report. The Ministry found that no evidence existed to confirm the allegations of coerced sterilization occurring among Romani women. After visiting a single hospital listed in the report the Government disclosed its findings in a report on 19 March 2003. It claimed that "all patients who underwent sterilization, signed the application for sterilization permission and all applications had been reviewed and approved by the sterilization commission [in conformity with the Regulation on Sterilization]".

On 31 January 2003, the Slovak Government's Office of Human Rights and Minorities filed a criminal complaint with the General Prosecutor's Office alleging the commission of "bodily harm" (which was later requalified to "genocide" pursuant to Section 259(1)(b) Criminal Code) against an "unknown perpetrator".

It is alleged that this police investigation was fundamentally flawed in several ways. In two cases it was found that minors were sterilized without adequate parental consent - the police qualified these cases as a "violation[] of administrative procedure rather than criminal offences."

Pursuant to international standards, the presence of a signature is not in itself evidence of consent in the absence of proof of how the signature was obtained, and the police failed to investigate the circumstances under which the consent forms were signed. Amnesty International alleged that the investigation "appear[ed] to have reached hasty conclusions before investigating all relevant crimes in connection with sterilization."

Many international groups questioned the findings of the Slovakian government. The Council of Europe's Commissioner for Human Rights concluded that the "intimidating atmosphere" created by the investigators would render it "'unlikely' that the Government's investigation 'would shed full light on the sterilization practices.'"

The American Helsinki Committee wrote a letter to Prime Minister Mikuláš Dzurinda requesting further investigation. In August 2003 a UN committee stated that they "remain[ed] concerned at reports of forced or coerced sterilization of Roma women" particularly regarding the failure of the Slovakian government to "clearly deny or admit breaches of the principle of full and informed consent".

The matter has also been addressed by other thematic Rapporteurs who sent a joint communication to the Slovak government. While Ms. Yakin Ertürk, Special Rapporteur on violence against women, and Mr. Paul Hunt, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, according to their own reports expressed satisfaction with the reply of the Slovak government, Mr. Doudou Diène, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance urged the Slovak government to "further develop strict and enforced policies concerning sterilization of women".

In order to harmonise Slovak health care laws with European Union legislation and the Council of Europe Convention on Human Rights and Biomedicine, a Health Care Law was passed in October 2004 and came into effect on 1 January 2005. The legislation governs a wide range of issues relevant to the prevention of the practice of coerced sterilization.

It remains to be seen whether the medical authorities will treat this new legislation with the same disregard as the previous regulations, or adhere to its provisions and eliminate the abhorrent practice from the Slovak Republic forever.

‘I did not know it would be forever’

ACCORDING to a report by the New York Centre for Reproductive Rights and Poradna pre obcianske a ludské práva (Centre for Civil and Human Rights, Slovakia), Slovakian medical authorities employed various methods of coercion to obtain sterilization consent from women during childbirth. "[They do] not explain anything … they just tie up our ovaries and then they say that they saved our lives" one Romani woman claimed. Methods included false and exaggerated descriptions of health risks, obtaining consent in situations of duress (some women were on the operating table or under the effect of anesthesia when presented with the consent form), and obtaining inadequate informed written consent from women who cannot read or who do not understand or speak Slovak. There was also an issue regarding the sterilization of minors without parental consent.

The report contains various comments from Romani women. "I was 19 when it happened and I wanted to live" stated one woman. Another said: "I then signed something, but I did not know that it would be forever." Many women did not discover they had been sterilized until after the procedure - one stated that "[l]ater I was given a medical release report where it was written that I was sterilized".

The report stated that Slovakian medical authorities were ignorant of the domestic legislative provisions governing the sterilization of women. When questioned many medical practitioners were unable to correctly recite the standards imposed by the Regulation on Sterilization. They also communicated bias against Romani women.

Slovakian authorities have traditionally discriminated against Romani women. The European Roma Information Office alleges that ‘[a]nti-Gypsyism is an aggressive, widespread and still acceptable form of racism in Europe’.

TRAFFICKING

State inertia stalls justice for victims

Malawi has yet to pass legislation explicitly prohibiting trafficking in women and children

THE trafficking of women and children for sexual exploitation, a practice for the most part ignored by governments in Sub-Saharan Africa, has for some time been a serious problem in the Republic of Malawi. Despite the concerns expressed by the Committee on the Rights of the Child, the body responsible for monitoring implementation of the International Convention on the Rights of the Child, the government of Malawi has yet to pass legislation explicitly prohibiting the practice.

The most recent report of the US State Department on human trafficking confirms the continued practice of trafficking of persons in Malawi and refers to child prostitution as a "growing problem" in the state. It also highlights the existence of an industry of sex tourism involving the prostitution of children. The problem has been exacerbated in recent years by the chronic poverty and acute food insecurity facing most Malawians.

There are three distinct flows of human trafficking that occur in Malawi. First, there is the trafficking of women and children out of the country to other states. According to the 2005 US State Department report on human rights in Malawi, "[t]he country is a source for women and children trafficked for sexual purposes locally and to brothels abroad, particularly in South Africa. Victims trafficked to South Africa were typically between 14 and 24 years old, and were recruited with offers of marriage, study, or employment in South Africa. According to the International Organization for Migration (IOM), sex tourists, primarily from Germany, the Netherlands, and the United Kingdom, lured children into sexual relationships with them while in the country."

IRIN, the United Nations news service, has reported Malawian women being targeted for trafficking because they do not require a visa to enter the United Kingdom. Recruited with an offer of employment, the victim would only discover the real purpose of the arrangement upon arrival.

Further evidence of the transnational flow of human traffic from Malawi is provided by the International Organisation for Migration (IOM). A study commissioned by the IOM states that Malawi has served as a source for the trafficking of persons into other states of the European Union. The findings of the study report the following trend of sexual exploitation: "Upon arrival in the Netherlands, the victim is sold to a Nigerian madam for US$10 000, and told that she must work as a sex-worker to pay off a debt of US$40 000. The Nigerian madam will ask for her panties, hair, and nail clippings in a ritual that threatens death by magic if she is not cooperative. The victim is then sold to other Nigerian agents from Belgium, Germany, and Italy, or rented to local brothels. One brothel in the Netherlands brands with an identifying mark the sex slaves who work there. If a victim does not perform sexually to the satisfaction of the brothel owner, she is beaten, and given sex lessons, or resold."

This form of forced prostitution contravenes not only the national laws of each State in the European Union, but also their treaty obligations under international human rights law.

The second type of trafficking occurs with the movement of women and children from neighbouring states to Malawi. Zambia, Tanzania and Mozambique serve as the most common source countries for this practice. While trafficking is not explicitly prohibited under national law, the constitution of Malawi does outlaw cruel, inhuman or degrading treatment (article 19(3)), as well as slave-like practices (article 27). Neither provision permits any derogation, restriction or limitation of its enforcement. Nevertheless, the reality as evidenced by the reports of the International Organization for Migration (IOM), the US State Department, and the national media, is that the protection provided by the constitution is currently far from being enforced.

The third kind of trafficking which features in Malawi involves the internal movement of women and children within the country. Due in part to the HIV/AIDs epidemic, the demand for child prostitutes has increased in recent years. Paedophiles of European origin travel to Malawi for the sexual exploitation of children. According to the International Organization for Migration: "Both girls and boys may be recruited in the holiday resorts along Lake Malawi by European sex tourists who pay money to the child's parents with promises of educational opportunities for the child in Europe. The victims are featured in pornographic videos that are transmitted over the Internet with victims' names and contact details included. In Europe, the children are sexually exploited in private homes, and are sold to paedophile rings."

The paedophiles visiting Malawi are also primarily from Germany, the Netherlands and the United Kingdom. Victims usually live in tourist spots along the shore of Lake Malawi in the districts of Nkhata Bay, Nkhotakota, Salima, Monkey Bay and Mongochi. In addition to this problem of foreign paedophiles, the US State Department has reported that in the past year, there were "societal patterns of abuse of children. Kupimbira, a societal practice that allows a poor family to take out a loan for cattle or money in exchange for their daughter, regardless of age, has re-emerged over the last few years, according to press reports. The media also reported on the sexual abuse of children, especially in relation to traditional practices of initiation . . . While rites to initiate girls into their future adult roles still were secret, information suggested that abusive practices were widespread and very damaging."

The practice of trafficking children is explicitly prohibited under article 35 of the Convention on the Rights of the Child: "States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form". Malawi, a state party to the Convention since 1 February 1991, obviously has yet to enforce this provision. Expressing concern at the situation in Malawi, the Committee on the Rights of the Child made the following recommendations to the government of Malawi:

- Take measures such as a comprehensive programme to prevent and combat the sale and trafficking of children, and conduct an awareness raising campaign and educational programmes, particularly for parents;
- Facilitate, inter alia, the reunification of child victims with their families and provide adequate care and reintegration for them;
- Ratify the Convention on the Civil Aspects of International Child Abduction adopted in 1980 at The Hague.

These recommendations, made on 2 April 2002, have so far not been acted upon by the government of Malawi.

In addition to the Convention on the Rights of the Child, the practice of trafficking is also explicitly prohibited under Article 6 of the Convention on the Elimination of All Forms of Discrimination against Women which states that 'States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.' There is currently no law in Malawi that specifically prohibits the trafficking of persons. The 2005 US State Department report notes that there were no arrests or prosecutions for human trafficking in the year preceding its publication. Acceded to by the government of Malawi on 11 April 1987, the Convention on the Elimination of All Forms of Discrimination against Women is another instrument of international law yet to be implemented by the state authorities.

In view of the lack of action taken on the matter by the Malawian government, there is an obligation on the international community to act to ensure that the problem is eradicated. Donors such as the United Kingdom, Germany, Denmark, Norway, Canada, Japan, the United States, and the European Union, have a special responsibility in this regard due to the nature of their relations with the government of Malawi.

While the power and responsibility to eradicate trafficking rests with the Malawian government, it is essential that civil society continues to press for action on the issue using every available means. The inertia of the state authorities needs to be broken if the sexual exploitation of women and children is to be effectively tackled.

As the trafficking of women and children continues, the government of Malawi continues to ignore its obligations under international human rights law. Given the state's record of inaction, and the transnational nature of the problem, it is now imperative that the international community focuses on the eradication of trafficking and provides some measure of justice for the victims of sexual slavery.

Quote UNQUOTE

"THAI Prime Minister Thaksin Shinawatra has indicated that he might be prepared to follow a softer line in tackling the restive south.

Mr Thaksin, addressing a parliamentary session which is debating the southern violence, said he would provide more education and development in the area.

He said he had had time to reconsider his approach to the bloodshed during a recent family holiday.

He was responding to criticism that Bangkok had alienated the south.

"I had a lot of free time to contemplate what was right or what was wrong in what I've done," said Mr Thaksin.

"Violence cannot be solved with violence."

- BBC News, 30 March 2005.
At: http://news.bbc.co.uk/go/pr/fr/-/2/hi/asia-pacific/4392657.stm

THAILAND has ordered the relocation of about 3,000 Burmese political refugees to the Thai-Burma border.

If they do not comply, they face being arrested and deported back to Burma.

An estimated one million Burmese are thought to live and work in Thailand, but of these only a tiny number are considered to be political dissidents.

No mobile phones or other electronic devices will be allowed into the camps, making it difficult for political activists to continue their work.

Thailand insists that the relocation is necessary on the grounds of national security.

BBC News, 31 March 2005.
At: http://news.bbc.co.uk/2/hi/asia-pacific/4396051.stm

Violence Against Women

Gender dimension of HIV/AIDS

The SR on VAW draws some key linkages between gender-specific violations of women's rights and HIV/AIDS

KATHRIN SCHLITT

THE world does not divide into neat little problems, each with its own solution, which can be dealt with in order of priority. In addressing the pressing human rights concerns of our day and age, we neglect their interrelatedness at our peril. Violence against women and the spread of HIV/AIDS: the human rights framework gives us the wherewithal to understand the underlying dynamics of these two pandemics and to respond to their human rights dimensions. The scale of the HIV/AIDS epidemic among women is a consequence of gender-specific violations of women's rights.

Focusing on the "Intersection of Violence against Women and HIV/AIDS", this year's report by the Special Rapporteur (SR) on Violence Against Women (VAW) - the second report by the current mandate holder, Yakin Ertürk - takes state to task for yet having to "create integrated and effective responses dealing with gender inequality as the root cause and consequence of the gender-specific manifestations of the disease".

Ms Ertürk articulates the basic understanding which a human rights analysis of VAW and HIV/AIDS gives rise to: VAW is not only a cause but also the consequence of HIV/AIDS, the promotion and protection of human rights of women can reduce the spread of the disease and mitigate its consequences. She uses her report to examine how different manifestations of gender-based violence put women at an increased risk of HIV transmission and comments on the manifestations of discrimination women face due to stigmatisation and gender-related obstacles to access to medical care and the judicial system.

Experts and practitioners in the field will recognise the building blocks of Ms Ertürk's analysis from the work done by NGOs and IGOs including in particular WHO, UNFPA and UNAIDS. Ms Ertürk accomplishes an important task by putting the issue of the intersection of VAW and HIV/AIDS squarely on the agenda of the CHR in a manner that draws urgent attention to HIV/AIDS as a gendered human rights issue.

Hopes are up that the concerns Ms Ertürk raises will be reflected by the work of the Commission on Human Rights this year. The draft resolution on "The protection of human rights in the context of human immunodeficiency virus (HIV) and acquired immunodeficiency syndrome (AIDS)", sponsored by the Polish delegation, is timely in featuring new paragraphs reflecting the interrelation of women's human rights and HIV/AIDS.

It "requests States to take all appropriate measures to protect the human rights of women (…) in the context of HIV/AIDS, in particular to address gender inequality, violence against women and girls [and] harmful traditional practices (…)". It also "calls upon states to ensure full and equal access for women and children to HIV prevention, information, education and commodities (…)".

The draft resolution on violence against women at this year's CHR includes women discriminated against on the basis of the HIV status in the group of those for whom discrimination leads to targeting or vulnerability to violence (PP6). It also urges governments, UN bodies, IGO, NGOs and others to "effectively promote and protect women's and girls' human rights, including sexual and reproductive rights, in the context of HIV/AIDS…" and encourages them to "provide comprehensive care for survivors of sexual violence, including the use of anti-retroviral drugs both for post-exposure prophylaxis and for ongoing treatment for HIV infection" (PP 9 bis and ter). Ms Ertürk emphazises that the interrelation of VAW and HIV/AIDS should be analysed through the lense of discrimination resulting from gender inequality. She elaborates on several VAW-related aspects of prevention of HIV/AIDS in women: rape and sexual assault, domestic and intimate partner violence, violence related to harmful practices, violence related to the commercial sexual exploitation of women, and violence in armed conflict. Women who are subjected to sexual violence stand little or no chance of protecting themselves against HIV/AIDS.

Ms Ertürk's analysis mirrors that of other human rights bodies. Thus, for instance, in its General Comment 24 on the Right to Health , the CEDAW Committee requested that states report on the manner in which measures taken to give effect to women's health rights take into account women's needs and interests, particularly with regard to "[s]ocio-economic factors that vary for women in general and some groups of women in particular [such as] unequal power relationships between women and men in the home and workplace … different forms of violence … [the vulnerability of girl children and adolescent girls] to sexual abuse by older men and family members, placing them at risk of physical and psychological harm and unwanted and early pregnancy … [and] cultural or traditional practices such as female genital mutilation …" (para. 12).

> **Programmes aimed at the prevention and treatment of HIV/AIDS cannot succeed without challenging the structures of unequal power relations between women and men. (…) [T]he multiple ways in which violence against women and HIV intersect increase the risk of HIV infection among women, their differential treatment once they are infected and their stigmatization, which in turn triggers further violence. (…)**
>
> **In spite of the number of women contracting HIV/AIDS through violent means, States have yet to fully acknowledge and act upon the interconnection between these two mutually reinforcing pandemics. By and large, Governments fail to take into consideration gender discrimination in formulating HIV/AIDS policies. (…)**
>
> **Most intervention strategies tend to target specific groups such as migrants or women who are trafficked for purposes of sexual exploitation. Such programmes are important; however, an integrated approach is needed to tackle the impact of gender inequality, while at the same time to reach specific risk groups. National policies and action plans would be vastly more effective if they acknowledged and acted on the interconnectedness between the two pandemics of HIV and violence against women."**
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> ***- Report of the SR on violence against women (E/CN.4/2005/72)***

While addressing violence against civilian women in conflict situations, the report neglects violence perpetrated against women combatants. Often forced to serve as soldiers, women are at high risk of experiencing rape. NGOs active in the release of female child soldiers in the Democratic Republic of Congo (DRC) in early 2004 reported that half of them were found to be HIV positive.

Once women have been infected by HIV/AIDS the risk that they become victims to violence rises further due to stigmatization and discrimination. Stigmatization - the "third epidemic" after the "silent" epidemic of HIV infection and the outbreak of AIDS -is fuelled by misinformation about HIV transmission, fear of infection and the incurability of the disease.

Women are differentially and differently affected by it in ways that exacerbates existing social, cultural and economic gender discrimination. Women are often portrayed as 'vectors of disease', incurring moral blame and allegations of infidelity and promiscuity. HIV-positive women are often more likely than men to face rejection not only by community but also by their families. Healthy women appear more likely than healthy men to stay with their infected partner and support them.

In violation of their rights, women, in particular those seeking prenatal care, are often subjected to involuntary HIV testing and disclosure of results without their consent, leading to discrimination, stigmatization and violence by community as well as the family and partners. How many women the world over come full circle, from violence to HIV infection to violence?

Ms Ertürk concludes: "Multiple layers of subordination that increase women's exposure to violence, limit their sexual and reproductive rights, increase stigmatization and discrimination and constrain their access to medical care, as well as feminized poverty, are all causes and consequences of HIV."

A critical look at the recommendations

In her first report, submitted to the 60th session of the CHR in 2004, Ms Ertürk highlighted the need to build on the standard setting successes on VAW accomplished during the ten years of the CHR's mandate on VAW by working "[t]owards an effective implementation of international norms to end violence against women" (so the title of her report) to create changed realities for victims of VAW.

It is to be welcomed that Ms Ertürk has fulfilled her part of the implementation deal by offering states implementation-oriented, detailed and precise recommendations which she herself will be able to follow up on in future country missions. The recommendation of health care, for example, integrates demands on states regarding implementing equality in access to medical care, HIV testing and treatment, with demands on the establishment of mobile health centres, the reduction or abolition of fees, the availability of affordable drugs as well as childcare and adequate privacy at health-care centres. Furthermore she calls for female health-care providers and suggests that women living with HIV be recruited to act as treatment advocates to ensure gender-sensitivity.

The report would, however, have benefited from the inclusion of recommendations on the subject of women's access to justice: nothing more concretely aids the implementation of women's human rights than enabling women to approach the courts to have their rights enforced.

Some commentators may disagree with this report's focus on HIV/AIDS as an issue closely related to VAW. Is Ms Ertürk not merely jumping on the 'HIV/AIDS and women' bandwagon? The answer is clearly no: Ms Ertürk's report responds to the CHR's call in 2003 to all special representatives, special rapporteurs and working groups of the CHR to " integrate the protection of HIV-related human rights within their respective mandates " (CHR Res. 2003/47, para. 13).

It is to be hoped that the conclusions of her report will be reflected in the resolutions adopted by this year´s CHR on the protection of human rights in the context of HIV/AIDS, on VAW and on access to medication in the context of pandemics such as HIV/AIDS, tuberculosis and malaria. Ms Ertürk's use of the 'S' word - sexual rights - is guaranteed to enliven the discussion of her report. She has done her bit to address the identified "need to ensure accountability and foster a sense of responsibility on the part of diverse actors in the fight against the pandemic, including States, community leaders, individual men and pharmaceutical companies" (para 50, Rep. on VAW-60th CHR, E/CN.4/2004/66).

Privatization of security

The need for improved governance

Part 2 of a series on human rights perspectives on the privatization of security and the resurgence of mercenary activities

JENNIFER LANGLAIS

AT first praised for their neat and efficient interventions, private military companies have in recent years attracted bad press coverage for the reported human rights abuses committed during their operations. In many quarters, however, these new providers of security are still considered as an inevitable evil to be coped with given the increased reluctance of Western states to intervene in war-torn countries and the impotence of an international system devoid of autonomous armed forces.

At a time when academics and international observers debate on the means to bring the new providers of security under clear lines of accountability, the international community must question the broader implications of the commoditization of security. By supplanting the state as the main provider of security, private security companies have put themselves in the enviable position of dictating the demand for security. But more importantly, they have become over the years the least expensive instrument in the toolkit of Western democracies to advance strategic interests without the embarrassment of public scrutiny.

The Erosion of State Sovereignty

While states have a legitimate right to buy military assistance, the increased reliance on external forces to meet their security needs can in the long run seriously erode their sovereignty. When states delegate their responsibility to protect their populations, they become dependent on the expertise of private actors whose interests do not necessarily coincide with theirs. Private providers of security, all types confounded, are in business for profits, not peace. As put by Christian Olsson, they have an obvious pecuniary interest in selling the fears they alone can combat through their military expertise. The danger they represent in this sense lies in their ability to control the demand for security. As analysts have demonstrated, security is not one of these commodities that are sold on the market according to the fluctuations of supply and demand; it is a "service" that can generate its own demand.

Every discourse on the need of protection gives rise to a sentiment of insecurity which in turn generates a need for protection. When the social actors who control the discourse on the need of security are in a position of authority, they can control the demand and type of security society requires. Given that private military companies are headed by military experts emanating from the defense departments of militarily-advanced Western countries, they are ideally positioned to create a need for protection and determine what kind of protection those in need of protection require. Unfortunately, the type of protection they provide tends to lead to the militarization of volatile areas and the expansion of the means to wage war.

Beyond eroding the sovereignty of states and militarizing crisis zones, the increased reliance on private providers of security has the pernicious effect of distributing in the hands of the wealthy the benefits of security. When the state abdicates its role of ultimate provider of security, it leaves the deprived sections of its population without resources to meet their security needs. Security becomes a luxury that only wealthy layers of society can afford. In most failed states, the benefits of security are thus enjoyed by political elites, extracting companies and rich land owners. In the end, the State remains the actor which can ensure optimal security to all its citizens. When the state delegates its responsibility, the security needs of its population are inequitably met at the expense of the most deprived communities.

> ***The international community must question the implications of the commoditization of security. By supplanting the state as the main provider of security, PMCs have put themselves in the enviable position of dictating the demand for security.***

The Discrete Allies of Western Countries

In addition to controlling the demand for security, private military companies insidiously take away from public scrutiny the actions of those who hire them. In a sense, private military companies are the covert forces of political elites unwilling to send official troops abroad due to cost, inadequate strategic interest, risk of casualties and lack of national support. In fact, most private security companies provide military assistance in a quasi-official capacity. Even if their home states insist that their activities are private, they are rarely performed without a seal of approval from the defense authorities of their home state. In the United States, for example, any contract for military assistance signed by a company must by approved by the US State Department. Similarly, the Israeli government grants licenses to private military companies and uses the services of these companies as a bargaining chip in negotiations with foreign governments.

Given their obvious utility to political elites, it may be unlikely that the regulation of private military companies will alleviate the potential to commit human rights abuses. The problem is not so much a lack of control of these private military companies as the lack of accountability on the part of governments susceptible to resort to them to short-circuit the democratic processes. As stated by Juan Carlos Zarate, "those states from which mercenaries are supplied have a vested interest in retaining the option to influence foreign conflicts by allowing mercenaries to sell the services with the possibility of denying responsibility for their actions."

The question is therefore whether the close circle of Western countries from which the supply of private military services emanates can politically commit to regulate the activities of the new providers of security in an effective and transparent way. While South Africa and the United States have developed precursory regulatory frameworks, the latter hardly involve democratic processes and are more concerned with ensuring that foreign policy is not hampered by the activities of private companies. But most importantly, even if a common regulatory framework could be agreed on by the main suppliers of security, the most disreputable private military companies based in Eastern Europe and East and Southern Asia would escape it.

Policy Responses

Given the link between private military companies and Western governments, it may be judicious in the long run to address the problems engendered by the privatization of security by focusing more on the factors that foster the demand for military services (rather than focusing entirely on the means to regulate them). The first and most important of these factors is bad governance. As long as there are states ruled by elites maintaining themselves in power through the language of force, the demand for military assistance will not abate. In the long run, security in developing countries will only be achieved though democratization, improved governance, and equitable distribution of resources. These goals can be fostered by including on the governance agenda of donors and international organizations the reform of the security sector and the creation of effective and efficient militaries adequately trained and answerable to the democratic processes.

Admittedly, in poor and fragile democracies, militarization may be a low priority but it should be remembered that even the ability to provide basic social services depends on stable and secure political structures.

Jennifer Langlais is LL.M. (Harvard University) and 2004-2005 Henigson Human Rights Fellow

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Illustrious partnership...

only reaffirms the concerns of the HRC that the President of Belarus has failed "to respect the decisions of the Constitutional Court and to observe the rule of law."

Problematically, all judges in Belarus are entitled to monthly bonuses, and according to the Special Rapporteur on the independence of judges and lawyers "[t]he Presidential Administration decides on the bonuses for the higher courts." One judge interviewed by the Special Rapporteur was also of the belief that torture was often used to extract confessions.

Putting the Pieces Together

As the preceding paragraphs illustrate, Belarus is far from "[b]eing a responsible State party to all core international human rights instruments [and even farther from fulfilling] its international obligations in good faith", despite the protestations of Belarus' Ambassador, His Excellency Mr. Sergei Aleinik.

Yes. Belarus has invited various thematic UN rapporteurs to visit the country, but what the distinguished Ambassador fails to recognize or admit is that importance is not only placed on their invitation and subsequent visit, but also on Belarus' adherence to their recommendations. Herein, lies the problem.

Furthermore, the Ambassador points to Belarus' commitment to engage in "constructive dialogue with the UN treaty bodies and specific thematic procedures of the CHR". Perhaps, he could start by engaging similarly with the Rapporteur on Belarus, who reports specifically on the country and would be as clued into the relevant issues as the other Rapporteurs.

Moreover, if the Ambassador is going to quote from Mr. Severin's report the least he could do, for the sake of - diplomacy, is actually quote it accurately.

Nevertheless, it must be said, it is at least important to know how the Ambassador, and not the Special Rapporteur, genuinely feels about NGOs.

Indeed, the Ambassador's statement about "militant" NGOs actually works well, as it is emblematic of how the Belarusian government treats NGOs in general. Hopefully next year the Ambassador will also realize that the Commission is referred to as the UN CHR and not that other UN body that deals with refugees. What an embarrassment!

You'd figure this time, when Belarus is really under the gun, they might actually get it right.

But, if Belarus was genuinely interested in cooperating with UN human rights mechanisms and further facilitating human rights protection they need not look far for advice.

Latvia is right across the border.

TORTURE

Prevention or promotion of torture?

The CHR must take an unambiguous position on the prohibition of torture and cruel, inhuman or degrading treatment

MARK THOMSON

ALMOST every week, since the last UN Commission on Human Rights we have all seen media coverage, in shocking graphic detail, of cases of torture and ill-treatment. Even worse, senior government officials have been trying to justify the use of torture and ill-treatment. One would have expected that they would have been held responsible for what they have unleashed but instead they are promoted to higher office. Under pressure officials have been denying that they authorised torture but "only" cruel, inhuman and degrading treatment or punishment (ill-treatment), yet the combination of these so called "aggressive interrogation measures" amount to torture as the intention is to brutally force confessions from detained persons by "breaking" and destroying their will, which is why ill-treatment is clearly prohibited under international law.

How cooperative will States be to agree on the draft resolution tabled by the Danish delegation? What issues will they try to have excluded from the resolution, such as references to ill-treatment?

Furthermore the clandestine way in which persons have been detained amounts to illegal disappearances and arbitrary detention. Recent evidence proves that high-ranking officials and political leaders knew that the methods they were promoting were breaking the law.

How will the world's most important human rights body respond to this challenge to one of the most fundamental rights enshrined in international human rights and humanitarian law? In the opening High Level segment some high-ranking State representatives indicated the position that they expected the Commission to adopt.

The South African Minister of Justice referred to the "appalling scenes of torture with impunity" and stated that: "These wrongful acts should not go unpunished and require this Commission to respond in a manner which ensures our collective responsibility to protect the victims of human rights violations."

The Danish State Secretary for Foreign Affairs highlighted the issue when he stated that: "Such measures have been described as 'practicising torture in a morally correct way'. In our view, this is a mockery of the firm prohibition against torture. Any Nation, which condones the use of or allows its agents to engage in torture should be met with an unequivocal and strong reaction by the international community."

The President of the ICRC focused his statement almost entirely on the protection of persons deprived of their liberty, with a strong declaration that: "Detaining authorities must abide by the prohibition of torture and other forms of ill-treatment not only because it is unlawful under international law (and most domestic law, for that matter), but because such treatment violates the most basic principles of humanity to such an extent that it can never be morally justified. Even the slightest acceptance of such practice risks to lead down the slippery slope of proliferation."

On the opening day of the Commission, the Swiss Minister of Foreign Affairs indicated the path she expected the Commission to take, with the statement (original in French) that:"It is unacceptable that governments or political leaders would consider the possibility of a legal authorisation to commit torture. These signals are of extreme concern and must be condemned with the greatest firmness."

The ball is now in the court of the States participating in this session of the UN Commission on Human Rights. Several upcoming matters will indicate where they stand. For example how cooperative will States be to agree on the draft resolution tabled by the Danish delegation? What issues will they try to have excluded from the resolution, such as references to ill-treatment? Are States willing to make public commitments and enter into a constructive dialogue with the new Special Rapporteur on Torture in the 4th week of the Commission? What reception will States give to the three previous mandate holders and the current Rapporteur, when uniquely they will be brought together, to mark the 20th anniversary of the mandate, for a parallel meeting on Thursday 7th April? We won't have to wait until the end of the Commission to have a clearer view of whether they support a collective unambiguous condemnation of all forms of torture and other cruel, inhuman or degrading treatment or punishment.

States need to be reminded that they should be taking concrete steps to prevent torture and other ill-treatment. The UN General Assembly adopted the Optional Protocol to the Convention against Torture in 2002, to assist States with this obligation. The aim of the Protocol is: to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

Visits by independent experts to places of detention are one of the most effective ways to prevent torture and other ill-treatment. However the visits need to be regular and made by appropriate experts who are capable of making recommendations to the relevant authorities. The Protocol provides this by not only presenting the criteria for effective preventive bodies but also through the innovative proposal to establish both international and national bodies to collaborate with States to take short and long-term action to prevent violations.

To ensure that national preventive mechanisms are effective the Protocol stipulates that "States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel." Functional independence is a key issue so how can it be ensured?

The need for the mechanisms proposed by the Optional Protocol is underscored by the renewed frequency with which we are confronted with images and reports of torture and ill-treatment in the global media

First of all, the founding basis of the national mechanism should be appropriately defined so as to ensure that the national preventive mechanisms can not be dissolved or their mandate negatively modified by the State, for example with changes of government. Ideally therefore the legal basis for their mandate should be founded in the national constitution or an act of parliament.

Secondly, national preventive mechanisms should draft their own rules and procedures and these must not be open to modification to any external authorities. Thirdly, the national mechanism should be composed of independent experts who are distinct from the State authorities. Fourthly, the experts and their staff should be appointed in an open process to ensure that the best possible candidates apply.

Fifthly, national preventive mechanisms should be financially independent with their own budget rather than one subsumed under a government ministry. The sources and nature of funding should be specified in the inaugural instrument of the national preventive mechanisms. Finally, the public reporting and transparent functioning of the national preventive mechanisms will assist their independence and perceived independence that will enhance their effectiveness.

So what about their mandates? The national preventive mechanisms are given the same mandate in the Protocol as the international Subcommittee on Prevention: to conduct regular visits to places of detention and to make recommendations in order to improve the treatment and conditions of persons deprived of their liberty. However, they are also afforded the additional mandate to submit proposals and observations concerning existing or draft legislation, thereby enabling them to play an active role in shaping domestic legal provisions for strengthening the protection of persons deprived of their liberty. Furthermore they are not excluded from submitting cases to the competent authorities, as some National Human Rights Institutions already do, e.g. in India.

Existing National Human Rights Institutions (National Commissions, Ombudsmen etc) are the most likely bodies to be adapted and re-resourced to take on the national preventive mechanism role, envisaged in the Protocol.

However, whether a State ratifies the Protocol or not, National Human Rights Institutions have a pivotal prevention role to play. Firstly, in advocating for the national implementation of international and regional standards prohibiting torture, especially in legislation to criminalise torture.

Secondly, in cooperating with international and regional human rights bodies, such as the UN Special Rapporteur and the Committee against Torture, by supplying information and following-up on the implementation of their recommendations.

Thirdly, by monitoring places of detention, not in a reactive way to crises or individual cases but rather in a pro-active way of preventive visits such as in the Protocol.

Fourthly, by investigating cases and submitting them to the appropriate judicial authorities. Fifthly, through public education and training of police and prison authorities.

Finally by participating actively in public policy making on issues related to the rights of persons deprived of their liberty.

Following endorsements by the UN, the African Commission on Human and Peoples' Rights, the Council of Europe and the Inter-American Commission on Human Rights, some 33 States have signed the Protocol. Six States have already deposited ratifications with the UN Secretary General; Mexico and Croatia have indicated that they will soon follow suit. The optional Protocol will enter into force on the 20th ratification, which can now be reasonably expected to happen by the end of 2006, four years after its approval by the General Assembly.

The need for the mechanisms proposed by the Optional Protocol is underscored by the renewed frequency with which we are confronted with images and reports of torture and ill-treatment in the global media. One of the saddest contradictions over the last few months have been the revelations of these criminal acts alongside the publicity given to the 60 years anniversary of the liberation of Auschwitz and other concentration camps. All of humankind has renewed their vows never again to allow such atrocities and yet torture and ill-treatment appears rampant again.

Individuals and groups must now wonder whether States and the Commission will take real positive steps and speak out, with a strong and unambiguous public position, on the absolute prohibition of torture and all other forms of cruel, inhuman or degrading treatment and punishment.

Mark Thomson is Secretary General of the Association for the Prevention of Torture.

PAPUA

New democracy must make a fresh start

Indonesia must prove its democratic credentials by ensuring accountability for rights violations in Papua

BUDI HERNAWAN OFM, CATHERINE SCOTT & CHRIS DUCKETT

While there have been positive developments in the democratisation of Indonesia, as evident by the recent presidential election that was deemed free and fair, the human rights situation in Papua remains grave. In spite of Indonesia's election as Chair of the 61st session of the UN Commission on Human Rights (CHR), systematic instances of torture, arbitrary detention, and forced displacement continue unabated by the Indonesian security forces.

Extrajudicial killings persist

Extra-judicial killings have been reported in the villages of Mariedi, Bintuni District where the British Petroleum (BP) Tangguh Gas project is located, and in Mulia, District of Puncak Jaya. In Mariedi, five people were shot dead by the police and two were injured and charged with treason and membership of the Free Papua Movement (OPM). These individuals were in fact asking for fair compensation for their land rights from the Djayanti timber company .

In Mulia, the situation remains unclear following the killing of a local priest, Elisa Tabuni, by the security forces. The major religious leaders of Papua have repeatedly urged the Provincial Parliament (DPRD) to request the Indonesian National Commission on Human Rights (KOMNAS HAM) to conduct a thorough investigation but to date, no action has been taken. Puncak Jaya exemplifies the gravity of the general situation. We must also emphasise that the human rights situation in Wamena has not improved since the large-scale military operation conducted in April 2003 (and cited in *Human Rights Features*, 13-18 April 2004).

Human rights defenders threatened and intimidated

Human rights defenders in Papua are also under threat. In 2004, members of the Institute for Human Rights and Advocacy (ELSHAM), Aliansi Demokrasi Papua (ALDP), TRITON Foundation and the Office for Justice and Peace Sorong are among those who have been criminalised or arbitrarily arrested and detained due to their lawful work to protect and promote human rights in different parts of Papua.

Limited progress, but the impunity continues

In the last twelve months, the stigma of separatism is regularly imposed on individuals or institutions that the security forces consider to be suspicious. The judicial system has proved its inability to convene fair trials owing to the pervasive influence of the security apparatus. This was illustrated by the trials of the suspects of the Wamena case and the Bolakme case where the court tried and sentenced the suspects to the fullest extent possible, despite weak evidence and irregularities during the trial.

From the many reported human rights cases, to date it is only the Abepura Case of 2000 which has been brought to the Permanent Human Rights Court in Makassar, having been pending for more than three years in the Attorney General's office. While this trial heralds progress, it should be noted that the Attorney General brought only two suspects to trial, whereas KOMNAS HAM had listed 25 suspects in its investigation. Moreover, during the legal proceedings, the panel of judges dismissed the victims' claim for compensation arguing that such a claim is not regulated by Law 26/2000 of the Human Rights Court. Therefore, despite Indonesian support to CHR Resolution 2004/33 , it is of major concern that this court runs the risk of perpetuating what appears to be an unbreakable cycle of impunity in Indonesia. Due to the acquittal of key perpetrators by the *ad hoc* human rights tribunals (Tanjung Priok and Timor Leste), the prospect of justice being brought to the suspects appears remote without the strong political will on the part of the new government.

Likewise for the Wasior (13 June 2001) and Wamena (4 April 2003) cases, as the result of KOMNAS HAM investigation which have been submitted to the Attorney General for prosecution and seem likely to meet a similar fate.

From the many reported human rights cases, it is only the Abepura case of 2000 which has been brought to the Permanent Human Rights Court in Makassar, having been pending for more than three years in the Attorney General's office. While this heralds progress, it should be noted that of the 25 suspects listed by Komnas HAM, the AG brought only two suspects to trial.

The new democratically elected government established the branch office of KOMNAS HAM in Papua on 10 January 2005 and the Papuan People's Council (Majelis Rakyat Papua, or MRP) in fulfilment of the provisions of the Special Autonomy Law for Papua (Government Regulation 54/2004). This law makes provisions for a greater local and regional inclusiveness in political and economic decision-making (for the two provinces of Papua and Aceh). Since the Special Autonomy Law was signed in 2001, few provisions have been implemented. In 2003, by presidential degree, Papua was split into three separate provinces, against the wishes of the majority of Papuans and in direct contravention of the Special Autonomy Law.

Despite the Constitutional Court Decision No. 018/PUU-I/2003 of 11 November 2004, the conflict of the division of the province continues to exist since the Court annulled the legal basis of Western Irian Jaya but at the same time recognised the existence of this particular province along with the Province of Papua.

This confusion around the implementation of the Special Autonomy Law remains unresolved since the government regulation 54/2004 stipulates that the MRP, the provincial government and the provincial parliament have to solve the problem in conjunction with the central government. . So far, it appears that the central government does not want to deal with the problem.

Papua: So rich, yet so poor

In spite of the existence of the Special Autonomy Law, Papua remains ranked the second lowest in the Indonesian Human Development Index of 2004. This is despite its Gross Regional Domestic Product (GRDP) being ranked the third highest in Indonesia based upon income from the trading of its natural resources . This situation is no different to the one Papua faced in 1999 prior to the implementation of the Special Autonomy Law. Among 26 districts and 2 municipalities in Papua, Jayawijaya ranks the lowest of all in terms of HDI indicators in Papua as well as in the whole of Indonesia. In spite of mass protests in Wamena calling for justice and appropriate action to remedy the declining situation, the government's neglect has persisted.

Given the low rank of HDI, the 2004 UNDP report clearly identifies that available income is not adequately invested in public services . The government admits that corruption is a major problem and it is part of the new government's commitment to combat corruption. However, action undertaken to investigate such allegations (for example, corruption at the provincial level of Papua, in the Provincial Parliament of Papua and in the District office of Jayawijaya) has not begun.

There is an urgent need for the government to put in place legal mechanisms, which can guarantee the economic, social and cultural rights of Papuans. Signing and ratifying without delay the International Covenant on Economic, Social and Cultural Rights, as well as the International Covenant on Civil and Political Rights, would be a welcome development in remedying this egregious situation. This would go some way to beginning the implementation of the Special Autonomy Law of 2001.

Religious leaders - Muslim, Catholic, Protestant and others - in Papua remain passionately committed to building Papua as 'a land of peace: free from violence, oppression and grief'. They acknowledge statements made by the government and security apparatus stating their willingness to participate in peace activities such as the commemoration day of 5 February. They are calling upon the Indonesian authorities to systematically address the social injustices and human rights violations of both civil and political as well as economic, social and cultural rights.

What must be done?

In order to address the egregious human rights situation in Papua, the Indonesian government must apply a rights-based approach to development in implementing the Special Autonomy Law, which addresses the root causes of poverty and disenfranchisement. A good start would be for the Indonesian authorities to promote and protect the human rights of indigenous peoples in Papua. In order to promote peace and stabilize the situation in Papua, the government must utilize the mechanisms provided by the Special Autonomy Law. It is imperative that necessary encouragement and support is provided by civil society, NGOs and intergovernmental organizations to the Indonesian government to uphold the rule of law, so as to combat both impunity and rampant corruption.

The new, democratically elected government of Indonesia must ensure that it takes human rights in Papua and the rest of the archipelago seriously. It is imperative that the government sign and ratify all key international human rights treaties including the ICCPR and the ICESCR. It must also fully cooperate with the Special Procedures of the UN Commission on Human Rights.

The new, democratically elected government must demonstrate that it takes human rights in Papua and the rest of the archipelago seriously. It is imperative that the government sign and ratify all key international human rights treaties, including the two international covenants on Economic, Social and Cultural rights and Civil and Political rights. Moreover, the Indonesian government must fully cooperate in the implementation of the Special Procedures, by inviting and providing unrestricted access to places, individuals and communities in Papua and all other parts of Indonesia. Such unrestricted access must be provided to the thematic mechanisms, in particular to those that have repeatedly requested invitations, but have so far not received permission to visit, including the Special Rapporteur on torture, Special Representative of the Secretary-General on human rights defenders, and Special Rapporteur on violence against women, its causes and consequences.

EVENTS

MONDAY 4 APRIL 2005

VIOLATION OF CHILDREN'S HUMAN RIGHTS IN LATIN AMERICA
Presented by: Children's Human Rights Caucus
Speakers: Andean Commission on Jurists, Colombian coalition against the use of child soldiers

9-10 am, Room E-3025

HOW TO PROVE TORTURE?
Presented by International Rehabilitation Council for Torture Victims

Speakers: Justice Renate Winter (Judge at the Appeals Chamber of the Special Court of Sierra Leone), Doctor Frances Lovemore (Director of the Amani Trust of Zimbabwe), Doctor Inge Genefke (IRCT Ambassador)

11:00 am-13:00 pm, Room E 2064

DON'T PANIC: A HITCHHIKERS GUIDE TO THE COMMISSION AND ITS MECHANISMS
Presented by Special Committee of NGOs of Human Rights (Geneva)

13:15-15:00 pm, Room E-2070-72

WHAT TO DO ABOUT THE COMMISSION ON HUMAN RIGHTS: A RESPONSE TO PROPOSALS FOR REFORM
Presented by UN Watch

Speakers: Special Rapporteur on Freedom of Religion or Belief Asma Jahangir, Chair of UN Working group on Enforced or Involuntary Disappearances Stephen J. Toope, Ambassador Mary Whelan of Ireland, Deirdre Kent of Mission of Canada, moderator Hillel Neuer (UN Watch)

13:00-15:00 pm, Room XVIII

HUMAN RIGHTS IN CUBA IN THE AFTERMATH OF MARCH 2003

Presented by permanent mission of Czech Republic and others
Speakers: Jan Ruml, Former member of Parliament of Czech Rep., Carlos Gonzales, Consultant of NGO People in Need, and journalist Freddy Valverde. To be chaired by Ambassador Martin Palous.

13:00-15:00 pm, Room XXI

TUESDAY 5 APRIL 2005

CONFRONTING VIOLENCE AGAINST CHILDREN: THE SECRETARY-GENERAL'S STUDY
Presented by OHCHR

13:00-15:00 pm, Room XXIII

HUMAN RIGHTS VIOLATIONS ON GROUNDS OF SEXUAL ORIENTATION AND GENDER IDENTITY: IS THE COMMISSION ON HUMAN RIGHTS TURNING A BLIND EYE?

Organised by the International Commission of Jurists (ICJ), International federation of Human Rights Leagues (FIDH), International Gay and Lesbian Human Rights Commission (IGLHRC), International Lesbian and Gay Association (ILGA), International Service for Human Rights (ISHR) and Human Rights Watch (HRW)

Tuesday 5 April, 13.00-15.00 pm, Room XXII

WEDNESDAY 6 APRIL 2005

THE UNITED STATES' TORTURE POLICY
Presented by Global Rights: Partners for Justice
13:00-15:00 pm, Room XXI

HUMAN RIGHTS IN ZIMBABWE: HAS ANYTHING CHANGED?
Presented by Amnesty International, International Commission of Jurists (ICJ), International Federation of Human Rights Leagues (FIDH), International Service for Human Rights (ISHR), and World Organisation against Torture (OMCT)

13.00-15.00 pm, Room XXVII

FRIDAY 15 APRIL 2005

THE DOGS OF WAR
Discussion on Mercenaries and Human Rights

Speakers: Ms. Shaista Shameem, UN Special Rapporteur on the use of mercenaries; Mr. Ravi Nair, Executive Director, South Asia Human Rights Documentation Centre (SAHRDC), and others.

13.00-15.00 pm, Venue to be advised

Briefings by Special Rapporteurs

Monday 4 April 2005

- Leandro Despouy on Independence of Judges and Lawyers
11:00-12:30 am, Room XXIII

- Manfred Nowak on Torture
15:00-16:00 pm, Room XXI

Tuesday 5 April 2005

- Leila Zerrougui on Arbitrary detention
13:00-14:00 pm, Room XXI

- Stephan J. Toope on Enforced or Involuntary Disappearances
13:00-15:00 pm, Room XXIV

Wednesday 6 April 2005

- Gabriela Rodriguez Pizarro on Human Rights of Migrants
12:00-13:00 pm, Room XXII

Thursday 7 April 2005

- Yakin Erturk on Violence against women
9:30-10:30 am, Room XXII

- Asma Jahangir on Freedom of Religion or Belief
13:00-15:00 pm, Room XXVII

- Philip Alston on Extrajudicial, Summary or Arbitrary Executions
13:00-15:00 pm, Room XXVII

Friday 8 April 2005

- Sigma Huda on Trafficking in Persons, especially in Women and Children
15:00-16:00 pm, Room XXII

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All briefings presented by Information Service and the Office of the High Commissioner for Human Rights (OHCHR)

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