

# HUMAN RIGHTS

# FEATURES

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Weekly series for the 59th CHR session

12 PAGES

A SOUTH ASIA HUMAN RIGHTS DOCUMENTATION CENTRE PUBLICATION

ISSN NO. 1541-2482

GENEVA, 22-25 APRIL 2003

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## 'Membership entails responsibility'

**A** SEASONED UN diplomat, Sergio Vieira de Mello's 33-year long career included stints in humanitarian and peacekeeping operations in Bangladesh, Sudan, Peru, Cyprus, Mozambique and Lebanon. He also served as Special Envoy for the United Nations High Commissioner for Refugees for Cambodia, Director of Repatriation for the United Nations Transitional Authority in Cambodia (UNTAC), Head of Civil Affairs of the United Nations Protection Force in the former Yugoslavia (UNPROFOR), as well as United Nations Regional Humanitarian Coordinator for the Great Lakes region of Africa. A major part of his career was spent at the Office of the High Commissioner for Refugees; he was appointed Assistant High Commissioner for Refugees in 1996 and promoted to Under-Secretary General for Humanitarian Affairs. In 1999 he served as the Secretary General's Special Representative for Kosovo until his appointment as head of the UN's operations in East Timor.

In September 2002, Mr. Vieira de Mello was appointed UN High Commissioner for Human Rights, a job he described at the beginning of his tenure as a "political minefield".

It is a minefield he appears willing to negotiate, albeit carefully, conscious of the need to balance the sensitivities of States with the task at hand - that of promoting and pro-

tecting human rights. With States showing an increased reluctance to take - and dish out - opprobrium when it comes to violations of human rights, the High Commissioner's recent initiatives just might help steer the debate back on track.

In an interview with *Human Rights Features*, the High Commissioner spoke about some of these initiatives, about the mainstreaming of human rights, and the application of human rights standards in conflict and post-conflict situations...

### INTERVIEW

*Sergio Vieira de Mello*

**Human Rights Features (HRF):** The first thing that we want to ask you about is the nascent debate on criteria for the membership of the CHR. How do you look at that debate evolving and is something actually going to come out of it substantively?

**High Commissioner Sergio Vieira de Mello (HC):** First of all, I don't use the term 'criteria' because governments have in fact objected to that, and I understand why. What I have used is the word 'minimum standards.' Why? Because I

believe that membership entails responsibilities, particularly in a Commission such as ours. Therefore aspiring to membership or becoming a member entails, as a minimum - in my opinion, and I may be wrong! - ratifying all core human rights conventions, translating those into national legislation and extending a standing invitation to all special procedures which, after all, are the creation of the very commission.

So if you are a member the least one could expect is that you cooperate with your own creation, with your 'children', as it were. So, that's the minimum, I think, we can expect member states to achieve. There could be additional ones like freeing all political prisoners, or human rights defenders, or people who express free opinion to the extent that it does not tantamount to violent speech or hate speech. I think one could add many additional expectations to the list but I would say as a minimum: ratification, implementation and standing invitations.

**HRF:** In terms of the initial reactions to the discussion that you have been having on minimum standards, what has been the kind of feedback you have got from amongst the various regional groups?

**HC:** Benevolent silence from the majority, some objections even from developed

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## Voting on Item 9: The agony and the ecstasy

**A**S expected, last week the Commission had fierce debate on country resolutions. For the first time, it adopted resolutions on Belarus, North Korea and Turkmenistan. It also terminated the mandate of the Special Rapporteur on Sudan, decided not to act on Zimbabwe and rejected a draft on Chechnya.

At the end of the fifth week of this 59th session, the Commission almost concluded its votes on Items 5 (self-determination), 8 (Arab occupied territories) and 9 (human rights violations). Two resolutions were adopted concerning the right to self-determination: on Western Sahara (by consensus) and on the Occupied Palestinian Territories (by 51 votes against one - the USA - with one abstention, Guatemala).

Under Items 8 and 9, the Commission adopted resolutions and decisions on Israeli settlements

in the occupied Arab territories (50 votes in favour, 1 against and two abstentions), the occupied Syrian Golan (31-1-21), the occupied Arab territories (33-5-15), the Lebanese detainees in Israel (32-1-20), Cyprus, Chechnya (draft rejected by 15-21-17), North Korea (28-10-14), Turkmenistan (23-16-14), Burma (consensus), Sudan (draft rejected by 24-26-3), Cuba (24-20-9), Belarus (23-14-16), Congo-DRC (consensus), and Burundi (consensus).

For the second consecutive year, the African Group (South Africa) introduced a no-action motion on a draft resolution that would have expressed deep concern at the deteriorating situation in Zimbabwe. The no-action motion was adopted, with 28 votes in favour (all Asian and African delegations, except Japan and South Korea, together with Russia, Cuba and Venezuela), 24 votes against, and one abstention (Brazil).

Another blow for the protection of human rights came with the decisions on Chechnya and

Burma. Though observers would hope that the Commission takes its decisions on the basis of specific human rights situations and not because of political motivations, this negative outcome was not unexpected. The African group, which is the largest group in the Commission (15 members out of 53) had clearly reiterated its will to get rid of all the country resolutions concerning the continent. It failed last year and continued its efforts this year. Concerning Chechnya, having systematically opposed all the country resolutions, the Russian delegation was expecting the trade-off from other countries.

All three new situations on the list of the Commission (Belarus, North Korea and Turkmenistan) concern countries under the yoke of old-type dictatorships, whose behaviours disturb even hardliner states in the U.N. It should be noted that none of these resolutions create the mechanism of a country Rapporteur. The three regimes are simply requested to receive the visits of several themat-

ic Rapporteurs of the Commission.

There is a group of hardliner states in the Commission who oppose any resolution on country situations. They claim that this debate shows double standards, but do not hesitate to make an exception for all the votes concerning the shameful and unacceptable policy of Israel in the Arab occupied territories. They denounce the human

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# 'Special Procedures must not be seen as a threat'

countries, particularly on the question of ratification, as you can imagine; not all Western democracies have ratified all core human rights instruments. But I would say by and large, positive responses from the majority of members of most regional groups. Whether that will then lead to the membership actually adopting those minimum standards remains to be seen, but I will certainly push for it.

**HRF:** *In terms of the interregnum between the Commission and the next session of ECOSOC and the General Assembly how do you feel this debate can be kept on the front burner rather than going back on the backburner until the next Commission?*

**HC:** With your help, with the help of non-governmental organisations, with help of national institutions. You've just given me a good idea, I think I could raise this tomorrow morning at this meeting of national institutions that I will address. I think that pressure must come from within. It's no good my repeating what I just told you between now and ECOSOC or the General Assembly. I think we need pressure from civil society at the national level.

**HRF:** *Moving on to your implementation of many of the recommendations from the Secretary General's long-term perspective on how it's got to be restructured: one of the key areas of emphasis is on national protection systems, and clearly national institutions are going to play a major role in that national protection framework. How do you see the work now in the Office itself in terms of restructuring and of priorities that national institutions will have?*

**HC:** National institutions are obviously a backbone of any plan aimed at consolidating national protection systems. You have read the Kapila recommendations. Not all of them will necessarily be implemented. Or perhaps let me rephrase that: we will implement most of them, but not necessarily in the fashion Mukesh Kapila recommended. But the most important recommendation from Mukesh is that the country team must feel it shares the responsibility for protecting and promoting human rights at the country level, and that obviously includes support from the country team to the national human rights commission in those sectors for which each agency, programme or fund has a particular responsibility.

Now, to achieve that, I don't need to tell you that that is easier said than done. Step One is to get the UN Development Group behind this new approach. And what I'm planning to do - I have written to Mark Malloch Brown last week - is to address UNDG on the 24th which is by no means an ideal date because it is the day on which the SG will be here. So I will probably have to do it by video conference, they will be meeting in Paris. And I will present, not the Kapila report - because the Mukesh Kapila report is one element in a broader equa-

tion - but rather this new approach to country-level activities.

Basically, what I will be requesting from my colleagues in the UN Development Group is that they adopt this new approach as theirs, i.e., it is not just my responsibility as High Commissioner for Human Rights to promote human rights; it is the responsibility of the system as a whole. And I have the Secretary General behind that. I would suggest that that is the central theme in the Kapila report, which I will try and market to the rest of the system.

**HRF:** *The Secretary General, in an earlier initiative, attempted to mainstream human rights across the UN agencies by using focal points on human rights in the UNDP office, as well as the HURIST programme initiative. How would this be something that is value added to the existing programme or go beyond that?*

**HC:** It is far from me to suggest that what was done earlier was not useful. And I think a lot of progress has been made, if you compare the present state of affairs from what I remember from five or ten years ago. The whole concept of mainstreaming has been successful, perhaps in some areas more than others. It is easier to mainstream in the sectors of health and education than it might be in others.

But I think the approach now is different; it's no longer focal points at headquarter levels at country level, it no longer a specific project such as HURIST, it is a change of policy at the country level, a different approach by the resident coordinator and the country team to human rights as a cross-cutting concern of the system as a whole. Now I am not saying that this would be easily implemented but I am rather confident that with Secretary General's personal commitment and support, it will work to overcome resistance, as everywhere else, especially in the UN when you foster change.

**HRF:** *High Commissioner, just to take you away from the CHR a little: we saw the press statement that you put out on the humanitarian crisis and need for greater care in Iraq. Given the political difficulties with that whole question, how do you think one would approach the human rights aspects of the crisis and use that as perhaps one way of ventilating the other major difficulties?*

**HC:** Part of my answer you will hear on *Hardtalk* later this evening. But let me say first of all that I have

regretted the fact that human rights was not a central concern in the Security Council deliberations on Iraq.

You will see in an op-ed that should come out in the next few days that I'm basically suggesting that human rights should be one of the, shall I call it, 'indicators' on

**A regime that can grossly violate the rights of its own people is ipso facto a threat to regional peace and security... about Iraq, let me regret that human rights were never a central preoccupation of the Security Council. Weapons were, disarmament was. But why not human rights?**

the Security Council's 'check-list', as it were.

Why? Because I am convinced that a regime that can grossly violate the rights of its own people is ipso facto a threat to its neighbours and to regional and international peace and security.

Since you are asking about Iraq, let me regret that human rights were never - contrary to other countries - a central preoccupation of the Security Council. Weapons were, disarmament was. But why not human rights?

Secondly, you know as I do that apart from humanitarian assistance, which needs no mandate from the Security Council, other UN activities in Iraq will require a UN mandate. So my answer to you is that our role, our Office's role in Iraq will very much depend on what the Security Council decides to give the UN as a mandate, if any, in the case of Iraq.

Now, we can do many things, in addition to monitoring in the preventive sense. We can do what this Office has done in other similar situations or is planning to do in other countries like the Democratic Republic of the Congo, Burundi or Sri Lanka which is: support the constitutional process

as Mary Robinson did with me in East Timor. I benefited, I and the constitutional assembly in East Timor benefited greatly from her suggestions and inputs, and we can do the same, obviously, in Iraq as well.

We can be of assistance with others - of assistance in partnership with others - in creating a new justice system, not just for gross human rights violations of the past but a functioning and fair system of justice for the Iraqis, which is a pillar of any democratic form of government.

We can do a lot more than that: we can provide education, training to new institutions such as the new police, the new penitentiary system. We can also play a useful role in ensuring that the Iraqi media - written, radio, television - will in the future provide the Iraqi people with what they haven't had in such a long time, with objective and free, responsible information which is key, as you know, in terms of restoring a culture of tolerance

and respect for human rights.

So the list is very long; again it will very much depend on the Security Council's mandate and, secondly, on resources. And we should be careful not to try to do more than we can deliver.

**HRF:** *You are going to Palestine shortly, and it is extremely difficult given the logjam at the political level. Do you think that a stronger human rights focus would help clear the air in terms of the political process? How do you see the agenda for your visit?*

**HC:** First of all, I am not visiting only Palestine. I'm also visiting Israel and possibly one or two countries in the region. Secondly, it is very difficult to establish a causal link between a focus on human rights and the peace process.

If I had to establish one from the pragmatic point of view, I would say that a recommitment to the Quartet plan and an early release of the famous roadmap, that is, a refocusing of attention on the political peace process is the only way we can bring the tension down, bring the bitterness down, restore hope and a broader sense of security, not just narrow security but security in the sense of my opening statement to the Commission on 17 March.

Therefore I would suggest that my visit should be seen as an incentive to both sides to transcend short-term preoccupations and recommit themselves to long-term peace goals. But my visit *per se* will not bring about, I'm afraid, any significant change in the situation on the ground without the peace process being first resurrected.

**HRF:** *In terms of the difficulties that the Special Procedures are facing on discussion, on shifting items from Item 9 to Item 19, of access to and resources - this is clearly a major problem that you are going to address. How do you think this is going to be done internally, with states as well as in terms of the Commission itself?*

**HC:** First of all, I think the Special Procedures have a lot of credibility and, in fact, give credibility to the Commission. They are, I would say, the standing tools, the permanent tools, of the Commission which only meets once a year, a sort of operational capacity that the Commission has for monitoring respect for human rights all over the world on a permanent basis.

Hence my appeal to all governments which whom I have met since my appointment to issue standing invitations to the Special Procedures and not to demonise them. I say this to each and every government I have met with, including this very morning - I won't tell you with whom! They should take the Special Procedures as a constructive, critical approach to imperfect human rights standards at the national level, not as a threat or as accusatory mechanisms.

So in that sense, I have every interest in supporting them.

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## 'My main message is rule of law'

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You may be aware that I have decided to create a new branch, which will, I hope, provide them with better, more integrated support. I can't do miracles, receiving, as we do, only 1.54 percent of the regular budget of the UN. I will do what I can to raise additional resources. But I am of the opinion that for procedures that emanate from the Human Rights Commission, those resources should come from the regular budget, and I shall use voluntary contributions to fund technical assistance or other types of projects that could be of help to developing countries, countries in transition or countries emerging from conflict.

But at least by bringing together all the support capacity of the Office into a single branch, I believe we can maximise the modest resources that our Office puts at their disposal. I am thinking of thematic mandates because the geographical ones may have to remain where they are right now, which is in the Activities and Programmes Branch.

What I would also like to achieve - and I was discussing this with Mrs [Hina] Jilani this morning - is a greater empathy, as it were, between the special procedures, rather than having them function in a compartmentalised way, in an insular way, make sure that common denominators are clearly identified and actually

brought to bear positively on respective mandates and that we also identify through this new branch ways in which we can be mutually supportive while respecting each other's specificity and, in their case, independence.

Maybe I am putting too much hope in a

***Militating for the rule of law, for the strengthening of the international system, for multi-lateralism is, I think, more important than ever, particularly at a time when some speak of the irrelevance of the UN. The UN has never been as relevant and as necessary as today...***

structural improvement, but knowing also the commitment of my own staff and how much they believe in the special procedures, I think we will see some measurable improvement in the months ahead.

**HRF:** *Is there anything you would like to convey?*

**HC:** You've heard me since day one. My main message is rule of law. The weakness of international society - and you don't have to win the Nobel Prize or study international relations to come to that conclusion - is the weakness of what binds us together and, in particular, the weakness of the ability to impose respect of international norms, contrary to what is possible within a state, in intra-state relations. The weakness of the rule of law has brought about many tragedies in the history of mankind.

So, militating for the rule of law, for the strengthening of the international system, for multi-lateralism is, I think, more important than ever, particularly at a time when some - and I hope they will remain only some - speak of the irrelevance of the UN. I certainly don't agree with them, as you can imagine. I believe the UN has never been as relevant and as necessary as today, which does not mean it doesn't deserve reforms. And certain mechanisms, such as the Security Council or even our Commission can improve their function and their ability to respond to crises in particular.

But the UN as a whole, imperfect as it may be, has never been as necessary as it is today.

**HRF:** *Thank you, High Commissioner.*

## Refugees: The right not to return

***But the principle of non-refoulement is increasingly being transgressed***

PETER ROSENBLUM WITH RADHI THAYU & ANNA WIGERNMARK

THE events of September 11 continue to have ripple effects around the world, taking a toll on individual liberties and threatening established doctrines of protection. One of the doctrines at risk is non-refoulement - prohibiting a state from returning anyone to a country where he or she might face persecution or torture. When there is a threat of torture, the prohibition is absolute no matter what the crime or alleged crime of the person.

Since 11 September 2001, there are new pressures on states to expel suspected terrorists. The pressures come from many quarters, including the United Nations. On 28 September 2001, the UN Security Council adopted Security Council resolution 1373, mandating that all states deny safe haven to those individuals who finance, plan, support, or commit terrorist attacks or who support havens to terrorists. While the resolution doesn't relax other obligations, news reports from around the world suggest that some states are more zealous about expelling suspected terrorists than preventing torture or abuse at the other end. The US has reportedly transferred a significant number of detainees to countries like Egypt, Morocco and Jordan, with the knowledge - and perhaps even the intent - that they would be tortured.

It is surprising that one of the first documented cases of this kind comes from Sweden. Soon after 11 September 2001, the Swedish government returned two Egyptian men, Ahmed Agiza and Mohammad El-Zari, to Egypt. The two men originally fled their country in 1991, claiming persecution. A couple of years later they were convicted, in absentia, of "terrorism" by a military court and sentenced to 25 and seven years, respectively. Unaware of each other, they made their way to Sweden where they sought refugee status.

Judging from the credible reports of human rights groups in Egypt, the two would face significant risks of torture, and possible death sentences, once returned to Egypt. At other times, the risk would have been enough to merit protection in Sweden pending a full exhaustion of national and international remedies. But times have changed: their right to protection was denied for national security reasons and Sweden chose to expel the men quickly. In exchange, the Egyptian authorities essentially

agreed not to torture them. In diplomatic letters, the Government of Sweden stated its understanding that the detainees would "not be subjected to inhuman treatment" or the death penalty. The Egyptian authorities responded that their rights would be respected "according to what the Egyptian constitution and law stipulates."

It is not unusual to subject the return of nationals to explicit conditions. In extradition, many countries now condition return of murder

***Since 11 September 2001, there have been new pressures on states to expel suspected terrorists; however some states are being more zealous about expelling suspects than preventing torture or abuse at the other end.***

suspects to the United States - and other death penalty hold-outs - to an agreement that they will not be subject to the death penalty. But it isn't quite the same thing as conditions regarding torture. In the first place, no country acknowledges committing torture; it would be like an individual acknowledging that he molested children or beat his wife. Would you place a child in his care if he agreed not to molest that particular child? Probably not. Certainly not, if you were in no position to monitor the situation closely. In the case of the two Swedish asylum-seekers, the problems were compounded by the fact that Swedish authorities did nothing to follow up on the detainees during the critical period after their return to Egypt: Only after five weeks did Swedish diplomats visit the detainees and, even then, it was in the company of prison officials. Subsequent visits were also monitored. In the meantime, the family of one of the detainees was receiving reports of torture, including electroshock and denial of food and medical attention. The UN Human Rights Committee has inquired into the cases and the Committee Against Torture is in the process of reviewing complaints raised on behalf of the two. Cases may also be brought to the European Court of Human Rights.

During an NGO-sponsored discussion at the Palais on Thursday, the Special Rapporteur on Torture, Theo van Boven, acknowledged the extent of the problem. The Swedish case suggests the problems with convenient diplomatic

arrangements to overlook a state's past performance with respect to torture. Given the facts of the Swedish cases, Mr van Boven suggested it may be time to review the use of similar diplomatic agreements.

But with all the problems with the Swedish cases, they are exceptional for the amount of information that has become public. The more profound threats may come from what is still hidden. In December 2002, the *Washington Post* reported that the CIA was handing low-level Al Qaeda suspects over to foreign intelligence services, "known for using brutal means" in interrogation. At that time, it was estimated that fewer than 100 had been transferred in these "extraordinary renditions," but the United States has provided no official data. There have been other articles, notably in the *New York Times*, the *Economist* and the *Guardian*, but with few new details.

In addition to suspected terrorists captured outside the US, there are large numbers of foreign citizens who have been expelled from the US or undergone 'voluntary' departure after detention for small immigration infractions. At a briefing at the Palais two weeks ago, the Center for Constitutional Rights, a New York-based NGO, cited the cases of two individuals being deported from the US to Syria and Egypt, respectively. The latter was handed over to security forces in Cairo and, reportedly, endured three months of torture before being released thanks to personal connections in Egypt. A Palestinian-Jordanian was deported to Jordan after being held for two months in solitary confinement in a Texas jail. He had reportedly agreed to 'voluntary' departure as he was afraid he would be held indefinitely in the United States and would be unable to support his family.

The number of cases far outstrips the capacity of NGOs to report. Without mobilising NGOs in countries around the world and putting pressure on countries like the United States in international fora, we may never know how many cases like Agiza and El-Zari are occurring with the active complicity of the international community.

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## INDONESIA

# Aceh: Cessation of hostilities or of human rights?

*The agreement between Jakarta and the Free Aceh Movement (GAM) is fundamentally and structurally flawed, and the past few months have actually seen a narrowing of democratic space, say SAMSUL BAHRI and LESLEY MCCULLOCH*

EXTRAJUDICIAL executions, disappearances, attacks by unknown persons on peace monitoring teams and their infrastructure, targeted harassment of human rights defenders. This is life in Aceh today, just as it has been for the past almost 30 years. But today in Aceh, there is an internationally brokered Cessation Of Hostilities Agreement (COHA). One could therefore be forgiven for expecting the human rights situation in Aceh to have improved, but this has not been the case.

The COHA between the Free Aceh Movement (GAM) and the Republic of Indonesia was signed on 9 December 2002. The main points of the document are a gradual process of demilitarization, an all-inclusive dialogue, and elections in 2004. In addition, the agreement provides for a joint security committee (JSC) to monitor implementation and investigate violations. But there are some fundamental and structural flaws within the agreement. The fine detail of some of these points could not be agreed upon in the negotiation phase, and so was neglected. The result? The COHA is having an identity crisis. Its personality as recognized by the Indonesian government is quite different to that recognized by GAM. The three points over which the identity of the COHA is in crisis are the following:

Demilitarization - GAM has offered a phased storage of its weapons, the government has offered to shuffle troops from one village to another while at the same time sneaking more military personnel in by sea.

All inclusive dialogue - this remains elusive. Moreover, the process through which this dialogue will be achieved has yet to be agreed. And the identity of the dialogue itself remains a mystery.

Elections in 2004 - the Jakarta-based government interprets this to mean the regular general elections due in that year. But to GAM (and to most Acehnese), it means local elections to allow the people a democratic voice about a local issue.

GAM was motivated to sign this less than perfect agreement in the hope it would

open democratic space for the civil society movement in Aceh to pursue a peaceful and political solution to the decades old conflict. Article 2(f) of the COHA makes provision for civil society to express their democratic rights or opinions without hindrance. But the common

***The cessation of hostilities agreement (COHA) is interpreted differently by the two parties - the Indonesian government and GAM. The identity crisis relates to three key elements of COHA: Demilitarization, dialogue and elections.***

ground between what is written in the COHA and practical outcome is noticeable only by its absence. Since December 2003 there has in fact been a narrowing of the democratic political space in Aceh. Those who have dared to protest at the continuing violence, lack of justice, and to demand a platform for their voice to be heard have themselves become targets.

***Since the signing of the agreement, the right to freedom of expression and association has been continually denied. The Joint Security Committee is an international monitoring team but is unable to intervene in such violations of human rights.***

At a demonstration in January 2003 four villagers were shot by the elite mobile police brigade when they attended a peaceful rally to request the government's full implementation of the civilians' role in the COHA.

In addition, police have arrested a prominent member of the civilian movement Muhammad Nazar, chairman of the Aceh Referendum Information Center (SIRA). He spoke critically about the agreement at the January meeting. Now accused of spreading

sedition against the government, the local chief of police has said he would like to see Nazar spend five years in prison.

The authorities have a growing list of those who they accuse of spreading hatred against the state, including Kautsar (former chairman of the Acehnese Democratic Resistance Front - FPDRA). Kautsar and many others have gone into hiding to avoid the same fate as Nazar. The voices of these people and of those whom they represent are being effectively silenced by the local police and military, under orders from the government in Jakarta.

On 30 November 2002, just days before the signing of the COHA, Musliadi (coordinator of Kegempar) was abducted by six unidentified persons. The armed men were carrying standard issue weapons of the Indonesian Police. The authorities denied all knowledge of the whereabouts of Musliadi. On 3 December 2003, his body was discovered in a swamp just outside the provincial capital of Banda Aceh. There was evidence he had been tortured before being summarily executed. There has been no effort by the authorities to investigate what happened to Musliadi. No-one will be held accountable for his murder, nor for the thousands of civilians who have suffered a similar fate.

On 26 March 2003, two more human rights defenders, Zulfikar and Muchlis, were abducted by the special intelligence unit of the Indonesian Military known as Satuan Gabungan Intelligence (SGI). Despite the fact that there were several eyewitnesses to this abduction, the Indonesian Police and other sectors of the security forces have refused to provide information and even denied knowledge of the incident. Both Muchlis and Zulfikar are members of the humanitarian NGO in Aceh. At the time of this writing, there is still no confirmed news of their whereabouts, and grave concerns remain for their safety.

According to the records of The Commission for Involuntary Disappearances and Victims of Violence in Aceh (Kontras Aceh), in the past year 30 human rights

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## Chechnya & Zimbabwe: CHR Perennials

IT seems that draft resolutions on Chechnya and Zimbabwe have become a fixture at the Commission on Human Rights. And, as usual, neither Russia nor Zimbabwe will be censured officially by this year's Commission. Given the particularly nasty use of a no-action motion by South Africa, one might argue that yet another reminder of the situation of human rights in these countries is in order.

Here's a snapshot of events that have occurred since the beginning of the 59th CHR. In other words, here's what the esteemed CHR members chose to disregard when they threw out the resolutions on...

### Chechnya

An official Russian report, describing mass violations of human rights in Chechnya, was leaked to the press during the second week of April 2003. *Le Monde* referred to it as, "a document that refutes every idea that the situation in Chechnya is normalised." According to the report there were 1,314 assassinations carried out among the civilian population in 2002. The report also describes an abundance of mass graves: in one month (either February 2002 or February 2003, the report is not clear), 2 879 dead bodies were discovered in mass graves in Chechnya. A table analysing "heavy crimes" committed in Chechnya during the period from January to March 2003 documents 70 assassinations, 126 "removals", 19 cases of disappearances, two rapes, and 25 cases of discovering fragments of human corpses during the three-month

period. Sergeui Lastrjembki, special spokesman for the Kremlin on Chechnya, merely stated: "We can neither confirm nor deny [the report]. Maybe this report exists. Maybe it was transmitted to the president, but it did not pass by our services".

### Zimbabwe

On 18 March 2003, *The Guardian* reported that its investigations had revealed politically motivated rapes against opposition party supporters. According to victims' testimony, members of President Robert Mugabe's ruling party are using rape as a political weapon and are forcing young women to be their concubines.

## PALAIS Intrigue

On 20 March 2003, it was alleged that a Zimbabwean farm-worker was killed and scores of others were seriously injured by army troops who invaded a farm leased by an opposition MP.

Zimbabwe fast bowler Henry Olonga admitted that he might have to go into exile following death threats over email concerning his decision to wear a black armband to "mourn the death of democracy in Zimbabwe." He did not deny that secret police from Zimbabwe had visited South Africa with a warrant for his arrest. "We had no illusions about the kind of consequences and reactions we would get," he stated, "The people we have dealt with in the past have been ruthless. We knew, or at least I knew, that the worst-case scenario was that I

might have to go into exile". In three different incidents, four individuals involved in journalism were arrested, in some cases beaten, and released. In at least one of the cases the arrest was ruled illegal by the high court.

### And finally...

Some members of states' delegations and non-governmental organisations have noticed that the Cuban delegation has acquired a fan club within the NGO gallery. There has been noticeable applause after some of the delegation's more fiery remarks, in particular during the lengthy debate regarding the draft resolutions on Cuba under Agenda Item 9. Clearly, Cuba's scathing references to the "Empire" to the North have struck a common cord.

However, in applauding for Cuba, are NGO representatives also applauding the recent arrest and prosecution of 75 political dissidents accused of "provocations" and "subversive activities"? Or the execution of three men who attempted to hijack a passenger ferry, after a mere nine days of trial? Are they applauding years of redundant and time-consuming draft resolutions submitted to the Commission, and the fact that Cuba has yet to ratify the ICCPR and the ICESCR?

It is fine to criticise the policy of the United States, but to do so by shooting from the shoulders of a human rights abusing country is a mistake. No doubt the Cuban GONGOs would disagree, but for those who may not want the Commission to think they are being bankrolled by Havana: political neutrality is the hallmark of a credible human rights NGO.

BRAZIL

# Sweeping promises, no action on the ground

MANY human rights activists in Brazil and abroad greeted the election to the Brazilian Presidency of Workers' Party candidate Luis Inacio da Silva, known simply as "Lula," as good news. For years, the Workers' Party (as the leading opposition force at the national level) had played a key role in the defence of human rights. The party's platform in the 2002 elections, among other things, emphasised fundamental rights and the need for policies designed to ensure their implementation.

While the discourse of the highest level officials in the Lula administration charged with human rights continues to provide hope that positive change will occur, they have been far too timid in taking concrete measures to guarantee the efficacy of those promises. While the government has had less than four months to address these issues, the record to date leaves much room for concern.

## Bold Promises

In February and March 2003, newly named National Secretary for Human Rights Nilmario Miranda travelled to Washington (seat of the Inter-American Commission on Human Rights of the Organization of American States), San Jose, Costa Rica (the seat of the Inter-American Court of Human Rights) and here to Geneva for the session of the UN Commission on Human Rights.

Before each of these bodies, Miranda outlined the ambitious human rights agenda of the Lula administration. In the presentations in Washington, San Jose and Geneva, Miranda explained that the Lula government would address a broad range of areas in which rights groups have documented chronic abuse. Among these were police violence, conditions in centres of detention for juveniles and adults, rural violence and land reform, indigenous rights and forced labour.

Before these international bodies and international civil society, Miranda has promised to make federal transfer of tax revenues contingent on respect for human rights. Miranda's sweeping promises and pledge of federal efforts to compel the states to adhere to human rights standards came as music to the ears of rights defenders in Brazil who have struggled to make local authorities more responsive to their international obligations.

Yet without clear guidelines, federal promises of conditionality may ring hollow in practice. What criteria should be used to determine whether a particular state has failed to meet minimum human rights standards? What rights would be emphasised? Who would make the decision? To date, unfortunately, the federal government has yet to achieve substantial progress in either designing or implementing this considerable and novel enterprise. At the same time, it has failed to take concrete steps to advance the defense of human rights in ways that have been tried and tested elsewhere.

## A National Human Rights Commission?

Unlike virtually all of its neighbors in South America, Brazil does not have a national human rights commission modeled on the Paris Principles. In Central and South America, termed '*defensores del pueblo*' (literally, "defenders of the people" in Spanish), these bodies have played a critical role in the oversight of state bodies charged with rights abuse throughout Latin America. Yet while human rights commissions abound within Brazil's legislative and executive bodies at the city, state and federal level, no independent body exists that would meet the guidelines endorsed by the UN Commission on Human Rights.

## Existing Bodies Inadequate

In Brazil, a series of human rights commissions

and other official entities have sought to fill the gaping void created by the government's failure to establish a national human rights commission. While several of these have been effective, none measures up to even the minimal requirements of the Paris Principles.

Within the executive branch, President Fernando Henrique Cardoso established a National Human Rights Secretariat in 1997. The post of Human Rights Secretary has been occupied by leading rights figures, among them, most recently UN Special Rapporteur Paulo

failed to recognize the jurisdiction of any of the four oversight committees to receive and process individual complaints (ICCPR, CERD, CAT, CEDAW). Brazil's record on compliance with the Committees' reporting requirements may best be characterised as highly deficient. Within the UN system, one bright spot has been Brazil's acceptance of the oversight of the Commission's special mechanisms.

Within the OAS, Brazil resisted recognition of the jurisdiction of the Inter-American Court until 1998. In December of that year, however, that practice changed. Then, in the final months of the administration of President Fernando Henrique Cardoso, Brazil recognized the individual petitions procedure in the Optional Protocol to CEDAW and in article 14 of CERD. Unfortunately, the Lula administration has not made further progress, failing to ratify the Optional Protocol to the International Covenant on Civil and Political Rights or to recognise the jurisdiction of the Committee Against Torture.

Within the inter-American system, while Brazil has accepted the jurisdiction of the Commission since ratifying the American Convention Human Rights in 1992 (and even before, though only pursuant to claims made under the American Declaration on the Rights and Duties of Man) and of the Court since 1998, its compliance with the judgments of these two bodies has been poor.

In particular, Brazil has not only failed to give effect to many of the decisions of the Commission in cases litigated before it, but has also failed to respond to the injunctions issued by the Commission and the Court (called precautionary measures) in matters of life and death. This lack of engagement in the system has caused immense concern among human rights activists in Brazil, in part because those on whose behalf such measures are requested are often rights activists themselves.

While it may be too early to detect a clear pattern in terms of Brazil's engagement in the inter-American system in litigation of individual cases of rights abuse, four months provides a significant basis to evaluate its lack of compliance with judgments in requests for precautionary measures - judgments which should be heeded in a matter of days if not hours. Unfortunately, the Lula administration has not taken adequate concrete steps in the cases in which the Commission and Court have ordered precautionary measures on behalf of persons threatened with death.

This month, one such person, Luis Tomé, died in circumstances that could have been prevented, had Brazil respected the precautionary measures order of the Inter-American Commission. Others for whom such protection had been granted in the same matter in Paraiba state have yet to receive adequate protection from federal authorities.

In Espirito Santo state, Alexandre Martins de Castro Filho a courageous judge who had investigated organised criminal activity's invasion of the public sector was murdered on March 24. The Inter-American Commission had ordered precautionary measures for others involved in rights defence in Espirito Santo state, and Castro Filho had been identified as requiring protection. Unfortunately, federal authorities failed to provide full police protection.

Rights activists have welcomed the sweeping pro-human rights discourse of the new Lula administration. But as time has passed, it has become increasingly clear that little - other than that discourse - has changed.

It is time for Brazil to take concrete measures to improve the country's severe human rights situations. Creating a fully independent oversight body at home and engaging fully and respecting the judgments of oversight bodies abroad, would be a good place to start.

## A Shaky Platform

For eight years, since its creation in 1995, the Human Rights Commission of the Federal Chamber of Deputies has served as a vital platform for the defence of human rights throughout Brazil. Because of its prominence, many activists routinely relied on it to amplify their rights concerns. This, in turn, stymied efforts to create an independent, national human rights commission.

Yet the Congressional Human Rights Commission suffered from the politics of its very creation. Because it is tied to its elected president, the Commission has been dependent on that person's political agenda, which may or may not coincide with rights defence. As long as the Workers' Party was an opposition force, its defence of human rights could often serve its political agenda - to critique the central government's policies - while advancing human rights at the same time.

This year, however, Enio Bacci, a member of Congress not tied to the Workers' Party sought and obtained election to the presidency of the Congressional Human Rights Commission. Unfortunately, Bacci has used the pulpit of the Congressional Human Rights Commission to promote a series of views clearly contrary to the promotion of fundamental human rights. Among these are the reduction of the age of full criminal responsibility (from 18 to 16, in violation of the Children's Rights Convention) and the death penalty (a violation of a number of instruments, most directly the American Convention on Human Rights).

Sergio Pinheiro. As a gesture to demonstrate the importance afforded to human rights in his administration, Lula has elevated the status of the Secretariat to cabinet level and named long-time rights activist and former Congressman Nilmario Miranda to occupy the post. While an important advance, the Secretariat, by virtue of its intimate ties to the executive branch, will never constitute an independent human rights body. A similar problem is faced by the Human Rights Commission of the Federal Chamber of Deputies, the lower house of Congress. (see box).

These developments should press the Lula administration to work towards creating an independent, national human rights commission. Instead, they have led to intensified efforts - both by the government and civil society - to restructure yet another rights body tied to the executive branch, the Council for the Defense of the Human Person.

The Council, tied directly to the Secretariat of Human Rights, includes several members of civil society. While enhancing civil society participation may be a worthwhile goal, because the Council is tied to executive branch through the Secretariat, it also will never achieve the requisite level of independence. The clear, though politically difficult solution, is to create a fully independent national human rights commission.

Will the Lula administration be able to overcome internal resistance to external oversight to assure adequate oversight of rights abuse?

## International Oversight

For many years after Brazil's transition to democracy, rights activists derided Brazil's failure to recognize the jurisdiction of oversight mechanisms established by the United Nations and the Organization of American States. Through early 2002, while Brazil had ratified the six core UN human rights treaties, it had

## Sexual Orientation

# It's about non-discrimination

A BRAZILIAN draft resolution on 'Human rights and sexual orientation' will hit the ground in next week's voting process. The question is: running or lame? Should the resolution pass narrowly the victory would be real but shallow. It would add another brick to the wall cementing sexual orientation as a category of discrimination, the pervasiveness of which is increasingly recognised within the UN human rights system, and offer an important reference to NGOs and the civil society lobby on lesbian, gay, bisexual and transgender (LGBT) issues. It would, however, hardly project anything like a global consensus among and acknowledgment by the UN's member states of the issue.

The process of consultations among delegations favourable to the draft from the Western Group, South America but also including South Africa made clear that even some of the draft's supporters are only at the stage of 'getting their head around' the topic, a position falling disappointingly short of full commitment to pushing the issue.

Should the resolution fail, however, what would be the conclusion to draw? That denial of human rights on grounds of sexual orientation is alright? But then again maybe some countries really have no non-heterosexual citizens after all ... in which case it would be difficult to understand why the same countries see a need to criminalise homosexuality and to oppose the Brazilian draft resolution, as can be predicted.

The magnitude of human rights violations against persons on the grounds of their sexual orientation cannot be underestimated. Social taboos and criminalisation of same-sex relations as 'sodomy', 'crimes against nature' or 'unnatural acts' lead to public and private violence and discrimination. In a landmark report in 2001, Amnesty International found that "In virtually every part of the globe, LGBT lives are constrained by a web of laws and social practices which deny them an equal right to life, liberty and physical security, as well as other fundamental rights such as freedom of association, freedom of expression and rights to private life, employment, education and health care". This social reality, affecting "a planetary minority", is covered up by a "veil of silence and indifference".

Additionally, some countries treat homosexuality "as a medical or psychological disorder and lesbians and gay men have been targeted for medical experimentation and forced psychiatric treatment designed to 'cure' their homosexuality". Violating the standard that obliges them to prevent and punish human rights violations committed by private actors, many states connive in the persecution of LGBT activists.

The basic idea behind the draft resolution is that grounds of discrimination enumerated in the UDHR are merely exemplary. Recognising widespread human rights violations on grounds of sexual orientation, the draft resolution therefore sets out to:

- express the CHR's "deep concern" at the occurrence of such violations,
- underline that "the enjoyment of rights and freedoms should not be hindered in any way on the grounds of sexual orientation"
- note the attention given to the issue by the special procedures and treaty monitoring bodies and encourages the former "within their mandates, to give due attention to the subject"

- request that the High Commissioner pay due attention to it.

While the Brazilian delegation stresses that the resolution proposes "no new rights", neither is sexual orientation as a ground of discrimination new to UN human rights mechanisms. In 1992, the Human Rights Committee, in *Nicholas Toonen v Australia*, stated that discrimination on grounds of sexual orientation

constituted discrimination on grounds of sex under Articles 2(1) and 26 of the International Covenant on Civil and Political Rights.

The Committee on Economic, Social and Cultural Rights concurred with this interpretation in its General Comment 14 (2000) on

## What it means

SEXUAL orientation refers to a person's sexual and emotional attraction to people of the same gender (homosexual or lesbian orientation), another gender (heterosexual orientation) or both genders (bisexual orientation). Gender identity is linked to an individual's intrinsic sense of self and, particularly, the sense of being male or female. It may or may not conform to a person's sex at birth.

the right to health.

In 1999, the Committee on the Elimination of all Discrimination against Women recommended to the Government of Kyrgyzstan that "lesbianism be reconceptualized as a sexual orientation and that penalties for its practice be abolished".

In 2002, the Committee on the Rights of the Child expressed itself "concerned that homosexual and transsexual young people do not have access to the appropriate information, support and necessary protection to enable them to live their sexual orientation" and encouraged the UK government, inter alia, to repeal section 28 of the Local Government Act 1988. These committees' lists of issues and concluding observations to states parties' reports have frequently made reference to discrimination on grounds of sexual orientation.

The Working Group on Arbitrary Detention, in 2002, in an opinion on the infamous Queen Boat case in Egypt established that "the detention of persons prosecuted on the grounds that, by their sexual orientation, they incited 'social dissension' constituted ... arbitrary deprivation of liberty" and so added another category of arbitrariness of detention to include deprivation of liberty ordered in violation of guarantees against discrimination as laid down in articles 2(1) and 26 ICCPR.

The CHR's independent experts on torture, violence against women, freedom of opinion and expression, extra-judicial executions, human rights defenders, and the independence of the judiciary have called for information on sexual minorities issues within their mandate and expressed their readiness to transmit individual cases and urgent appeals in this area.

The 2001 report of the Special Rapporteur on torture to the General Assembly acknowledged the pervasiveness of human rights violations against members of sexual minorities and their disproportionate exposure to torture and other forms of ill-treatment, especially of a sexual nature, for failing "to conform to socially constructed gender expectations."

The Rapporteur, Sir Nigel Rodley, warned that "discrimination on grounds of sexual orientation or gender identity may often contribute to the process of the dehumanization of the victim, which is often a necessary condition for torture and ill-treatment to take place." His successor, Theo van Boven, has again dealt with violence and discrimination against members of sexual minorities in his mission report on Uzbekistan.

Since her appointment in 1998, the Special Rapporteur on extrajudicial, summary and arbitrary executions, Asma Jahangir, has addressed the issue of death threats or killings of persons on grounds of the sexual orientation or gender identity in her reports. This year, she took up cases from Taliban-ruled Afghanistan, Venezuela, and Mexico and devoted a section of her report on a mission to Honduras to the issue.

So has the Special Representative of the Secretary-General on human rights defenders, Hina Jilani, who, in her first report in 2001,

referred expressly to the "greater risks" faced by human rights defenders active on the issue of sexual orientation "as their work challenges social structures, traditional practices and interpretation of religious precepts that may have been used over long periods of time to condone and justify violation of the human rights of members of such groups."

At this year's CHR, an NGO panel entitled "Suffering in silence - the despair and confusion of children questioning their sexual orientation or gender identity" organised by the International Research Centre on Social Minorities (IRCSM), a recently established Geneva-based NGO which lobbied strongly on the Brazilian draft resolution featured the CHR's Special Rapporteurs on the right to education, Katarina Tomasevski, and on the right to health, Paul Hunt.

Ms Tomasevski announced that her report to the CHR next year would address the long overdue question of "what school children learn about sex, sexuality and gender; what they are taught, what they are not told, and what they are told not to ask about". Her emphasis on the importance of human rights education for respect (and her clear repudiation of the term "tolerance" as a "passive behaviour against something which was considered abnormal") is reflected in the Brazilian resolution which affirms that "human rights education is a key to changing attitudes and behaviour and to promoting respect for diversity in societies".

Mr Hunt argued that right to health issues associated with sexual minorities fall directly within one of the two main themes that he proposed to address: discrimination and stigma in the context of the right to health. During an NGO briefing, Paulo Sergio Pinheiro strongly affirmed that as Rapporteur of the Sub-Commission on the Protection and Promotion of Human Rights responsible for a two-year study on violence against children he intended to address violence faced by children on grounds of their sexual orientation and gender identity.

A growing familiarity of the UN mechanisms with issues of discrimination on grounds of sexual orientation, however, in no way pre-judges vigorous opposition to the draft which can be predicted on this "provocative piece of work" (USA during consultations). A showdown in the form of a paragraph-by-paragraph vote on the Brazilian draft resolution is clearly in the offing starting with the draft's title, as one opposed delegation announced. We are likely to be treated to a rerun on positions brought forward during last year's GA debate on Ms. Jahangir's report on extrajudicial executions.

The delegations of Egypt, the Sudan and Pakistan found her exceeding her mandate by addressing concepts 'sexual minorities' and 'sexual orientation' which (so the Egyptian delegation) had not been elaborated or explained by any intergovernmental body. The Swiss delegate expressed opposition to the inclusion of the term 'sexual minority' in the report as it "fell outside the internationally recognised definition of minority".

While expressing "grave concern about the impunity with which people who did not belong to the recognised sexual orientations or minorities were treated", Ms. Jahangir maintained that far from discussing issues of (im-)morality she had merely called for accountability for governments which perpetrated summary executions, drownings and killings against persons because of their sexual orientation.

In a challenge to those opposed to her approach, she held that "the fact that no one was willing to talk about sexual orientation was perhaps part of the reason that it was so difficult to collect information". While "she could not look away from such matters", it was "up to delegations to decide whether or not to ignore that important issue".

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DISABILITY

# Standard Rules: 10 years after

DECEMBER 2003 will mark the 10th anniversary of the United Nations Standard Rules on the Equalization of Opportunities for People with Disabilities (Standard Rules). Adopted by the General Assembly in resolution 48/96 of 20 December 1993, the Standard Rules recognise "a new concept of disability" that emphasises "the close connection between the limitation experienced by individuals with disabilities, the design and structure of their environments and the attitude of the general population."

Significantly, paragraph 17 defines "handicap" as "the encounter between the person with a disability and the environment." It further states that, "The purpose is to emphasize the focus on the shortcomings in the environment and in many organized activities in society, for example, information, communication and education, which prevent persons with disabilities from participating on equal terms."

Adopting what could be referred to as a "social model" of disability, they set out a number of practical measures for achieving substantive equality for persons with disabilities. The areas for development listed in the Standard Rules include awareness building, education, information and research, and national monitoring and evaluation of disability programmes.

The Standard Rules exemplify the ongoing shift from a charity-based approach to disability to one that is based on human rights. On the international stage, this shift began in 1981, which the United Nations declared the International Year of Disabled Persons.

This was followed by the adoption of the World Program of Action Concerning Disabled Persons in 1982, which provided an international framework to incorporate disability issues into national planning and explicated a global commitment to developing a society that fully integrates disabled and non-disabled persons. Rather than placing the burden of change on the individual person with disabilities, it called for legal, institutional, and social adaptation that would allow for the full realisation of the rights of disabled persons.

The following year, the International Decade of Disabled Persons was designated (1983-1992) to promote "equality" and "full participation" of disabled persons in social life and development.

The UN Commission for Social Development also appointed a Special Rapporteur on monitoring the implementation of the Standard Rules. The final report of the Special Rapporteur (E/CN.5/2000/3), whose mandate ended in August 2000, highlighted the importance of integrating the Standard Rules with the UN human rights mechanisms.

General Comment No. 5 on Persons with Disabilities of the Committee on Economic, Social and Cultural Rights (contained in document E/1995/22) highlights the importance of the Standard Rules in determining states obligations under the ICESCR. In drawing on specific provisions of the ICESCR with references to the Standard Rules, the Committee concludes:

The obligation of States parties to the Covenant to promote progressive realization of the relevant rights to the maximum of their available resources clearly requires Governments to do much more than merely abstain from taking measures which might have a negative impact on persons with disabilities. The obligation...is to take positive action to reduce structural disadvantages and to give appropriate preferential treatment to people with disabilities in order to achieve the objectives of full participation and equality within society for all persons with disabilities.

Yet despite the positive contribution of

the Committee on Economic, Social and Cultural Rights in General Comment No. 5, as well as General Recommendation 18 on women with disabilities produced by CEDAW, it is clear that the treaty bodies are, in general, under-utilised as means of protecting the rights of persons with disabilities. A study on the use of UN human rights instruments in the context of disability, conducted by the Research Centre on Human Rights and Disability of the University of Galway and submitted to last year's session of the Commission (E/CN.4/2002/18/Add.1), states: "the process of disability reform that is taking place across the globe could be immeasurably strengthened and accelerated if greater and more target use were made of [the six main UN human rights treaties]".

Three treaties in particular that could benefit from mainstreaming the rights of persons with disabilities are the ICCPR, the Convention Against Torture, and the Convention for the Elimination of All Forms of Discrimination Against Women. As the study explained, many states' reports refer to disability as a welfare issue and not as an issue under the ICCPR. However, "the key ethic of the worldwide disability rights movement is freedom and participation". Again, in surveying states' reports the authors of the study found that "States parties tend not to draw the link between ICESCR rights and the achievement of the goals of independence, autonomy and participation". It observed a similar lack in the periodic reports to CAT and CEDAW.

Notably, in some ways these areas of weakness in using the human rights treaty bodies mirror deficiencies that have already been pointed out with respect to the Standard Rules. For example, the final report of the Special Rapporteur of the Commission for Social Development notes that neither the gender dimension nor the needs of children with disabilities are treated sufficiently.

The report also points out that the Standard Rules do not deal at all with the area of housing. (This observation also highlights the importance of this year's draft resolution on the right to adequate housing, see the 14-20 April 2003 issue of *Human Rights Features*.)

Taking this and other gaps in existing international instruments into account, many have argued convincingly that binding international convention for persons with disabilities is needed, and in December 2001 the General Assembly resolution 56/186 established an Ad Hoc Committee "to consider proposals for a comprehensive and integral international convention to promote and protect the rights and dignities of persons with disabilities, based on the holistic approach in the work done in the fields of social development, human rights and non-discrimination."

As explained in the UN report *Human Rights and Disability*: The current use and future potential of United Nations human rights instruments in the context of disability, it would increase the visibility of people with disabilities leading to a broader and deeper human rights expertise on disability, clarify states parties' obligations with respect to persons with disabilities, give disability NGOs a clear target to focus their complaints on, and mainstream the issue of disability rights so that they would be better protected by the six major human rights instruments. Such a convention would complement, rather than replace, the role of the six core human rights instruments in protecting and promoting the rights of disabled persons.

The formation of the Ad Hoc Committee is a welcome - some would say vital - step in the promotion and protection of the rights of persons with disabilities. Although it is regrettable that NHRIs were not invited to its first meeting, the Ad Hoc Committee will hold its second meeting in June 2003 to discuss reports from member states, UN bodies, NHRIs and NGOs.

At the same time, the fanfare surrounding the development of the Committee must not be substituted for the continual re-evaluation and implementation of the Standard Rules. The Economic and Social Council for the Asia Pacific (ESCAP), in anticipation of the meeting, was to have organised a regional meeting on an International Convention to Protect and Promote the Rights and Dignity of Persons with Disabilities in Beijing from 8 to 11 April 2003. This, however, has been postponed due to the SARS epidemic. Its purpose was "to create regional unified support for the elaboration of an international convention on the right of persons with disabilities among countries of the Asian and Pacific region, to raise awareness and interest among Governments and civil society organizations in the region toward the international convention and to promote their active participation in the process of the elaboration of the international convention." Recommendations resulting from this meeting were presented at the second session of the Ad Hoc Committee.

Although this meeting came after two consecutive Asia Pacific Decades of Disability, it is interesting to note that only one ESCAP country, Japan, contributed to the voluntary fund for the activities of the Special Rapporteur of the Commission for Social Development.

Discussion of a new instrument for persons with disabilities should be concurrent with discussion of the Standard Rules - an instrument, which, though non-binding, is already in existence.

As General Comment No. 5 illustrates, the Standard Rules can provide guidance in determining states' obligations under international human rights treaties. Where the Standard Rules do not provide guidance, such as in the area of housing, the Commission

has an opportunity to create an impact on the way the rights of disabled persons are promoted.

The Commission can also consider appointing a Special Rapporteur on the rights of persons with disabilities. This is particularly important now that the mandate for the Special Rapporteur of the Commission for Social Development has ended. If the drafting process of other new human rights instruments is any indication, the creation of the Draft Convention may be a lengthy process, and a Special Rapporteur would act as a much-needed focal point for disability in the human rights system.

Finally, the Commission should facilitate and encourage the participation of persons with disabilities in its proceedings. It is important to remember throughout that over 600 million people, approximately ten percent of the world's population, live with a disability of some kind. Recent estimates suggest that nearly one third of persons with disabilities live below the poverty line, and less than ten percent of youth with disabilities attend school.

According to a United Nations report *Human Rights and Disability*, "The link between disability and poverty and social exclusion is direct and strong throughout the world." Often disability intersects with other kinds of disadvantage including race, gender, class, and age - accentuating the problems already faced by these individuals. Hopefully the Commission will be among the first to exemplify a change in this appalling status quo.

***A Convention for persons with disabilities would mainstream the issue of disability rights so that they would be better protected by the major human rights instruments. It would thus complement these instruments.***

***Discussion of a new instrument for persons with disabilities should be concurrent with discussion of the Standard Rules - an instrument, which, though non-binding, is already in existence.***

## CHINA: Freedom of Expression

## 'Stainless Steel Mouse &amp; Golden Shield'

'IT was the best of times, it was the worst of times.' The words were used to describe the French Revolution, but they could equally be applied to the Internet revolution in China. On the one hand, the Internet is seen as a panacea for freedom of expression and freedom of information. The only drawback being the economic one; that is, "the right to freedom of expression should become a reality for everyone, not just the privileged few who can afford their own telephone line, modem and PC". (Peter Noorlander, Article 19)

But, on the other hand, simply providing access to the Internet is only part of the story. As the case of China shows, there is nothing inherently democratic about the Internet, its introduction does not necessarily mean greater freedom and democracy, but in a one-party state can mean "more subtle and sophisticated forms of repression".

## China's 'Golden Shield'

China was first linked to the global Internet in 1994. Since then the Chinese authorities have sought to control China's Internet connections. The most comprehensive work to date on the technology used by the Chinese authorities is *China's Golden Shield: Corporations and the Development of Surveillance Technology in the People's Republic of China* by Greg Walton, published by the International Centre for Human Rights and Democratic Development (2001).

Walton's conclusion is that while the Internet "has increased opportunities for human rights and democracy activists to build international support for their struggles" it has also "brought new challenges for human rights advocates, particularly those living under repressive regimes" and is "threatened by economic priorities".

In the early days of the Chinese Internet, the government used fairly "crude" methods to "block" access to certain websites. China adopted the "Great Firewall" strategy, the concept of foreign 'internet' gateways linking to a secure national 'intranet'. Web users seeking "forbidden" websites would not be able to reach those sites at all, as the IP address for the website would be blocked. The principle adopted by the Chinese government was "guarded openness", seeking to preserve the economic benefits of openness to global information, while guarding against unwanted foreign influence. However, due to the increased volume of Internet traffic in China the government can no longer filter out all "objectionable" material before it enters China's networks.

The government has tried other techniques. For example, in August 2002 they temporarily blocked access to the popular Internet search engine 'Google'. The outcry over this incident caused the government to back down. Fortunately, for the Chinese government, as technology has improved so has access to better censorship and surveillance methods.

Users may now have the impression that they have access to certain sites but certain functions on those websites are blocked. In addition experts and users have reported selective blocking of e-mail that mentions certain words, e.g. "Falun Gong", restricted or difficult access to foreign sites and continued interruption of search engines on particular topics.

This is all possible through "software filters" used at the level of Internet Service Providers (ISPs) and cyber-cafes. One particular method is to re-direct those visiting banned websites to a single IP address which is already blocked by the government at the international gateway level.

Experts say this is done by falsifying the records in Domain Name Servers (DNS), so that when a user types in a web address the DNS will route the request to a pre-determined site and not the intended address.

But this kind of complex technology has not appeared overnight. In November 2000, 300 companies from over 16 countries attended a trade show in Beijing called Security China 2000.

The focus of the show was the "Golden Shield" project, launched to promote "the adoption of advanced information and communication technology to strengthen central police control, responsiveness, and crime combating

posted politically sensitive articles on the Internet.

This picture is reinforced by the cases in the Addendum to the Special Rapporteur's (SR) report to the 59th Session. The SR refers to five communications received with regard to human rights violations in relation to the use of the Internet in China.

One of these cases concerns an urgent appeal sent on 8 October 2002 by the SR, jointly with the Chairman-Rapporteur of the Working Group on Arbitrary Detention, concerning Chen Shaowen, an Internet essayist from Lianyuan in Hunan Province, who was allegedly arrested on 6 August 2002 on suspicion of "using the Internet to subvert state power". He is said to have written numerous essays and articles for various overseas Chinese-language web sites on topics including China's unemployment problem, social inequalities, and flaws within the legal system.

The SR also reports that in a letter dated 24 May 2002, the Government of China replied to a communication from the SR dated 1 November 2001 concerning Zhu Ruixiang and Lü Xinhua. The Government alleges that in the case of Zhu Ruixiang he had on many occasions, since October 2000, made use of the Internet to produce and disseminate materials designed to subvert the State's political authority, and that his acts constituted the crime of inciting subversion of State political authority.

He was sentenced to three years' fixed term imprisonment and stripped of his political rights for two years

The pattern of these cases shows that whilst the technology may be new, the underlying charges of "subversion" or "threatening to overthrow the government" have not changed and continue to be used to suppress freedom of expression. (see **interview with Tibetan political-dissident Takna Sang Po, facing page**).

The grim irony appears to be that as human rights activists and political opponents have begun to use the Internet to promote their causes, the Chinese government has adopted technology to make it potentially easier to silence their opponents.

## Freedom of expression and association

Article 19 of the International Covenant on Civil and Political Rights (ICCPR) states: "[E]veryone has the right to freedom of expression: this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers either orally, in writing or in print, in the form of art, or through any other media of his choice."

There is no doubt that these words apply to the use of the Internet. The Internet's primary functions are to allow the user to "seek, receive and impart information", and while Article 19 was drafted before the use of the Internet it is expressly applicable to "any other media".

At the 58th Session of the CHR members (including China) adopted resolution 2002/48 on the right to freedom of opinion and expression by consensus. At operative paragraph 12, the CHR "[s]tresses the importance of the diversity of sources of information, including mass media, at all levels, and the importance of the free flow of information, as a way to promote full enjoyment of the right to freedom of opinion and expression, and encourages the facilitation of access to the Internet."

In spite of its obligations under international human rights law, in China there is no "free flow" of information. The Chinese authorities have adopted restrictive laws, arrests, detentions, censorship, bans, surveillance of and restrictions on the use of the Internet.

The diversity of sources is deliberately limited and the right to freedom of opinion and

CONTINUED ON FACING PAGE

## Web of Surveillance

THE ambitious plan for Chinese national security was, according to Walton's report: "to build a nationwide digital surveillance network, linking national, regional and local security agencies with a panoptic web of surveillance." In Walton's words: "Old style censorship is being replaced with a massive, ubiquitous architecture of surveillance: the Golden Shield". Or in the words of Nortel Networks, a contractor of the Chinese government: "Imagine a network that knows who you are, where you are, and can reach you whether you're on your mobile phone or at your desktop. Even better, imagine instead of finding your Web content, it finds you. Sounds personal. Exactly." The Chinese authorities are reliant on private telecommunications firms located primarily in Western countries to fulfill this vision.

*China's Golden Shield: Corporations and the Development of Surveillance Technology in the People's Republic of China*  
By Greg Walton (International Centre for Human Rights and Democratic Development, 2001)

capacity, so as to improve the efficiency and effectiveness of police work." (see **box above**)

The latest initiative by the Chinese authorities is to attempt to make Internet companies police themselves. In August 2002, a 'Public Pledge on Self-Discipline' was introduced. Signatories agree not to post "pernicious" information that may "jeopardize state security, disrupt social stability, contravene laws and spread superstition and obscenity".

Amnesty International (AI) reports that over 300 companies have signed up, including the Chinese operations of 'Yahoo!'.

## Internet-related convictions

There have been an increasing number of Internet-related convictions in China. Typical

**Typical Internet-related offences leading to convictions in China include posting or downloading pro-democratic information, articles that are critical of the Chinese government or articles that allege human rights violations in China - activities which fall broadly under the term 'virtual organising'.**

offences include posting or downloading pro-democratic information or articles that are critical of the Chinese government or articles that allege human rights violations in China - activities which fall broadly under the term "virtual organising".

In November 2002 AI reported the cases of 33 people who had been detained or imprisoned for offences in relation to the exercise of freedom of religion, expression and association in the use of the Internet. AI reported that two detained for such offences, both members of the banned Falun Gong spiritual movement, have died in custody, allegedly as a result of torture and ill-treatment by the police.

The Hong Kong-based organisation, Human Rights in China, reports that political dissident Tao Haidong was recently sentenced to seven years in prison for articles he posted on the Internet. The most celebrated case to date is perhaps that of Liu Di - otherwise known by her Internet name "Stainless Steel Mouse" - a 22-year-old student at Beijing Normal University, who was detained in November 2002 after she

CHINA

## Great firewall against criticism...

expression, in particular for journalists, members of political opposition groups and parties and human rights defenders is severely limited.

During the 1990's the members of the Western Group shifted their focus on Chinese human rights violations from a relatively open multilateral focus on the UN bodies, such as the CHR, to a less transparent bilateral dialogue. A China resolution at the CHR has not been seen since.

This shift in policy was sold on the basis of a 'win-win' philosophy. The Western members could deepen diplomatic and economic relations with China after Tiananmen Square (1989), and at the same time explore a meaningful human rights dialogue without the pressures of public scrutiny on China.

This has regrettably not proved to be the case. According to the International Centre for Human Rights and Democratic Development, "[t]he bilateral human rights dialogue has not achieved its objectives, the situation of human rights in China has deteriorated". On 31 March 2003, Human Rights in China stated, "[a]ll available information suggests that the Chinese government is as repressive as ever toward political dissidents".

In the context of the restriction on the use of the Internet in China, it is worth noting the words of the SR: "The Special Rapporteur considers that the exercise of the right to freedom of opinion and expression is a clear indicator of the level of protection and respect of all other human rights in a given society." The regulation of the Internet worldwide will be explored at the first phase of the World Summit on the Information

Society in Geneva from 10 to 12 December this year. The World Summit website says that: "The Summit offers a unique opportunity for the global community to reflect, discuss and give shape to our common destiny in an era when countries and peoples are interconnected as never before." The Asia-Pacific Regional Conference was held in Tokyo from 13 to 15 January 2003 as a preparatory meeting to the World Summit. The Tokyo Declaration was the end product. In the ten-page document there is only one cursory reference to the protection of freedom of expression. This is not a good start. Can the mouse be mightier than the Golden Shield?

Cyber-speak has created many new words, but perhaps no metaphors more appropriate than the 'Stainless Steel Mouse' and the 'Golden Shield' to describe the new challenges faced by human rights defenders and political dissenters in China, against the increasingly pervasive surveillance of Internet use by the state authorities.

The CHR is the appropriate international forum to scrutinise the violation of the right to freedom of expression by the Chinese authorities. There is, however, no China resolution on the table at the 59th Session, as the majority of the Western Group members continue to pursue a bilateral dialogue on human rights in China.

If Western Group members are committed to this dialogue, then a good start would be to hold to account those companies in their own jurisdictions who are providing the necessary expertise and technology to China, which is knowingly being used in this latest chapter of the suppression of freedom of expression and freedom of association in China.

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## Aceh...

defenders have been attacked by the security forces (109 since 1999). The summary killings and executions, arbitrary arrests/detentions, torture and intimidation are all typical tactics of terror employed by the Indonesian security forces. Since the signing of the agreement in Aceh, the right to freedom of expression and association has been continually denied. The JSC is an international monitoring team but is unable to intervene in such violations.

The mandate of the JSC is only to investigate reported violations of the COHA, there are even reports that it has at times shown a reluctance to do this. Many Acehnese are asking what does it mean when there is no safe environment within which implementation of the COHA can take place; when even the international monitoring team cannot function effectively and is recalled to the relative safety of Banda Aceh as happened early April?

Why does it appear that the international community has such a short memory? Surely it has as its point of reference the actions of the security forces in East Timor? With the COHA facing such a crisis, there is now more than ever, the need for the fine detail of the identity of the agreement to be determined. This process may be slow.

In the meantime, the Indonesian government should show its real commitment to the pursuit of a peaceful solution to this conflict by releasing Nazar, Muchlis, Zulfikar and others whose voices they have sought to silence. And it should scrap the list of those wanted for speaking critically about this less than perfect COHA. Their voices must be among those who seek a real and sustainable peace in Aceh.

...from page 1

## Voting...

rights abuses in the Western countries, but don't submit drafts for examination and decisions. This group is traditionally composed of Algeria, China, Cuba, India, Libya, Malaysia, Pakistan, Saudi Arabia, Sudan, Syria, Viet Nam and Zimbabwe. In view of their negative voting patterns this year on almost all the country resolutions, it seems that Gabon, Russia, Ukraine, Armenia, South Africa, Swaziland and Venezuela now also belong to the group.

In the debate on country situations, much still depends on the initiatives by the European countries. Their drafts resolutions may sometimes appear weak, but they are the only ones to take the lead and constitute a minority in the Commission. Hence the importance of the Latin American votes. From this first voting week, Mexico has by far the best voting record. Paraguay also proved to be committed to human (but why this abstention on Chechnya?). Argentina's voting pattern was mostly positive, except for its unsurprising abstentions on Cuba, Chechnya and Belarus. Despite their doubtful position on the Occupied Territories, Peru and Costa Rica took a clear stand on most drafts. As last year, Brazil's position was disappointing.

During the coming week, again under Item 9, the Commission will take action on the drafts resolutions concerning Afghanistan, Iraq and south-eastern Europe (parts of former Yugoslavia). Chairperson's Statements will be made on East Timor and Colombia. Furthermore, as part of the advisory services, the Commission has to take decisions on Cambodia, Haiti, Somalia and, hopefully, Equatorial Guinea and Sierra Leone.

# Half a life: Story of a political prisoner

**T**AKNA Jigme Sangpo, an ex-political prisoner in Tibet, made an oral statement at the 59th Session under Item 9 on behalf of the International Fellowship of Reconciliation. Since 1965 he has been imprisoned by the Chinese authorities on three occasions, serving a total of 37 years in prison. While in prison, he says: "I was tortured both physically and mentally, beyond human imagination. My dignity as a human being was humiliated and crushed." This treatment included, among many other things, his neck and arms being manacled in an iron brace for six months. He was released on 31 March 2002 on medical grounds, with 9 years of his sentence remaining. He now lives in Switzerland where he is receiving medical care.

So what crimes merited this inhumane treatment? In 1965 he was 37 years old and teaching Tibetan language and mathematics at a primary school in Lhasa. At that time there was a 'defamation drive' by the Chinese authorities against a petition in support of the 10th Panchen Lama of Tibet. When the authorities visited his school Mr Takna expressed his support for the petition and was subsequently sentenced, without trial, to three years' imprisonment.

In 1970 he was arrested again and sentenced to 10 years on charges of "inciting counter-revolutionary propaganda" when two Tibetan youths were found trying to leave Tibet and carrying a photo of Mr Takna amongst their possessions.

Then in 1983 he was sentenced to 15 years in prison for "spreading and inciting counter-revolutionary propaganda", after he pasted wall-posters and distributed leaflets in Parkhor, Lhasa's central market. The words contained in this material that offended the Chinese authorities were "Chinese fool the Tibetan", "Chinese quit Tibet" and "Tibet belongs to Tibet". His prison sentence was increased by five years when in 1988 he protested from his cell in support of Tibetan street demonstrations, and

by a further eight years in 1991 when he raised slogans during a visit to Drapchi Prison by a Swiss Human Rights Delegation.

In Mr Takna's view the suppression of freedom of expression and freedom of religion in Tibet is getting "worse and worse". He says a sense of suppression permeates Tibetan society. Tibetans cannot speak their own words freely, even with their own family and friends, for fear of the repercussions of being labelled a 'nationalist'. He gives the example of the arrest of five people from Karze region in 2002 for religious practices associated with the Dalai Lama.

In spite of his life being dominated by 37 years of imprisonment, he is determined to tell what happened to him in prison and "what is still happening", and to continue to support the Tibetan's right to self-determination. His view of the Commission is that it is "a good platform" and a place where "everybody can freely express themselves", whatever the ultimate outcome may be.

In his oral statement he highlighted to the Commission the situation of two prisoners, Sonam Tswang and Tingka, who since 1999 have been held in solitary confinement in "small dark cells" in Drapchi Prison's Block Ten. He urged the Working Group on Arbitrary Detention to follow up on these cases as a matter of urgency. In doing so, he said: "I remain grateful to all the special thematic procedures of this Commission who acted on my behalf and other Tibetan prisoners through various interventions to the Chinese authorities." Members of the Commission might wish to reflect on these words given the current assault against Item 9.

"Takna" in Tibetan means "Black Tiger". It is of course only a word, but it happens to be the name that was freely given to Mr Takna. He is now 74 and has spent exactly half his life in prison for exercising his right to freedom of expression. It is a price many others like him have paid and will continue to pay.

*A sense of suppression permeates Tibetan society. Tibetans cannot speak their own words freely, even with their own family and friends, for fear of the repercussions of being labelled 'nationalist'.*

EUROPE: *Discrimination*

# Roma: Europe's forgotten minority

THE Roma are currently the most deprived, excluded and discriminated ethnic group in Europe: high unemployment, reduced access to health care, restrictions on freedom of movement, restricted access to education or segregation in "special schools," denial of residency permits, extreme difficulty finding employment and poor housing continue to characterise their marginalised existence.

These physical hardships, which go hand in hand with ethnic persecution, discrimination and stereotyping persist against Roma in most countries in Europe. This physical and social prejudice denies them the basic elements of human dignity and leaves them vulnerable to criminal exploitation and physical abuse. They often live in extreme poverty, in horrendous living conditions and suffer disproportionately high rates of illiteracy and ill-health, including infant mortality.

It is estimated that there is a global population of 12 million Roma and between eight and 10 million of these currently reside in Europe. Roma people make up 5-10 percent of the population of the countries of central and eastern Europe. It is difficult to gather exact statistics as many Roma still live a nomadic existence and still more do not concede their ethnic origin.

Contrary to widespread belief, the Roma originated from north-west India, not Egypt; the word gypsy is a corrupted form of "Egyptian". They left India in the 10th century and dispersed throughout the world, mostly to Europe, although the Philippines and Argentina also have significant Roma populations. Their lifestyle and social status has remained largely unchanged over the centuries: itinerant and self-sufficient, they speak a language known as Romani which can only be communicated orally (and has similarities with Sanskrit) and which has been passed down through the generations. Often based on prejudice, due to their distinctive socio-cultural characteristics, numerous discriminatory policies and practices have historically been directed at the Roma. They were the second most persecuted group after the Jews in Nazi Germany and in 1994 were persecuted by the Serbs in Bosnia.

A recent survey in Slovakia showed that only 12 percent of the citizens of Slovakia had a positive image of Romas. Roma have resisted attempts to assimilate them and register them on the electoral roll. Authorities and society as a whole have tended to perceive them as a public nuisance which are lazy and noisy, feed off state resources, live in dirty conditions and resort to crime to support themselves. Cases such as the placing of a sign in a hotel window stating that rooms would not be let to Roma, to prevent destruction of property, as well as the banning of Roma from restaurants, swimming pools and discotheques have not been uncommon. Roma and their property are increasingly singled out as targets for violence by "skinheads" and other militant nationalists, they are often seen as scapegoats for the ills of society at large.

As pointed out in a report issued in 2000, two main problems which hinder improvements in the situation of Roma communities are shortcomings in the education system and housing problems. Regarding the former, this is part of a systematic marginalisation of Roma language and culture.

A Minority Rights Organisation report on Roma education in Serbia found that it was hostile to the Roma language and culture, and that Roma children faced prejudice from classmates and teachers. Also that approximately half of Roma children did not attend school, and most of those who did attend, dropped out before the end of primary school.

In Serbia this problem is currently compounded by the recent wars, growing poverty and the placement of many Roma children in "special schools" for the mentally disabled. This ensures that they are deprived of an equal and fair chance to obtain a proper education and that they remain second-class citizens forever. The effects of this are the extreme difficulty the Roma face in gaining employment. The vast majority are unemployed, but those who do have jobs normally work as road-sweepers, factory workers or rubbish collectors; Roma are virtually absent from the service sector.

Meanwhile, regarding housing, most Roma still live in the most squalid and derelict housing estates with non-existent or extremely poor sanitary facilities. Often they live in Roma-only sections which is tantamount to a segregation or ghettoisation from the mainstream population.

Also of great concern are reports, substantiated by the European Roma Rights Centre (ERRC), of coercive sterilisation of Roma women in Slovakia. From the 1970s until 1990 the Czechoslovak government sterilised Roma women as part of a policy aimed at reducing the "high, unhealthy" birthrate of the Roma community.

The policy was documented and condemned by human rights defenders and a 1993 report by Human Rights Watch stated that the policy had ended in mid-1990, although attempts to prosecute on behalf of groups of sterilised women were dismissed in 1992/3.

However, throughout the late 1990s there have been periodic indications that the practice is continuing. In Slovakia in particular the purportedly high birth rate of Roma is a regular feature in public discourse on Roma, frequently in the context of right-wing rhetoric warning that "they will outnumber us by 2050". The issue is extremely sensitive in Slovakia and reports meet with widespread denial by nearly all actors, sympathetic or otherwise.

Investigative missions by ERRC in autumn 2002 to Slovakia confirmed that the practice is continuing. Cases of sterilisation in which consent has been secured and such consent meets medical, ethical and legal standards of full and informed consent constitute 10-20 percent of those that have been examined. In other cases there is evidence of criminal malpractice where the woman has given no consent and there is the possibility that forged consent signatures have been used.

Meanwhile there is a vast grey area where consent has been obtained through misinformation, manipulative information, pressure, tricks, or bluster. There are also cases of associated discrimination - for example one Roma woman had apparently been recommended for abortion by a bogus local doctor on as many as four occasions, due to a purported defect in the foetus. During a fifth pregnancy she sought a second opinion in Bratislava, after again being told that the foetus was defective, and was told that in fact the foetus was healthy, following which she gave birth to a healthy child.

There are grounds for concerns about similar practices in the Czech Republic and Hungary although Slovakia has been of particular concern owing to the extent and frequency with which the idea of coercive contraceptive

measures has emerged as part of public discourse on Roma in the country.

Roma women are also often lured or forced into prostitution, ending up as subjects of international trafficking.

Post-1989, dogged by vulnerability, racism and insecurity, some Roma migrated to Western European countries. There was disillusionment because the promises of democratic political reform, so strong after the demise of Communism in Eastern Europe in 1989, had amounted to very little for them. This was accompanied by a great compression in job opportunities, especially those requiring no particular skills, which the majority of the Roma find themselves seeking.

The Roma are therefore in direct competition with the mainstream population who see them as the perfect scapegoat for their difficult circumstances. This has heightened "insecurity due to community tensions and occasionally violent incidents", a motivation for migration which is particular to the Roma.

Recently, strict control and regulation of immigration and asylum, and newly-introduced provisions for repatriation and readmission have restricted overt migration westwards. As a consequence, migration has become clandestine in the last few years, and migrants have been increasingly reluctant to either register with authorities or contact non-governmental support groups for fear of being detected and expelled.

The key factor in improving the situation of the Roma appears to be the need for greater inclusion and representation, so that when governments do attempt to promote their interests the Roma themselves are asked to give their views and become involved.

Currently measures taken appear as impositions or *faits accomplis*. Far from being a mutually beneficial dialogue, assistance tends to take the form of "favour-giving" on the part of the majority community.

However, there is also a definite need for Roma to be perceived as paying attention to and showing respect for the laws and customs of the country they reside in. They may be more inclined in this regard if they had a political voice; currently the Roma are under/unrepresented at the local, central or regional tiers of Government.

The model of the National Minority Self Governments adopted in Hungary since 1995 should be studied with a view to applying it elsewhere. Information also needs to be disseminated to the Roma regarding their rights and the remedies available both within and beyond the boundaries of the state in which they live.

The needs of the peripatetic and settled Roma communities are often very different and must be addressed. Racism also needs to be tackled more effectively and a "no-tolerance" attitude adopted toward it. An honest and unbiased police force as well as a strong and independent judiciary are essential in this regard. Longer-term strategies to enhance the inclusion of the Roma people and reduce their negative image needs to be adopted while urgent short term action is required to reduce the more obvious effects of discrimination: the poverty and ill-health of many Roma.

Speaking at a conference, in Athens on International Roma Day earlier this month, Council of Europe Human Rights Commissioner Alvaro Gil-Robles launched an appeal, asking for the millions of members of the Roma community to benefit effectively from their rights as European citizens. "Democracy", he concluded, "is the power of the majority".

But the quality of that democracy is measured by the respect with which minorities are treated.

***There are reports, substantiated by the European Roma Rights Centre, of coercive sterilisation of Roma women in Slovakia. From the 1970s until 1990, the Czechoslovak government sterilised Roma women as part of a policy aimed at reducing the community's 'high, unhealthy' birthrate.***

***The key factor in improving the situation of the Roma appears to be the need for greater inclusion and representation, so that when governments do attempt to promote their interests, the Roma themselves are asked to give their views and become involved in the decision-making process.***

# DRC: A resolution against a deadly war

MANOJ MITTA

**D**URING the CHR's 59th session, the world witnessed mass killings due to the civil war in the Democratic Republic of the Congo (DRC). On just one day, 3 April 2003, more than a thousand innocent civilians were massacred in the region of Bunia, in the north-east of the DRC. In a cruel irony, the massacre took place barely a fortnight after a ceasefire agreement was signed between the DRC government and the rebel groups on 18 March 2003 in a bid to resolve the civil war which has been dragging on for years.

Little wonder then that last week the CHR adopted a resolution on the DRC without a vote, as it had done in previous years. The like-minded group (LMG) of developing nations, which usually has reservations about country resolutions, made an exception in the one concerning the DRC. This is because the resolution sponsored by the EU does not, in the opinion of the LMG, engage in the game of selective naming and shaming. On the contrary, since the resolution was drafted in consultation with the DRC, the LMG sees it as a co-operative and constructive exercise intended to help the affected country and not to condemn it.

This assessment of the LMG was confirmed by the DRC on 17 April 2003 when its Permanent Representative spoke in the CHR shortly before the adoption of the resolution. The DRC expressed appreciation for the EU's gesture of taking the affected country into confidence while drafting the resolution. But at the same time the DRC stressed that the concern shown by the developed countries should translate from altruism to financial help. "My government can't ensure that prisoners get enough food because of the growing debt burden. The lack of funds prevents us from providing proper facilities to our prisons and courts, paying our civil servants or dealing with AIDS," said the DRC's Permanent Representative, adding with more than a touch of sarcasm, "We request the champions of human rights to give us the necessary funds."

Whether the rich countries will pay heed to the DRC's appeal for aid or not, it was refreshing to see the target of a resolution not coming up with a blanket denial of all the charges that are made against it. To be sure, the resolution adopted in the 59th session contains condemnation of not just the rebel groups but also the duly recognised government of the DRC. In the negotiations between the EU and DRC, the sponsors of the resolution ensured that some of their major concerns remained in the text even if those were critical of the government. Some of the clauses in the resolution that condemn the DRC government as well are:

"The cases of summary or arbitrary ex-

ecution, disappearance, torture, harassment, arrest, widespread persecution and arbitrary detention for long periods throughout the country."

"The widespread recourse to sexual violence against women and children, including as a means of warfare."

"The upsurge in the recruitment and use

## Deadliest in African history

ACCORDING to the International Rescue Committee (IRC), the four and a half year war in the DRC has taken more lives than any other since World War II and is the deadliest documented conflict in African history. In a report released on 8 April 2003, the IRC estimated that since August 1998, when the war began, until November 2002, at least 3.3 million people had died due to war-related factors. IRC President George Rupp described it as "a humanitarian catastrophe of horrid and shocking proportions," adding that "the worst mortality projections in the event of a lengthy war in Iraq, and the death toll from all the recent wars in the Balkans don't even come close. Yet, the crisis has received scant attention from international donors and the media."

of child soldiers by armed forces and groups in the territory of the Democratic Republic of the Congo."

"The impunity of those responsible for violations of human rights and international humanitarian law, and points out in this connection that the Democratic Republic of the Congo is a party to the Rome Statute of the International Criminal Court."

To compensate for the clauses that are embarrassing to it, the DRC government negotiated the inclusion of a reference to the illegal mining that is allegedly going on in rebel controlled areas with the connivance of multinational companies. This issue is important to the DRC because of its long-standing allegation that the illegal mining of gold and diamonds in rebel-controlled zones by companies based in developed countries is serving as a source of revenue for the rebels to carry on with the civil war. The resolution accordingly condemns "the illegal exploitation of the natural resources of the Democratic Republic of the Congo in view of the link between that exploitation and the continuation of the conflict."

The DRC has also had the satisfaction of seeing that the CHR's resolution has "named and shamed" rebel groups such as the Movement for the Liberation of the Congo (MLC), Congolese Rally for Democracy - National (RCD-N), Rally for Democracy - Goma (RCD-Goma), the Congolese Rally for Democracy - Liberation Movement (RCD-ML) and Union of Congolese Patriots (UPC). All these groups as well as the

neighbouring country, Uganda, have been warned to ensure respect for human rights and stop using ethnic conflicts to advance their own agendas.

Apart from apportioning blame, the CHR has through its resolution provided the DRC with a roadmap for returning the country to peace and order. It rightly called upon the government together with all the Congolese parties to implement the power-sharing agreement concluded at Pretoria on 17 December 2002 and to apply the transitional constitution so as to initiate the transitional period and pave the way for a genuine democratisation process. The violence that is still going on is a reminder of the magnitude of the challenge to human rights in the DRC. Amnesty International says the DRC, particularly its Ituri region in the north-east, is suffering "one of the world's gravest humanitarian and human rights crises." The problem began with the inter-communal violence that erupted in June 1999 between members of the Hema and Lendu ethnic groups.

The CHR's latest resolution on the DRC comes in the wake of the General Assembly's resolution of 18 December 2002 and the Security Council's resolution of 20 March 2003. It is also a sequel to a detailed report on the DRC submitted in the current session of the CHR by the Special Rapporteur on extrajudicial, summary or arbitrary executions, Asma Jahangir. She carried out a fact-finding mission to the DRC in June 2002 to inquire into the massacres that took place the previous month in the region of Kisangani, which is a zone controlled by the rebel group, RCD-Goma.

The mission was specially undertaken in response to a statement by the President of the Security Council on 24 May 2002 in which the Council drew the attention of the High Commissioner for Human Rights to the seriousness of the Kisangani events. Apart from recording extra-judicial killings and summary executions, Ms. Jahangir gave the finding that the de facto authority of Kisangani, RCD-Goma, was responsible for the massacres that took place there. She also emphasised that "the entrenched impunity" for grave human rights violations must be urgently addressed.

Ms. Jahangir's apprehensions about the entrenched impunity have been borne out by the recurring massacres and other human rights violations. Unlike in the case of other African countries such as Zimbabwe and Sudan, the problem with the DRC is not so much of a repressive regime but of a government that is unable to exert its will, especially in the rebel-controlled zones which are most susceptible to human rights violations. Despite all the efforts being made by the UN system, the mission to end the civil war and anarchy in the DRC is bound to be a long haul.

...from page 6

## Sexual orientation...

Could it be that "delegations were perhaps running behind definitions used by NGOs and others agencies"? Delegations were urged "to look at human rights developments that were taking place outside the room". In order to appease delegations unhappy with the grouping of cases under the heading of 'sexual orientation', Ms Jahangir stated, however, that she would gladly "separate the cases based on sexual orientation" more specifically in the future.

The treacherous waters of definition, which Ms Jahangir navigated, skilfully threatened to unsettle the draft resolution too even though here the above-cited objecting countries and others of their ilk no longer deigned to participate. The draft now does not contain an attempt at definition of 'sexual orientation' which, in an earlier version, was taken to "encompass heterosexuality, homosexuality, bisexuality and transsexuality". The omission of a definition by enumeration is justified on the grounds that its inclusion would militate against the purpose of the resolution, the promotion of

non-discrimination, by necessarily being exclusionary of some possible sexual orientations. Ironically, some of those countries not even willing to be part of the consultations on the resolution insist that they are only willing to consider negotiations on the issue once a definition is on the table (a definition acceptable to them, that is). The Holy See too "would like to understand the meaning of 'sexual orientation' before embarking on any further deliberations."

Once the original definition section had been deleted on the EU's suggestion, and the term "transsexuality" was no longer expressly covered by the resolution, a debate ensued about the inclusion of the term "gender identity". Despite strong support from Canada, Germany, Liechtenstein, New Zealand, Brazil, Norway, and Sweden for its inclusion, the EU as a whole confounded the resolution's sponsor by remaining unclear on who amongst them would find this term unacceptable. Ireland, the suspected culprit, declared that it did not oppose inclusion. In the end, it was decided to leave the term out so as not to lose possible votes. The Brazilian delegation promised, however, to include the term in next year's resolution.

As of the afternoon of 17 April 2003, the draft had 20 co-sponsors. The GA's vote on the

2002 resolution on extrajudicial executions, sponsored by Finland, might give some indication of a likely voting pattern on this draft. The EJE resolution, in OP 6, called "upon Governments concerned to investigate promptly and thoroughly all cases of killings committed ... for any discriminatory reason, including sexual orientation ...". OP 6, which was voted on separately, was retained by a margin of 104 votes in favour, 37 against with 29 abstentions. If the voting pattern on OP 6 is projected onto the membership of the CHR, a vote of 30 in favour, 11 against and 8 abstentions would be predicted (three CHR member states were absent when the OP 6 vote took place). Once OP 6 was included the vote on the resolution came out as 130 in favour, none against with 49 abstentions. The abstaining states here closely mirrored those opposed to the inclusion of OP 6.

This draft resolution reaffirms the cornerstone of human rights protection, the principle of non-discrimination. Either human rights apply universally or they do not. If they do and if we face up to the realities outside Room XVII (as well as inside it) then this draft resolution should be the CHR's message to the wider world: whatever your sexual orientation, your human rights are our concern.

# Anwar Ibrahim: Too early to let his case rest

*Why do the upholders of human rights and walkers of the 'high road' fail to prod Malaysia about him?*

THERE will be no respite for Anwar Ibrahim. Not until Malaysia wakes up to the fact that its leadership is autocratic and paranoid, and that the judiciary is a joke. Last week, Malaysia's Court of Appeal turned down the former deputy prime minister's bid to overturn his conviction for sodomy, upholding a nine-year prison sentence that began on 14 April 2003. Anwar is thus expected to be in jail for six more years after a customary one-third remission for good behaviour. The court also turned down his application for release on bail pending the final outcome of the appeal process.

An appeal to the Federal Court is likely. But few expect the court to deliver any surprises.

Anwar's 1999 trial that eventually led to a six-year imprisonment by the High Court is widely seen as unfair to the defendant. The defence lawyers were hounded by arbitrary accusations of contempt of court, and failed to receive protection from the court against intimidation and harassment by the police. The prosecution, at the end of its case, was allowed to amend the charges, denying the defendant the opportunity to refute the original charges of sexual misconduct. Subsequent hearings for judicial review have been characterised by contradictory evidence, dubious witnesses and rulings by the judge that openly favoured, and at times rescued, the prosecution case. (see box)

In Dr Mahathir's Malaysia, and particularly with regard to the opposition Keadilan Party (led by Anwar Ibrahim's wife Wan Azizah Wan Ismail), the judiciary has continued to toe the government line. Even as the International Federation for Human Rights (FIDH) and Suaram, a human rights NGO, unequivocally condemned the July 2002 hearing as marked by various "judicial dysfunctions such as the refusal of bail, expunging of evidence, compelling the defence to provide a summary of witnesses' evidence in advance and ruling on their relevancy, disallowing witnesses from testifying, disallowing the defence of political conspiracy", and the EU echoed this criticism, several members of the Keadilan party remain in detention under the draconian Internal Security Act (ISA) for allegedly promoting insurrection against the state.

Under the ISA, a person may be detained by the police for up to 60 days without trial for an act which "prejudices the security" of the country. After 60 days, the detention can be extended for a period of two years, with the approval of the Minister of Home Affairs. It can then be renewed for successive two-year periods. A detainee can thus expect to remain in detention indefinitely.

One of the most recent and high profile cases has been that of six activists, all of whom have been accused of plotting to overthrow the government by "militant" means. Dr Badrulamin Bahron, Mohamed Ezam Mohamed Nor, Tian Chua, Sari Sungib and Lokman Noor Adam, all leaders of the opposition Keadilan party, and Hishamuddin Rais, a columnist and filmmaker, were arrested in April 2001 in a move seen as a politically-motivated attempt to stifle dissent. No evidence to support these allegations was ever made public.

On 6 September 2002, the Federal Court

heard the habeas corpus application of five ISA detainees - Tian Chua, Hishamuddin Rais, Sari Sungib, Mohamed Ezam Mohamed Nor, and

## 'We agree... therefore we are'

On 10 July 2002, in proceedings lasting barely 20 minutes, a three member Federal Court panel headed by the then Chief Justice Mohamed Dzaiddin Abdullah "unanimously" rejected Anwar Ibrahim's appeal against his corruption conviction and six-year sentence for tampering with a police investigation. It produced no substance to counter Anwar's multiple and powerful grounds of appeal, other than to repeatedly acquiesce with the verdict given on 14 April 1999. Instead of deliberating on the arguments, the court chose to quote from the previous judgement on almost every major point. The judgment was scored with "we agree" in its many variations, such as:

"we have examined his findings ...we do not find any flaw ..."

"we have carefully examined the evidence ....we see no reason to disagree ...."

"we have examined the record, we cannot say that the learned judge wrongly exercised...."

"considering the totality of evidence, we cannot say the learned judge erred ...."

"we are not persuaded that the conduct of the learned judge amount to a miscarriage of justice ....."

Raja Petra Raja Kamaruddin who had been arrested earlier. The court ruled that their initial 60-day detention made under section 73 of the ISA was unlawful and that the police had acted in bad faith in detaining them. However, the decision did not result in the immediate release of the detainees as the judges further held that a separate habeas corpus application had to be filed since the decision did not affect the two-year detention order made by the Home Minister, even though the latter order was made pursuant to recommendations made by the police.

Of these five, Mohamed Ezam Mohamed Nor was convicted of an offence under the Official Secrets Act and is now serving a two-year jail term, while Raja Petra Raja Kamaruddin had been released before the expiry of the initial 60-day detention period.

In an unashamed display of disregard for the judiciary and the rule of law, Deputy Prime Minister and Home Minister Abdullah Ahmed Badawi said the activists would not be released because the government had ordered their detention on the basis of valid security concerns. "I read the reasons why they must be detained, and I am aware that the questions that were asked during the period were also questions relevant to security matters and not just a case asking about personal questions," Mr Badawi said.

This is not borne out by the Federal Court ruling. The judge stated that "clearly, from the affidavits which it highlighted above, the questions that were asked were more on the appellants' political activities and for intelligence gathering." In refusing to revoke the detention order, Mr Badawi clearly demonstrated that he considers himself above the law.

There is no gainsaying that the govern-

ment of Prime Minister Mahathir has followed a policy of oppression and legal subversion. With the impending war on terror Dr. Mahathir seems to have enjoyed a resurgence-national and international- adroitly exploiting Malaysian fears of a militant Islamic opposition and the global economic uncertainty. The Australian Defence Minister, Senator Robert Hill, is quoted as saying - with regard to the ISA - that "extraordinary responses" were needed to deal with "those not prepared to accept the norms of reasonable behaviour."

Unsurprisingly, against this background, Mr Anwar and his plight have slipped from the domestic and international spotlight.

In a sharp contrast to the 1999 judgment that created a serious commotion and protests nationally and internationally, the 2002 rebuttal of the same judgment endorsed by the highest court caused hardly a stir. The Malaysian Bar Council, which voiced its outrage four years ago, barely mumbled this time. The international community which sprang to condemnation at Judge Paul's judgment in 1999 is now either gently, expressing its disagreement or none at all.

While the international community in general continues to view Mr Anwar's jailing as politically motivated, the pressure on Dr Mahathir's government has eased over the issue, partly because of security co-operation with the government. The United States for one has all but buried the previous official expressions of concern about Mahathir's anti-democratic methods and barely disguised frame-up of former Deputy Prime Minister Anwar Ibrahim. In April 2002 US Assistant Secretary of State for East Asian and Pacific Affairs James Kelly, hailed the Malaysian leader for his "stirring response in the global campaign against terror". Malaysia, he declared, was a "beacon of stability in the region," adding: "It is important for us to further co-operate in the matter and improve our bilateral relations." When questioned by the media on Anwar Ibrahim, Kelly replied that he had not discussed Anwar's treatment with Mahathir, even though Anwar and six of his supporters, also detained under the ISA, were on a hunger strike designed to embarrass Mahathir prior to his US visit in May 2002.

In May 2002, on the eve of Dr Mahathir's visit to USA, President Bush in a press conference gave a muted reply to a question on the Anwar case that "[o]ur position has not changed." This was qualified by a statement by the US embassy press officer Frank Whitaker who assured that "the US' stand is still as expressed in the State Department's human rights report". However Anwar Ibrahim was not mentioned during Dr. Mahathir's visit to Washington in May 2002. On his return from the US Dr Mahathir said that, "He (Bush) did not raise anything about democracy or human rights in Malaysia...By and large, I think other members of the US government understand the way we deal with our problems in Malaysia."

For Anwar, meanwhile, it is back to the confines of his prison cell. His treatment, however, will continue to exemplify the paranoia, the scorn for the rule of law and the contempt for fundamental freedoms that characterises the Malaysian establishment.

### Printed and published by:

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(HRDC)**  
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St. Louis, MO 63104 USA  
Tel: (+) 773-702-0348  
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