

HUMAN RIGHTS

FEATURES

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Is human rights on the agenda?

THE 60th session of the Commission on Human Rights (CHR) begins not very differently from last year's session. With the echoes of the dastardly Madrid bomb blasts still ringing in delegates' ears, the issue of 'terrorism vs human rights' is likely to remain centre-stage, and some delegations are no doubt asking themselves why they are here, talking about human rights in the first place.

Except that States are fundamentally wrong to assume that anti-terror measures must necessarily be in contradiction with human rights. Human Rights Features has consistently held that special measures may sometimes be necessary to counter terrorism, with the rider that such measures must be temporary and in conformity with judicial due process norms. Fundamental liberties, such as the right not to be tortured, cannot be eroded. The past year however has seen no let-up in States' willingness to bend these principles. This is reflected in the reports of the CHR's special mechanisms and studies on the ground by non-governmental organisations (NGOs) all over the world.

Now is the time for the CHR to affirm the reason for which it was created - to

guarantee respect for fundamental rights in general, but particularly in times of crisis, when they seem unimportant in the greater scheme of things such as 'national security'. As discussed elsewhere in this issue, this could involve the setting up of mechanisms of interaction with the Counter Terrorism Committee, and establishing national mechanisms to report on the human rights implications of anti-terror legislation. (see article on p3)

CHR observers are unable to be optimistic about the outcomes of the current session, with good reason. A case in point is the meeting on Regional Arrangements for the Asia Pacific region, organised earlier this month by the Office of the High Commissioner for Human Rights (OHCHR) in Doha, Qatar. Diplomats from the region were in their element, watering down progressive drafts, effectively carrying out a dry run ahead of the CHR session. A delegate from Myanmar went so far as to suggest that the meeting be wound up early so that he - and presumably, other delegates - could squeeze in a round of golf!

Other disturbing nuggets of information were revealed, unofficially - chiefly

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When the CHR failed to take up the burden

WHILST progress was made at the 59th Session of the Commission on Human Rights, there were also reasons to be pessimistic. The composition of the Commission's membership increasingly resembled what Reuters described as an "abuser solidarity group." The election of Libya, Syria, China, Cuba and Vietnam, and the election of the Libyan Ambassador as Chairman by means of a US-requested secret ballot, all raised preliminary suspicions as to how effective the Commission could possibly be. The subsequent politicisation of the decision-making process, at the expense of genuine human rights concerns, ended up discrediting the Commission to such a degree that the High Commissioner for Human Rights was moved to protest: "... When a charge of partiality - of failure to recognize the indivisibility of human rights - destroys a resolution on an important question, this is not to be celebrated. It is a disaster. It is a failure to take up the burden. At worst, it may even be a betrayal of the hopes of people who desperately need you."

In the course of the six-week session in 2003, member States adopted 86 resolutions, 18 decisions, and three chairperson's statements, as well as reviewing the mandate of several special thematic and country specific procedures. Small innovations were notable in certain resolutions. The resolution on religious intolerance, which focused on the defamation of

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'A job of passion, in difficult times'

Bertrand Ramcharan was Deputy High Commissioner for Human Rights since 1998, taking over as Acting High Commissioner after High Commissioner Sergio Vieira de Mello left for Iraq as UN Special Envoy. Mr. de Mello was later killed in an attack on the UN headquarters in Baghdad and it fell to Mr. Ramcharan to rally the Office of the High Commissioner in its moment of grief, and to keep it running smoothly after the upheaval. Mr. Ramcharan was previously Adjunct Professor of International Human Rights Law at Columbia University and has held a number of posts at the UN, including at UNPROFOR and in the UN Political Department.

In an interview with **Human Rights Features**, Mr. Ramcharan spoke of his experiences at the Office of the High Commissioner, and his expectations from the Commission.

Human Rights Features (HRF): Your special report to the Commission on the human rights

situation in Liberia is a novel step in the history of the Commission, and you have suggested that this might be a model that can be built upon. Does this stem from a belief that the High Commissioner needs to be more proactive in his/her engagement with the Commission? Have you had any feedback on the report yet?

H. E. Bertrand Ramcharan (BR): Yes, I do believe the High Commissioner should be more proactive, as you say. On feedback to the Liberia report, members of the Commission have acknowledged it as an important precedent. I hope the Commission will react to it at its coming session.

HRF: With regard to counter-terrorism legislation, and in particular, the work of the Counter Terrorism Committee (CTC), what specific steps is your Office planning in terms of ensuring that the work of the CTC incorporates an examination of the human rights concerns raised by anti-terror legislation. Does your Office plan to urge

the CTC to formalise and/or institutionalise the practice of receiving information on human rights issues - from the Special Mechanisms, NGOs, or by having human rights experts interact with the CTC on a regular basis? At the moment, the system appears to be ad hoc, as it were.

BR: Our digest of human rights and terrorism was principally prepared for the CTC. We should continue to develop cooperation pragmatically.

HRF: Any concrete plans to push the CTC towards examining State compliance with international human rights norms in the course of their work?

BR: We will certainly continue to nudge them in this direction.

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HRF: This brings us to the recent questionnaire on National Protection Systems that was sent out to Governments, of which about 30 responded. Many of the responses however appear to be inadequate - the Government of Bangladesh, for example, is denying that there are any groups or sections of people at special risk in the country. Does your Office plan to solicit further information from NGOs - alternate reports, if you will - and draw from treaty body observations and reports by the special mechanisms?

BR: We have begun a process. I hope all Governments will submit replies. Thereafter, it can develop naturally.

HRF: You referred recently to the GA's endorsement of the SG's report on the need to "rationalise and enhance the effectiveness" of the Special Mechanisms. This is ominous terminology - as you are aware, it was the "rationalisation" of the work of the CHR that facilitated the weakening of the CHR and its mechanisms. It led to the near-emasculatation of the Sub Commission, restrictions on NGOs, among other things. In view of the attacks on the special mechanisms - who you admirably defended - during the previous session of the Commission, don't you think any attempt at "rationalisation" runs the risk of playing into the hands of the critics of the special mechanisms"?

BR: We at OHCHR have focused on a strengthened support and methods of work. We have not followed the line of rationalisation.

HRF: Drawing from your experiences and the ideas you have set forth in the past, about having the SG and/or special rapporteurs brief the Security Council fortnightly about situations of concern, do you plan to push that agenda forward during your stint as Acting High Commissioner?

BR: Yes, very much so. You will see this in my Annual Report to the Commission.

HRF: The former High Commissioner, the late Mr. Sergio de Mello, suggested at the end of last year's session that the CHR might decide to bring the special procedures and national institutions into the agenda earlier in order to give them the attention and importance they deserve. Is it something your office intends to follow up on? Did it come up during the drawing up of this year's agenda?

'A job of passion...'

BR: This is an idea I had advanced and I will certainly continue to advocate it.

HRF: With regard to the ongoing debate on criteria - or rather, 'minimum standards', as Mr. de Mello termed it - for membership of the Commission, have you received any indications as to how States feel about it? Do you see it as a workable proposition?

BR: States are reticent. In my Annual Report, I have advanced other ideas.

HRF: High Commissioner, during the last session of the Commission, non-governmental organizations observed a conscious attempt by some states to curtail their ability to fully contribute to the work of the CHR. We understand that at least two regional groupings seek to renew their effort in the Bureau to further this NGO unfriendly agenda. Of some concern is that these very states have been instrumental in bringing a large number of Government Organised NGOs, whose sole objective is to muddy the waters relating to NGO contribution to the work of the CHR. What will be the role, if any, of your Office to ensure that NGO participation is not curtailed but enhanced?

BR: We have been ardently advocating the case for optimum participation by NGOs, including adequate speaking time.

HRF: Last year, we saw a plethora of no action resolutions by some states. Coupled with this is a clear attempt to discourage any discussion on country-specific mandates. How do you plan to address this challenge to accountability?

BR: This is a matter for States. As a matter of principle, we must insist on the concept of accountability.

HRF: Finally, what do you see as your most important contribution to the work of the OHCHR over the past few years?

BR: Keeping the Office focused on its mission; professionalising it; strengthening the Office internally; and developing a policy architecture for human rights protection on the ground.

HRF: You have been the High Commissioner for a year now. What has it been like?

BR: A job of passion, in very difficult times.

HRF: What do you consider to be your most important achievement?

BR: Keeping the Office focused, professional and in first-class shape during this difficult period.

HRF: You have submitted key reports to the Security Council, ECOSOC, the General Assembly and the Commission. What have you sought to achieve through these reports?

BR: To sharpen the focus on human rights.

HRF: You have reacted to a number of situations of gross violations of human rights through public statements. What has it been like?

BR: I have issued some 40 public statements expressing concern over the past year. I have never shirked from reacting to a situation.

HRF: Have you also acted behind the scenes?

BR: Yes. In numerous instances, I have sought to use human rights diplomacy for the protection of those at risk. I have on occasion received warm notes from those on whose behalf I acted.

HRF: You have also made quite a few policy statements...

BR: Yes. I believe I made some 70 such statements in which I sought to spell out a human rights policy for the future.

HRF: What are your key messages for the forthcoming Commission?

BR: In the annual report I have submitted to the Commission, I have sought to urge them to modernise themselves, to strengthen protection, to protect the victims of trafficking and to draft a Convention on human rights education.

HRF: Why a Convention on human rights education?

BR: Because we must sharpen the definition of policy when it comes to formulating courses and materials on human rights in local languages. Human rights education is the key to the future. So is support for the role of judges in the protection of human rights. This is so very important.

HRF: A final comment?

BR: It has been, for me, "To Serve With Passion".

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Human rights on the agenda?

relating to new, improved attempts to whittle away at the CHR's role and functioning through the insidious process of "rationalisation". Well-meaning member States, and observers, including NGOs, would do well to carefully monitor the Asian group's activities, in particular, attempts to alter the text of Resolution 110 relating to "Improvement of the work of the session".

The European Parliament's resolution on the European Union's rights, priorities and recommendations for the 60th CHR session calls on the EU to sponsor or co-sponsor resolutions on an impressive list of countries, including China, Iran, North Korea, Vietnam, Colombia, Cuba, Haiti, Iraq, the Israeli Occupied Territories and the area under the Palestinian Authority, Algeria, Tunisia, Morocco, Libya, Liberia, the Central African Republic, Côte d'Ivoire, Cameroon, the Democratic Republic of Congo, Togo, Zimbabwe, Sudan, Chechnya, Belarus, Turkmenistan and Uzbekistan. It also notably calls for resolutions on India (in particular, the situation in Gujarat), Pakistan and Saudi Arabia. Good intentions, however, are all very well. Its attempts to push through resolutions on Chechnya and Zimbabwe last year during the 59th session floundered because EU delegations failed to work the corridors. Any attempt to defeat the Like Minded nexus would need strong support from other groups and the fence-

sitters. But, as we know, the EU watched miserably as the resolutions faltered and died.

The EU, furthermore, needs to fight the inclination to be cautious with respect to States like India. EU-India dialogues have included few references to human rights, and the ones that did find their way into joint statements were empty shells, devoid of specifics. The European Parliament has recommended that the EU sponsor or co-sponsor a resolution on India on the situation in Gujarat. As it stands, there are no indications to suggest that the EU can summon the necessary courage and consensus to ensure, if not a resolution, at the very least a paragraph in its joint statement, on the continuing lack of accountability in Gujarat. Nonetheless, the duty to bring the issue forward remains with the EU, particularly since India and the EU are "natural partners" in the words of former EU commissioner Chris Patten.

The United States is expected to introduce resolutions against China and Cuba. The first is a result of pressure from within the US to take note of the increasing reports of human rights abuses in China. It has come with the realisation that trade relations, by themselves, do not guarantee respect for basic liberties, and while there is not much hope for the resolution, it is for the US and other countries to keep the pressure on Beijing. While they are at it, the US delegation would do well to tell allies such as Saudi Arabia and Jordan what it really thinks of their rights records.

With regard to Cuba, it is time for the Latin

American countries to retrieve their heads from the sand and take a good, long look at the indulgences they allow their neighbour. While the Latin American group puts up a spirited show against the rights records of other countries, it has shockingly allowed Cuba a further three-year run at the CHR. The Cuban delegation will now have more time to do what it does best: chip away at every progressive initiative at the CHR, assisted by its Like-Minded friends.

Finally, the assault on the CHR's special procedures looks set to continue. The first signs have already emerged, with China taking umbrage at the methods followed by the Special Rapporteur on the right to education, who produced an excellent report, tearing down every myth that China had built around itself regarding its commitment to economic rights. And Israel added its bit by firing a broadside at the Special Rapporteur on the right to food.

It is time to bring human rights back onto the agenda. And to discard the tiresome debates and accusations of "politicisation", probably the most frequently used word at the CHR. As the late Sergio de Mello stated at the close of the 59th session, "For some to accuse others of being political is a bit like fish criticising one another for being wet. The accusation hardly means anything anymore. It has become a way to express disapproval without saying what is really on our mind. The Commission could use with plainer speaking."

May his soul rest in peace.

CTC: Counter human rights committee?

The Counter Terrorism Committee may be undermining States' duty to protect basic liberties

"[B]uilding a durable global human rights culture, by asserting the value and worth of every human being, is essential if terrorism is to be eliminated."

- Mary Robinson

THE critical issue of protecting human rights whilst countering terrorism is at the forefront of this year's meeting of the UN Commission on Human Rights. There is currently no international institution with a mandate to assess whether measures taken and justified by a State as necessary to combat terrorism are in violation of its international human rights obligations. Following endless recommendations, the Counter-Terrorism Committee (CTC), established by the Security Council, has finally indicated recognition of the value of incorporating a human rights expert as part its mandate.

State counter-terrorist measures since 11 September 2001 show a global pattern of systematic erosion of civil liberties. The arbitrary detention of 600 detainees in Guantanamo Bay, the categorisation of Uighur minorities in China as "terrorists" and their subsequent executions, the indefinite detention of non-nationals without charge or trial in the UK, the provision for immunity from prosecution for officials in India and Russia on the basis of acting in good faith, the increased use of military tribunals in Egypt to try civilians, the use of punitive policies against refugees and asylum seekers, the refoulement of alleged terrorists to jurisdictions where they are certain to be tortured, and the re-introduction of capital punishment for terrorist offences in the USA, China, Jordan, India and others, offer a select testimony to the fact that the disappearance of legal safeguards in the political post-September 11 climate is not a theoretical concern.

Nor is it a theoretical concern that the UN to this point has been bureaucratically incapable of, or its constituent members even intentionally unwilling to, establish an adequate means to respond to the growing crisis. Early fears that Security Council resolution 1373's "get going on effective measures now" message could be exploited to circumvent States' human rights obligations were well founded. Despite the adoption of Security Council resolution 1456 (2003), requiring that counter terrorism measures must be "in accordance with international law, in particular international human rights, refugee, and humanitarian law", haphazard legislation had already been implemented and routinely employed in many States. The lack of an international monitoring body has only served to facilitate the continued abuse of resolution 1373.

Resolution 1373 establishing a Counter-Terrorism Committee (CTC) of the Council to "raise the average level of government performance against terrorism across the globe" by "upgrading the capacity of each nation's legislation and executive machinery to fight terrorism", left the body to its own discretion regarding its mandate. Former High Commissioners for Human Rights Mary Robinson and the late Sergio De Mello expected, at the very least, that the CTC's work would be directed by the principles of legality, non-derogability, necessity and proportionality, non-discrimination, due process and rule of law, and right to seek asylum/non-refoulement.

However, the CTC stressed from the outset that "monitoring performance against other international conventions, including human rights law, is outside the scope of the Counter-Terrorism Committee's mandate". In the past, the CTC has been happy to liaison with human rights experts on an ad hoc basis, and just as happy to continue to ignore all their recommendations in practice.

Rather than assess human rights in any capacity, the CTC has in fact been accused on occasion of undermining States' protection of human rights safeguards. Citing the example of Kenya, whose government reportedly came under pressure to enact legislation modelled on

the USA Patriot Act, Global Advocacy Director of Human Rights Watch Rory Mungoven has accused the CTC of being complicit by its silence of supporting legislation that violates fundamental principles of international law.

Human Rights Committee expert Sir Nigel Rodley, speaking directly to the CTC, went one step further by noting that the CTC's questions to the State report of Slovakia "could be understood to be urging the State to overlook the principles that in no case should a person be sent to a territory where he or she faces torture or cruel, inhuman or degrading treatment or punishment, or a violations of the right to life."

Human Rights Committee member Sir Nigel Rodley noted that the CTC's questions to the State report of Slovakia "could be understood to be urging the State to overlook the principles that in no case should a person be sent to a territory where he or she faces torture... or a violation of the right to life".

This is the Committee that the UN has entrusted to monitor counter-terrorism measures "in accordance with the purposes and principles of the U.N Charter."

The CTC expects to leave monitoring to the already under-funded UN treaty and charter based human rights bodies. The Human Rights Committee has acted commendably within the confines of its mandate by reviewing ex officio State party reports to the CTC, and expressing concerns in Egypt, New Zealand, Sweden and the UK relating to administrative detention without effective judicial review; expulsion of those at risk of being subjected to torture or cruel, inhuman or degrading treatment; retroactive law making; and restrictions on freedom of expression, association and assembly. The Committee Against Torture (CAT) and the Committee On the Elimination of Racial

The relationship between the CTC and the OHCHR needs to be formalised and strengthened. To date, the OHCHR talks and the CTC pretends to listen, but carries on regardless. In view of the global pattern of counter terrorist measures, cooperation with regional and national bodies is also required.

Discrimination (CERD) have done likewise in their respective capacities.

However, these bodies are not capable of examining the complexity of issues on a sustained basis, collectively or otherwise. Treaty monitoring bodies can only cover issues relative to their respective treaties, and the reports of States party to them. This automatically excludes over one quarter of UN member States in the case of CAT. State party reports are submitted on a periodic basis, and many are seriously overdue. Furthermore, the Committees are only capable of considering on average fifteen reports per year. Adding all the other human rights issues they must address, this hardly amounts to an immediate and comprehensive response to counter-terrorism measures.

Likewise, all charter-based mechanisms are severely limited in their capabilities. The Commission presently suffers from a politicisation that is at odds with the type of global response required. Special Rapporteurs suffer from what has been referred to as the "circumscribed and particularised nature of each mandate", where certain aspects of counter-terrorist activity fall under the mandates of several different Special Rapporteurs, whilst others are not covered at all. Moreover, the "more humanitarian than judicial" nature of certain urgent action procedures and the ineffective means of following up on recommendations means that the input of Special Rapporteurs may appear peripheral.

The Sub-Committee on the Protection and Promotion of Human Rights has taken positive steps in the past, appointing a Special Rapporteur on the question of terrorism and human rights in 1998. However, Ms. Kallipoli Koufa's mandate is directed towards a more conceptual analysis of the areas in which terrorism, rather than counter-terrorism, affects the full enjoyment of human rights. In August 2003 the Sub-Commission tabled the creation of a working group to examine counter-terrorism measures. A welcome addition, this is however only at the draft resolution stage, and will not come before the Sub-Commission until August 2004.

Considerably more is required. Firstly, a Special Rapporteur must be appointed at the Commission level to monitor and investigate the compatibility of counter-terrorism measures through *in situ* country visits and correspondence. Its mandate must cover the use of emergency laws; vague definitions of "terrorism" designed to suppress freedom of expression, association, assembly, religion, and movement; the use of unlawful force; torture and other forms of cruel, inhuman and degrading treatment; unlawful detention; due process and fair trial; methods of search and seizure; protection from refoulement; discrimination; and the right to effective remedy. The Rapporteur's goals should be to identify and highlight areas of concern, request explanations to State practices, and identify methods of best practice.

The relationship between the CTC and the OHCHR needs to be formalised and strengthened. To date, the OHCHR talks and the CTC pretends to listen, but carries on regardless. In view of the global pattern of counter terrorist measures, increased co-operation with regional and national bodies also needs to be strengthened. At the recent Asia Pacific Forum for National Human Rights Institutions, it was suggested by the Asia Pacific Human Rights Network that member national institutions should be requested to submit their findings on counter-terrorism measures to the OHCHR, which in turn would forward these reports, with additional recommendations, to the CTC. This initiative was welcomed by the representative of the OHCHR, and would be an invaluable resource to any human rights expert appointed to the CTC.

But it is to the higher echelons of the United Nations that the issue must also be taken. A recent open briefing of the Security Council on 4 March 2004, discussing the "urgent and absolutely necessary" need to revamp the CTC, addressed the need to establish a new 'counter-terrorism directorate' which would expand the CTC's team of technical experts. Following suggestions presented in a letter to the Council by CTC Chairman Inocencio Arias on 19 February, a core bloc of Latin American and European countries supported the immediate need for the appointment of a human rights expert.

According to Richard Ryan, Permanent Representative of Ireland to the UN, speaking on behalf of the European Union, there "could be no trade off between human rights and effective counter-terrorism measures" and this required not only the appointment of a human rights expert but also a provision for direct liaison between the proposed Directorate and the Office of the United Nations High Commissioner for Human Rights. Regrettably, permanent Council members the US, UK, France, China and Russia all remained silent on the subject of human rights. This debate will be resumed after the 60th Session of the Commission on Human Rights.

These constitute the minimum immediate requirements for an effective assessment of State compliance. The "urgency and indispensability" of these requirements cannot be understated, as, to quote Kofi Annan on his address to the Security Council in January 2003: "[W]e must never lose sight of the fact that any sacrifice of freedom or the rule of law within States ... is to hand the terrorists a victory that no act of theirs alone could possibly bring."

Treaty compliance: Big democracy fails test

The first of a two-part series looks at India's compliance with the ICCPR, ICESCR and ICERD

ON paper, the Indian Government's commitment to the human rights standards enunciated in several key international instruments is exemplary. It has acceded to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), indicating its willingness to be bound by the treaties in international law.

However, the reality of India's human rights record reveals that this formal affirmation of human rights is deceptive. The same fundamental rights that the State has pledged to protect in the three aforementioned treaties continue to be routinely violated through the application of particular laws and the actions of State authorities. This disparity between the rhetoric and practice of the Indian Government is disturbing. It calls into question whether the Government's ratification of the ICCPR, the ICESCR and the ICERD is motivated by a genuine commitment to human rights, or the need to divert international scrutiny from the plight of its citizens.

The Caste System

Caste-based discrimination remains endemic in Indian society. The groups occupying the lowest echelons of the caste system, particularly the Dalits or the Scheduled Castes, are regularly denied basic political, economic, social and cultural rights. The range of abuses to which they are subjected include torture, restrictions on their freedom of movement, and forced participation in such degrading tasks as manual scavenging.

In spite of the fact that this constitutes a clear derogation from the provisions of the ICCPR, the ICESCR and the ICERD, the Indian Government has sought to frame caste-based discrimination as a social issue of purely domestic concern, rather than a human rights problem warranting international attention. This argument ignores indications that comparable kinds of discrimination exist in numerous countries in Asia and Africa. Even so, the Indian Government was successful in ensuring caste-based discrimination was omitted from the agenda of the World Conference against Racism, Racial Discrimination, Xenophobia and All Related Forms of Intolerance, held in late 2001.

However, this reasoning has been unequivocally rejected by the Committee on the Elimination of Racial Discrimination, the monitoring body established under the Convention. The Committee has recognised caste-based discrimination as a form of discrimination based on descent and has passed a general recommendation reiterating this view, putting the question of the scope of the ICERD beyond doubt.

The Rights of Indigenous Peoples

The rights of indigenous peoples are enshrined in various provisions of the ICERD, the ICCPR and the ICESCR. In particular, the right of all peoples to self-determination is recognised in Articles 1 of both the ICCPR and the ICESCR. Contrary to these provisions, the Indian Government has acted to suppress movements for self-determination and has adopted a policy of preserving national integrity at all costs. Although the Indian Government ratified the ICCPR and ICESCR with reservations in respect of those Articles, this does not diminish the seriousness of the abuses systematically inflicted upon its indigenous populations.

The tribal people of Northeast India, for

example, have suffered economic deprivation, social and cultural oppression and have been the victims of a discriminatory application of emergency laws such as the Armed Forces (Special Powers) Act. Section 4(a) of the AFSPA provides that any commissioned officer or a person of equivalent rank in the Armed Forces is empowered to shoot to kill after giving such due warning as he may consider necessary.

The 4th International Conference of the International Alliance of Indigenous and Tribal Peoples of the Tropical Forests held in Nairobi in 2002 took note of the Indian Government's policies that stifle the aspirations of the indigenous people of the Northeast through laws legitimising the brutalisation of the people in the region. The Conference was also vocal in its criticism of the 'development projects' instigated by the Indian Government, which result in the large-scale displacement of thousands of tribals from their ancestral land.

The Rights of Religious Minorities

Instances of the complicity of State agents in the persecution of religious minorities in India continue to undermine the Government's purported commitment to the protections contained in the ICERD. In the aftermath of the Gujarat riots in early 2002, overwhelming evidence emerged implicating members of the police force in the violence against Muslims. Furthermore, collu-

sion between police and Government officials to protect the perpetrators of the violence from prosecution was reportedly widespread.

Far from being an aberration in the behaviour of State officials, the tendency of law enforcement agencies to side with the Hindu majority in communal riots has been publicly acknowledged for some time. Indeed, the 1981 Report of the National Police Commission admitted to such a bias in the operations of its police officers.

The uncertain predicament of religious minorities in India is also apparent in the passage of anti-conversion laws in the early 1990s. Although ostensibly secular in purpose, the laws in fact operate to reinforce the dominance of the Hindu majority.

The Special Rapporteur on Religious Intolerance shared this conclusion, reporting in 1992 on the forced conversions of Christians to Hinduism in the state of Madhya Pradesh, led by the Bharatiya Janata Party which governed the State at the time. The same trend is apparent in more recent legislation enacted by the state government in Tamil Nadu and the Government of the state of Gujarat.

Reporting Obligations

In light of the range of human rights violations in India that contravene provisions of the ICERD, it is unsurprising that the Indian Government has been reluctant to submit its compliance reports to the CERD. It submitted its 16th and 17th reports after receiving four and three reminders from the Committee respectively.

The Death Penalty

In spite of its obligation under Article 6(6) of the ICCPR to work towards the abolition of the death penalty, the Indian Government has signalled its movement in the opposite direction by broadening the applicability of the death penalty as a punishment for 'terrorist acts' in its recent counter-terrorism legislation, the Prevention of Terrorism Act 2001.

Furthermore, the Government is yet to amend the Indian Penal Code to ensure that persons are not executed for crimes committed when they were under the age of eighteen, in line with the requirements of Article 6(5) of the ICCPR. In conjunction with its reticence on the issue of signing the Second Optional Protocol to the ICCPR, this suggests a lack of good faith on the part of the Indian Government in its efforts to comply with the provisions of the ICCPR.

Rights in a State of Emergency

Although Article 4 of the ICCPR allows for the suspension of some of the rights contained in the Covenant in times of 'public emergency', it does not allow derogation from designated fundamental human rights under any circumstances.

Several pieces of legislation enacted by the Indian Government clearly fall foul of this provision, including the Armed Forces (Special Powers) Act, the National Security Act and the Prevention of Terrorism Act. None of these Acts were enacted in an officially proclaimed emergency. Of greater concern, however, is their authorisation of measures such as arbitrary detention and other infringements upon fundamental human rights standards expressly prohibited by the ICCPR.

The Government has invoked the threat to India's security posed by terrorist organisations to justify the passage of such draconian legislation. However, it is clear that anti-terrorist legislation that does not conform with human rights standards only serves to perpetuate the violation of human rights rather than redress the violations of human rights committed by terrorist acts.

Official Immunity

Both the ICCPR (in Article 2(3)) and the ICERD (in Article 6) enunciate the need for an effective remedy to be available to victims of human rights abuses. However, section 6 of India's Armed Forces (Special Powers) Act grants members of the armed forces immunity from prosecution. Given the regular allegations of human rights violations committed by India's Border Security Forces in the past, this amounts to a denial of justice and redress in the form of compensation to significant numbers of people.

Monitoring and Complaints Procedures under the ICCPR

The ICCPR provides for two complaints procedures - one available to individuals under the First Optional Protocol, and one available to States under Article 41 of the Covenant. However, the Indian Government has failed to consent to either of these mechanisms, depriving its citizens of an important alternative avenue of redress against the State.

States that have acceded to the ICCPR are also expected to submit periodic reports to the Human Rights Committee detailing its compliance with the Covenants requirements. Each of the reports India has submitted thus far have been late, and the Committee is currently awaiting India's fourth report which was due in 2001.

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The reality of India's human rights record reveals that the formal affirmation of human rights is deceptive. The basic rights that the State has pledged to protect in the ICCPR, ICESCR and ICERD continue to be routinely violated through the application of particular laws and actions of State authorities

INDIA

Treaty Compliance - I

Both the ICCPR and ICERD enunciate the need for an effective remedy to be available to victims of human rights abuses. However, section 6 of India's Armed Forces (Special Powers) Act grants members of the armed forces immunity from prosecution. This amounts to a denial of justice and redress.

CRISIS ZONE

Zimbabwe: It's not about West vs Rest

With the Asian bloc helpfully pitching in, African countries thwarted the resolution against Zimbabwe last year. The EU will need to work the corridors strenuously if it wants a resolution passed this year...

ZIMBABWE is at crisis point. With unemployment rising, incomes and foreign investment falling and an inflation rate of over 500 percent, the country is facing a severe food shortage which has left over 5.5 million people in need of food aid. The country's previously healthy agricultural industry, which once served as a food exporter to its poorer neighbors, has been destroyed, in part due to drought but mainly by President Mugabe's controversial land reforms.

Yet, not only must Zimbabweans contend with a food emergency and a deteriorating economy, they are also faced with a deteriorating human rights situation, as President Robert Mugabe and his Zimbabwe African National Union-Patriotic Front (ZANU-PF) continue to suppress all forms of opposition to his regime.

According to the US Department of State report on human rights practices in Zimbabwe in 2003, there has been a systematic government-sanctioned, campaign of violence targeting supporters and potential supporters of the government's main opposition party, the Movement for Democratic Change (MDC). The MDC faces significant intimidation, and during 2003, the police arrested 17 out of the 53 of the MDC's Members of Parliament, some on more than one occasion. MDC president Morgan Tsvangirai was arrested twice in June and faces charges that include treason for allegedly plotting the assassination of President Mugabe.

The Official Secrets Act and the Public Order and Security Act (POSA), which grant a wide range of powers to prosecute persons for political and security crimes that are not clearly defined, have been gratuitously applied to suppress freedom of expression and movement and to silence all forms of political opposition. Human Rights Watch reports that the work of NGOs is also being progressively more controlled and suppressed through the use of POSA.

The police repeatedly used force to break up nonviolent demonstrations and to prevent public gatherings from taking place. In October, the Commission on Human Rights' Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Ambeyi Ligabo; the Chairperson-Rapporteur of the Commission's Working Group on Arbitrary Detention, Leila Zerrougui, and the Special Representative of the Secretary-General on human rights defenders, Hina Jilani, expressed concern regarding the arrest of more than forty trade unionists during a national protest demonstration.

In November, the Acting High Commissioner for Human Rights issued a statement expressing his concern regarding reports that more than 100 trade unionists and civil leaders had been arrested on 18 November 2003 during a

protest demonstration in the capital Harare. The Government has also repressed the work of journalists and media organisations through the use of restrictive legislation such as the Access to Information and Protection of Privacy Act (AIPPA).

In September, the privately-owned *Daily News* was closed for failing to fulfill registration requirements under the AIPPA. The police have ignored subsequent Court rulings authorising the *Daily News* to re-open and ordering the police to vacate the premises.

The Government controls all domestic radio broadcasting, and most newspapers practice self-censorship due to government intimidation and fear of prosecution for libel. Foreign journalists were frequently denied visas to enter the country, and in May the Government deported an American journalist after he wrote about the political situation in the country.

The Government has made numerous attempts to subvert the independence of the judiciary, applying intense political pressure on judges and repeatedly refusing to abide by judicial decisions. On 24 September 2002 and 19 February 2003, the UN Special Rapporteur on the independence of judges and lawyers expressed grave concern over the criminal charges brought against two Zimbabwean judges and their implications on judicial independence and the rule of law in Zimbabwe.

The Government's famine relief operation, managed by the Grain Marketing Board (GMB), has been accused of diverting food aid to supporters of the ZANU-PF. According to Human Rights Watch, those responsible for drawing up the lists of the needy are under instructions to exclude all MDC supporters and residents of former commercial farms resettled under the country's "fast-track" land reform program.

The National Youth Service program, initiated by the Government in 2001 to promote patriotism, has been used to create

youth militias trained to kill and torture. The government youth militias have been accused of torturing, beating and raping opponents of the government. There have also been allegations of the systematic rape of young girls at national youth service training camps, reportedly as "part of the training". Students entering college, teacher training schools or the civil service must have undergone training in the youth program.

Mugabe's Ploy: Blame Neocolonialism

When faced with criticism regarding his Government's human rights abuses, Mugabe claims to be a victim of an Anglo-Saxon conspiracy to prevent him from divesting white farmers of their vast holdings. Mugabe blames the country's collapsing economy and escalating law and order problem on a sinister alliance of Britain, white farmers and assorted 'traitors' who are conspiring to reverse the country's independence.

Mugabe's strategy of turning the issue into a black vs white dispute was again exemplified in December 2003. Following the decision to renew Zimbabwe's suspension from the Commonwealth due to the rigged presidential elections in 2002, Mugabe terminated Zimbabwe's membership of the Commonwealth and described the Commonwealth's decision, promoted by Britain and Australia, as "pure racism".

Whilst it is clear that Mugabe's controversial land reforms policy has been a factor in the escalating human rights crisis in Zimbabwe, Western countries have been wary of focusing on the issue in the CHR, lest they play into the hands of Mugabe. Both of the European Union's previous draft resolutions on Zimbabwe have failed to recommend any concrete measures to address the issue of land reform. However, the CHR should not be swayed by political arguments on Zimbabwe and should condemn the growing inci-

dence of human rights violations in the country.

Debacle of the 58th and 59th CHR Sessions

The European Union failed in its previous attempts to bring a resolution against Zimbabwe at the CHR in 2002 and 2003. On both occasions, President Mugabe succeeded in his ploy of convincing members of both the African and Asian Groups that the main purpose of the draft resolutions was not to protect human rights, but instead was a politically motivated attempt at neocolonialism.

In 2003, the representative of South Africa, speaking on behalf of the African Group, criticised the European Union's stance as being "politically motivated", claiming that the text of the draft resolution "lacked the requisite balance between civil and political rights on the one hand and economic, social and cultural rights on the other. Closer inspection revealed that the draft resolution's sponsors did not fully understand Zimbabwe's history, or were choosing to ignore it for reasons of political expediency."

On both occasions the resolutions were scuttled by procedural no-action motions as the Group of African States, together with members of the Asian Group, voted to obstruct the resolution, and prevented the Commission from debating the subject matter of the resolutions.

A glimmer of hope for the 60th session?

The economic sanctions imposed upon Zimbabwe by the European Union were renewed and extended earlier this year, and the European Parliament has again called upon the European Union to sponsor a resolution on Zimbabwe. What remains to be seen is whether Mugabe will again succeed in burying the pressing issue of human rights violations in Zimbabwe under a mountain of political rhetoric.

In this era of the "war against terrorism", when the political will to fight human rights violations is diminishing in western countries, it is vital that the European Union take an active and vigorous role in gathering support for a resolution on the human rights situation in Zimbabwe. The member countries of the European Union would do well to recall the active campaigning of Zimbabwe and other African countries prior to the no-action motion last year.

Prior to any decision to vote as a bloc to obstruct a resolution on Zimbabwe, African Nations should look beyond the politics of land reform and let Zimbabwe's human rights record speak for itself.

Zimbabwe's neighbours must remember that protecting the rights of the citizens of Zimbabwe is essential not only for the stability and security in Zimbabwe, but for the region as well.

Reign of Terror

MORE than 18,000 students have graduated from the National Youth Service Program in Zimbabwe since its inception in 2001. The programme, purportedly a voluntary training program for instilling a feeling of nationalism in the Zimbabwean youth in the age group of 10-30 years, has become a compulsory paramilitary training ground. The Mugabe government has consistently denied allegations of forcing the youth to compulsorily join these youth service camps.

The youth militia, also known as the "green bombers" have been accused of several human rights violations including murder, rape and torture. They have been openly used by the Mugabe government as a tool to terrorise the Zimbabwean people, especially the opposition activists.

Apart from committing atrocities on their fellow peoples, the youth militia have themselves been subjected to various human rights abuses at the training camps. The camps impart military training to children as young as eleven years of age, thereby creating child soldiers.

The female youth militia have reported systematic rape and sexual abuse in these training camps as a part of the training process.

Derogating from justice

Faustian British bargain attempts to trade fundamental liberties for national security

DECADES after seeing preventative detention fail in Northern Ireland, the British Government is at it again. In the name of national security, the United Kingdom's anti-terrorism legislation grants extraordinary executive powers of indefinite detention that contradict both international human rights law and the core values of Britain's own legal heritage.

The British Parliament debated and enacted the Anti-Terrorism, Crime and Security Act ("ATCSA") in the months following the September 11 attacks. The Act contains a panoply of provisions in the name of combating terrorism. This article focuses on Part IV of the Act, which returns preventive detention to the British statute books. Part IV allows the Home Secretary (Mr David Blunkett MP) to order the indefinite detention of any foreign national whom he believes to be a terrorist and a risk to national security. Specifically, the Part is intended to allow the indefinite detention of any foreign national who, for either practical or legal reasons, cannot be deported to any foreign country (for example, because that person may have a well-founded fear of persecution upon return).

This power does not exist in name alone. The British Government arrested and detained the first eight suspected terrorists within days of the legislation's enactment. At the time of writing, the Home Secretary has detained 16 foreign nationals under the Act, of whom 14 remain in detention and two have left the country (for France and Morocco). One further foreign national has been certified for detention, but is currently detained under other legal powers. In detaining these men - without trial and with limited right of review - the British Government has abandoned long-standing obligations under international, European and British law.

The Right to Liberty

In *Woolmington's Case of 1935*, the British Lord Chancellor Lord Sankey famously wrote: "Throughout the web of the English Criminal Law, one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt..."

This principle - the presumption of innocence - has underpinned the rights of citizens and foreign nationals alike in Britain for hundreds of years. It has long been understood that to make extended criminal detention conditional on the state proving its case in open court is to ensure a vital check on a power that can be misused by even the best intentioned government.

The Home Secretary has argued, "if we know there is a threat...we need to be able to ensure that we can continue to protect ourselves from the conspiracy to act." This argument is utterly disingenuous - for conspiracy to commit an unlawful act is itself a recognised offence before British law. What the Secretary defends is not the ability to act against known conspirators (for the Crown has that power already) but rather the power to detain people indefinitely upon a mere suspicion - without confidently knowing whether they pose a threat at all. The Secretary argues that "[i]n such circumstances, the evidential thresholds for action have to be acceptable in a democracy..." - but this is precisely the point. Judicial independence - including unwavering commitment to the presumption of innocence - lies at the very foundation of the liberal democratic ideal. The only "evidential thresholds for action" that are truly "acceptable in a democracy" are those that require the state to provide evidence to assuage reasonable doubt before locking people up for acts that they may or may not be planning to commit.

The Home Secretary deserves praise for upholding this principle in regard to British citizens detained at Guantanamo Bay. In January, Blunkett spoke of the possibility of detainees being returned from Guantanamo Bay to

Britain, saying: "Where there isn't evidence that would stand up in a British court, as opposed to a military tribunal [in the US], then people can't be tried. If we could return them to Britain, and

Even Blunkett said so...

DEROGATION is a very serious action that is qualified by a number of prerequisites. Fundamentally, there must exist a "public emergency threatening the life of the nation" (ECHR Article 15, which is similar to ICCPR Article 4). In *Lawless v Ireland*, the European Court of Human Rights explained that this requires "...an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organised life of the community...". The British Government, however, has never asserted that terrorist suspects pose a threat of this kind or magnitude. Indeed, when he announced the proposed derogation on 15 October 2001, Mr Blunkett specifically stated, "...[t]here is no immediate intelligence pointing to a specific threat to the United Kingdom..." .

where there isn't a trial, people would be allowed to go about their business fairly."

However, when it comes to British citizens, other than those detained in Guantanamo Bay, Mr Blunkett once again ignored the importance of due process and the presumption of innocence. In January 2004, the Home Secretary

In Woolmington's Case of 1935, the British Lord Chancellor Lord Sankey famously wrote: "Throughout the web of the English Criminal Law, one golden thread is always to be seen, that it is the duty of the prosecution to prove the prisoner's guilt..."

attempted to extend internment without trial to British citizens. The consequences for British citizens suspected of terrorist activity could have been years spent imprisoned without charge. The proposal was finally abandoned when media pressure and attacks from civil rights groups displayed no signs of abating.

ATCSA allows indefinite detention on the basis of reasonable suspicion alone. Indeed, when the Special Immigration Appeals Commission (SIAC) first reviewed some of the ATCSA detentions, the Crown repeatedly emphasised that there was insufficient evidence to convict any of the detainees in a British criminal court. Prior to ATCSA, this was every individual's ultimate guarantee of freedom - but under ATCSA, it is apparently a persuasive reason for some individuals to be locked up forever.

The Home Secretary has described the indefinite detention powers as "a cornerstone of the UK's anti-terrorism measures at this time of heightened threat" - but the right to liberty and its correlative presumption of innocence have been at the cornerstone of British law for hundreds of years. Merely asserting the existence of a heightened threat - even a threat of serious consequences - is no justification for abandoning the core values of Britain's legal heritage.

The right to liberty is also central to European and international human rights law. Everyone within Britain, whether citizen or foreign national, is entitled to liberty and security of the person - a right that proscribes the arbitrary and indefinite detentions allowed under ATCSA. This is the separate effect both of Article 5(1) of the European Convention on Human Rights (ECHR) and of Article 9(1) of the International Covenant on Civil and Political Rights (ICCPR), which the UK ratified on 20 August 1976.

The British Government recognises this inconsistency, and has accordingly derogated both from the ECHR (under Article 15) and

from the ICCPR (under Article 4). Despite numerous terrorist threats across the continent, Britain remains the only European nation to derogate formally from its human rights obligations. In *A, X and Y and others v The Home Secretary* (2002), the England and Wales Court of Appeal affirmed ATCSA's validity under British law. The Court held that the Home Secretary's risk evaluation "could reasonably be entertained", and hence should not be impugned by an appellate body. That conclusion is currently under appeal in the House of Lords - but it does not, at any rate, imply that Britain's derogation was either appropriate or consistent with international standards. (see box)

Even the UK's formal Designated Derogation Order conflated the notions of "a threat to the national security" and "a public emergency". Further, the existence of a public emergency must be confirmed by the formal declaration, in good faith, of a 'state of emergency'.

The Home Secretary made this declaration on 12 November 2001 - but on the same day insisted to *The Guardian* newspaper that the action was a mere technicality. It is clear that Britain's derogation from both the ECHR and the ICCPR is neither justified nor an act of good faith. Rather, it is an extreme means of gaining extraordinary powers over suspects' fundamental liberties.

Habeas Corpus

Every individual detained in Britain is entitled to have the lawfulness of that detention reviewed by a court. This is the right of habeas corpus - a long-standing remedy under British law that is enshrined in both Article 5(4) of the ECHR and Article 9(4) of the ICCPR. This right extends to cases of preventative detention (see the Human Rights Committee's General Comment 8 of 1982, paragraph 4). The UK has not derogated from these provisions (indeed, habeas corpus is a non-derogable right: see the Human Rights Committee's Concluding Observations on the report of Israel, 1998, paragraph 21).

Under ATCSA, every detainee can have the Home Secretary's certification reviewed by the Special Immigration Appeals Commission ("SIAC"). International and European human rights jurisprudence has established minimum standards by which a judicial body can be characterised as a "court" capable of granting habeas corpus rights. SIAC falls well short of those minimum standards.

Detainees have no meaningful right to participate in hearings to determine their own liberty. In *Hussain and Singh v UK*, the European Court of Human Rights held that, where character assessments are necessary to decide whether to impose a "substantial term of imprisonment", Article 5(4) may require the defendant to be present at an oral hearing - and that this may further require "an adversarial procedure involving legal representation and the possibility of calling and questioning witnesses". SIAC proceedings blatantly breach this principle. The proceedings necessarily involve questions of detainees' character and dangerousness - indeed, that is the essence of any preventative detention - but yet ATCSA detainees are not permitted to attend or participate in much of the SIAC hearings.

Rather, SIAC proceedings are bifurcated into 'open' and 'closed' components. The closed component allows the Secretary to justify his detention decisions with reference to sensitive or classified evidence. Neither the public nor the detainee whose liberty is at stake (nor that detainee's chosen legal representative) may attend closed SIAC hearings. Instead, the detainee is represented by an appointed 'special advocate', who cannot communicate with the

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HUMAN RIGHTS DEFENDERS

Egypt NGOs: Coming into their own

BASSEM HAFEZ

LOOKING back over the past 20 years, which constitutes the lifetime of the organisational experience of human rights activists in Egypt, it is time to assess their experience and judge their performance. Twenty years ago, Egypt, witnessed the establishment of the first human rights organization. In the years following, the experience was repeated human rights NGOs emerged throughout the region, reflecting the need, and arguably the fashion of the day. Some experiences were seen as successes, and others were called "kiosks," reflecting their relative failures. The concern of the following article is to examine, with an objective focus, what was achieved, and what was not, highlighting the pitfalls and shortcomings that influence the inertia of the human rights organisations as a movement.

Historically, the inauguration of the Arab Organization for Human Rights (AOHR) by a consortium of Arab intellectuals after a meeting in Cyprus has a clear significance that sheds light over the culture and the performance of the movement since its establishment. This significance lay in the capacity of these first-wave activists to lead the launching of the movement, as well as the geographical location from which their outcry was voiced. The fact that these intellectuals, voicing the desperate need for human rights organisations and activism, belonged to the elitist-leftist section that governed or attempted to be at the top of the official hierarchy, in Egypt or other Arab states, meant that the outcry did not originate at the grassroots level. It was a top-down initiative. Thus, one is hardly surprised if, after 20 years of existence and operation, both the public and administrative branches of Arab governments are barely aware of the existence or the names of a large number of human rights NGOs in Egypt.

Utilising old connections and influence, the AOHR became a reality in Egypt (and eventually in some Arab states) as the first NGO dedicated to the protection and promotion of human rights. Being a regional organisation, it had to first establish departments that could examine individual countries' violations generally, instead of specific violations. Documentation and research were non-offensive strategies that granted AOHR peaceful coexistence with the authorities.

Out of the womb of the Egyptian department at the AOHR came the Egyptian Organization for Human Rights (EOHR), which was run mainly by law graduates with leftist orientations - mostly former Communists and Pan Arab-Nasserites. These were the individuals who transformed EOHR into, first, an independent body, and later an organisation, and have been the heads of the human rights NGOs that have mushroomed out of it thereafter. These individuals can be considered the second-wave of Egyptian human rights defenders.

Essentially, this second-wave of activists came to exist separately from their mentors as a result of personal rivalries and frictions, which encouraged younger activists to pursue their personal ambitions within the framework they were used to, leading to their establishing independent projects as NGOs.

The second-wave yielded the Cairo Institute for Human Rights Studies (CIHRS) in 1990, the Legal Research and Resource Center for Human Rights (LRRRC) in 1991, the Center for Human Rights Legal Aid (CHRLA) in 1994, and others. These NGOs were established and run by some of the former senior members of the EOHR and its cadres. This pattern of offshoot organisations continued between 1996 and 1999.

Unfortunately, by 1999, the qualitative effects of these multiple organisations did not reflect the increase in their number. Thus, the AOHR - as the mother organisation - resorted to regional cooperation with counterparts, which

were more technically advanced than local NGOs, in Tunisia, Jordan and Lebanon. While no one can deny that the existence of the Egyptian human rights NGOs has been felt by the authorities, this can be attributed to the 'fax-machine-culture' in which their advocacy was practiced. Their technique essentially comprises attempts to embarrass the government by massively publicising every recorded example of human rights violations by way of press releases. This technique, however, has rarely witnessed an effective response and has instead been a cause of antagonism and hostility from the government towards these groups.

However, despite the antagonism this method has produced, it can also be credited with establishing the de-facto presence of these groups as human rights watchdogs with international recognition, and potentially with protection. (see box)

By 1999, however, following attempts by the authorities to de-legitimise the NGOs in the eyes of the masses - by depicting them receiving their funding from foreign sources,

In good company

THE perceived 'recognition' of human rights NGOs in Egypt was manifested in the international support for Hafez Abu Saeda, secretary general of the Egyptian Organisation for Human Rights (EOHR), during his four-day arrest. At the same time, however, these NGOs existed on a de-jure basis, by virtue of their being either public not-for-profit companies or public associations. Legally, according to law no. 32 of the year 1964, anybody could establish an organisation and notify the authorities after they began operations. With potential for State interference, companies law no. 169 for the year 1981 was the saviour of the day. It helped human rights NGOs establish themselves easily, without having to go through security or political complications.

implying treason and potentially espionage - the government passed law no. 153 on NGOs.

This critical event realised the worst fears of Egyptian human rights activists, especially as it was directly followed by the arrest of Abu Saeda for receiving funds from the British Embassy. Suddenly, after years of accepted presence and international recognition, NGOs and activists were to be forced to fight to stay operational. This also affected the already weak internal solidarity within the human rights movement. NGOs were split between staying and fighting in Egypt regardless of the hardships and leaving for France to form a front beyond the control of the Egyptian authorities (as their counterparts from Iraq and Syria had done). This split was fed and intensified by the historical personal rivalries between the heads of these NGOs, which continues to be a significant weakness in the Egyptian human rights movement.

There was some hope on the horizon. As a result of Abu Saeda's arrest and the legal challenge that was mounted against the law, a degree of unity was forged in the battle against the law, and was ultimately won because of a technicality in the procedure to be observed in lawmaking.

However, the phase before the cancellation intensified the split physically within the movement. CHRLA split into two separate organisations after underlying internal conflict was exacerbated by external pressure. Members had been split between registering according to law 153, or rejecting its legitimacy and continuing to function devoid of registration and legal recognition. The same issue haunted most other similar organisations.

In 2002, a new, more balanced, law on public associations (84/2002) was issued and accepted by all parties concerned. The Egyptian human rights movement had experienced a time of uncertainty, exhaustion, and had been weakened. This was manifested in the NGOs' inability

to offer a prominent activist such as Dr. Saad El-Din Ibrahim (founder and director of the Ibn Khaldun Center for Development) the required - and expected - moral, legal or even political support during his imprisonment. The support he did receive was mainly from outside and foreign organisations.

In conclusion, after 20 years of existence, the Egyptian human rights defenders operating the 20-30 local human rights organisations stand at a critical crossroads. They have witnessed numerous internal turbulence and external legal and political threats, which have made their existence problematic. In order to assess their experience objectively there are several factors that must be borne in mind.

Externally, the antagonism of the authorities has been of paramount significance. However, this hostility can be found in any authoritarian state. The survival of human rights defenders in such societies depends on their structure/setup and their techniques based on the utilisation of existing socio-political and economic resources. In this specific case, existence is guaranteed as long as the authoritarian state is trying to market a façade of democracy and tolerance. Existence here is very important to the process of democratic decoration, especially if the state's economy is based on foreign aid.

This gets us to the internal factors to be considered in studying the case. Technical weakness, lack of solidarity, and issues of structural organisation are the main variables here. The inability to utilise the available resources, which are numerous, is a clear indication of why human rights defenders in Egypt have not yet reached the 70 million Egyptians to let them know that there are activists working on their behalf to defend their rights.

However, no one can deny that the fax-machine culture is beginning to wither. The fact that an NGO like the HRCAP finally presented the first shadow report officially responding to the Government of Egypt's Report to the UN Human Rights Committee is a brave and technically advanced move. Although the HRCAP's report was 200 pages in length - and the supposed length of a shadow report is usually between 10 and 15 pages - one cannot but welcome and support the endeavour.

What I perceive is needed now is a comprehensive strategy offering a sustained solution to the dilemmas presented. That can happen with the physical existence and cooperation of donor institutions and international organisations. Donors in such a critical situation should not only offer money, but technical cooperation, leading projects that combine the available expertise from as many NGOs as possible to conduct/deliver projects which will allow for internal cooperation in the short term and solidarity in the long term.

International organisations are needed as well. They need to focus not simply on establishing stronger contacts with local activists through mere messages of support and publications and inviting them to conferences. Instead, exchange projects and internships should be offered. These could be crucial in helping local defenders cross the technical divide in a sustainable manner. While local activists are interning in an international organisation for technical and strategic know-how, foreign experts should fill the local gap for greater benefit. This culture would definitely break the bridges of hostility with the administration, and allow for more room for creative and strategic cooperation.

Finally, as regards the annual sessions of the Commission on Human Rights, it must be hoped that such proposals become incorporated into the Commission's agenda. This action could truly answer the cry emanating from Egyptian human rights defenders and help them solve their current dilemmas.

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MINORITY RIGHTS

Speaking of dispossession

Policies targeting language and culture are still being used to suppress the Kurds in four countries

GEORGINA FRYER

FOR the second time in under a century, the fate of the Kurds has been subjected to the aspirations of States which stake geopolitical claims in the territories in which they live. In the aftermath of World War I Kurdistan was divided between the four nation-states of Turkey, Iraq, Persia (now the Islamic Republic of Iran) and Syria. As a large minority in each, the Kurds were perceived as a threat to internal and external security as their distinct identity, marked chiefly by language, could provide the basis for separatist movements and therefore had to be extirpated. Policies targeting aspects of Kurdish culture, especially its language, immediately attained prominence amongst the measures adopted in pursuit of this aim. Not only did Kurdish culture and language become highly politicised bargaining tools, invoked throughout the twentieth century by these governments and Kurdish political leaders, but they retain a central role in the suppression of the Kurds to this day.

Eighty years on, the Kurds in Turkey and Iraq find themselves at the forefront of another defining period in European and Middle Eastern history. The protection of the cultural and linguistic rights of its Kurdish population are central within criteria for Turkey's accession to the European Union; however, the Kurds in Turkey remain severely repressed, as do those in Iran and Syria. The Iraqi Kurds are participating in the negotiations concerning the restructuring of the country, which could ultimately result in their autonomy within a federal Iraq. The Iraqi Governing Council this month signed a transitional Administrative Law, to last until the end of 2005, which defines the structures for the transitional government and guarantees basic rights for all Iraqis. By June 30, the Iraqi Transitional National Assembly will elect its leaders and assume full sovereignty for Iraq. In December the European Council will judge Turkey's readiness for EU membership. It is therefore prescient to evaluate the current status of the Kurds' cultural and linguistic rights in relation to these States.

International obligations

The Kurds' ability to use their language and manifest their culture is protected both by those rights guaranteed under international law to all individuals and also by rights granted to individuals by virtue of their status as members of a linguistic minority.

The Kurds' right to non discrimination on the basis of language (Article 26, ICCPR) provides the fundamental protection against state policies which place them at a disadvantage due to the imposition of an official language. The right to freedom of expression (Article 19, ICCPR) safeguards the Kurds' right both to express Kurdish themes and, according to the Human Rights Committee, to choose their language of expression. Article 15(1) of ICESCR protects Kurdish authors and scientific writers, who suffer persecution in these States. That the fundamental cultural right to education (Article 13, ICESCR) 'shall be directed to the full development of the human personality and the sense of its dignity' supports demands for teaching Kurdish speakers their mother tongue, as does the Committee on Economic, Social and Cultural Rights' prioritisation of the best interests of the student.

Article 13 paragraphs (3) and (4) respectively provide for parental choice regarding the schooling of their children and for the ability of individuals and bodies to establish and direct private educational institutions, which guarantees the Kurds the right to establish their own

schools.

Article 27 of the ICCPR guarantees to persons who are members of ethnic, religious or linguistic minorities the right, inter alia, to enjoy their own culture and to use their own language in community with the other members of their group. In all four states, the Kurds fulfil the definition of a minority formulated by Special Rapporteur Francesco Capotorti in his report to the Human Rights Commission in 1979, at least upon the ground of language. The UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities (1993) was the first international instrument exclusively devoted to the protection of minority rights. It provides, inter alia, for the adoption of specific measures for the protection of minority identity (Articles 1 and 4) and for the opportunity for education in or through their mother tongue (Article 4(3)).

The Kurds in Turkey also benefit from rights guaranteed by other instruments. As a member of the OSCE, Turkey is politically bound by its Copenhagen Document (1990). Paragraphs 30 to 34 contain provisions relating to national minorities including the right to non-discrimination (31), rights regarding their cultural identity (32 and 33) and rights regarding mother tongue education and its use before public authorities (34).

The Council of Europe's Framework Convention for the Protection of National Minorities (1995) is the first international treaty with a multilateral protection regime for minorities, and adds new rights to those guaranteed in the International Covenants. Although Turkey has not yet signed the Convention, its provisions may be used to gauge Turkey's progress towards meeting the Copenhagen political criteria regarding minorities. This is in view of the clear importance accorded to cultural rights in a broad sense by the Commission of the European Communities within its Regular Reports on Turkey's Progress Towards Accession. Provisions include the right to use freely and without interference his or her minority language, in private and in public, orally and in writing (Article 10), to use traditional names (Article 11) and to learn the minority language (Article 14). It also provides for freedom from discrimination in access to the media (Article 9) and for the use of the minority language in public services (Article 10(2)) and in relation to a criminal charge (Article 10(3)).

There is an arguable tendency to recognise a right to internal self determination for minorities, as discernable in the findings of Arbitration Commission for Yugoslavia. In delivering its Second Opinion in January 1992, the Commission reasoned that self determination is not exclusively a principle of state creation but a fundamental and basic principle of state, designed to protect the separate identities of the various population groups within it.

The Republic of Turkey

The political criteria for accession to the EU, established by the Copenhagen European Council in June 1993, demand a transformation in Turkey's policy towards the Kurds. To achieve candidacy, States must achieve 'stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.' Short term priorities for legislative reform, established within the Accession Partnership between the EU and Turkey, include strengthening legal and constitutional guaran-

tees for the right to freedom of expression and of association and to peaceful assembly, and the removal of any legal provisions forbidding the use by Turkish citizens of their mother tongue in broadcasting. Medium term priorities include guaranteeing full enjoyment by all individuals all human rights and fundamental freedoms, without discrimination and irrespective of, inter alia, their language; ratifying the ICCPR, its First Optional Protocol and the ICESCR; ensuring cultural diversity and guaranteeing cultural rights for all citizens irrespective of their origin; and abolishing any legal provisions preventing the enjoyment of these rights, including within the field of education.

Turkey's legal reforms have, in practice, failed to fulfill the political criteria. Its ratification of the ICCPR was accompanied by a reservation to Article 27 and a declaration that the right therein will be applied in accordance with the Turkish Constitution and the Treaty of Lausanne 1923, instruments which implicitly entrench discrimination against the Kurds. Turkey's ratification of ICESCR has similarly been accompanied by a reservation to Article 13 paragraphs (3) and (4), which respectively provide for parental choice regarding the schooling of their children, and for the ability of individuals and bodies to establish and direct private educational institutions. This casts doubt upon the will to implement legal reforms resulting from the August 2002 Harmonisation Package, which permitted the teaching of language and dialects used by Turkish citizens in their every day lives as well as broadcasts in languages other than Turkish. Indeed, implementing regulations discouraged potential applicants from exploiting the opportunity to establish Kurdish language courses, and those who did apply found the process impeded by bureaucratic obstacles. Protracted legal disputes between the state broadcasting corporation (the TRT) and the broadcasting supervisory board (the RTUK) over the first piece of implementing legislation resulted in the passage of a second regulation which, by its publication in January 2004, had already been declared incompatible with the

Progress made regarding official acceptance and protection of Kurdish culture and language continues to be achieved by piecemeal reforms which do not correspond to international obligations

Copenhagen political criteria by Turkey's Foreign Minister. Other aspects of Kurdish cultural expression, such as the use of Kurdish names, remain similarly restricted despite reforms due to the attitudes of those charged with their implementation.

In its 2003 Regular Report on Turkey's Progress Towards Accession, the

Commission of the European Communities was critical of Turkey's superficial approach to legal reforms directed at its Kurdish population. The opening of accession negotiations with Turkey is conditional upon a favorable assessment of Turkey's fulfillment of the Copenhagen criteria by the European Council in December 2004. It is therefore essential that Turkey's fulfilment of this criteria is rigorously monitored in the months leading to that date, and the Council ultimately refuses to tolerate the merely cosmetic protection of the cultural and linguistic rights of the Kurdish population.

Iraq

The November 15th Agreement between the Iraqi Governing Council and the Coalition Provisional Authority provides for the drafting of the new Constitution by a convention to be elected by 15 March 2005. This will determine the political nature of the Kurdish region and also how the needs of different kinds of minority, including the Kurds, are to be accommodated within this region and in the rest of Iraq.

The freedom enjoyed by the Kurds living in the Kurdish region of Iraq to express

CONTINUED ON PAGE 12

CENTRAL ASIA

Uzbekistan: Illusions of change

Democratic reform appears distant for the Uzbek people who are being given 'freedom' in small doses...

UZBEKISTAN occupies a central place in the geography and political culture of the five former Soviet republics. In 2002 and 2003, the Uzbek government received recognition for a variety of positive developments it has made with respect to political and civic freedoms. Yet, these "positive" developments: the registration of two domestic human rights organisations, the abolition of official press censorship, allowing the Birlik and Erk opposition parties to hold congress sessions, and the prosecution and conviction of nine police and National Security Service officers for human rights violations are less positive developments than they are attempts to placate the international community.

Examples that illustrate the broader political context of these "positive" developments, such as: the control of political opposition groups through official harassment and an unfair process of registration, the refusal of the government to engage in effective dialogue with national human rights organisations, and the state's continued control of media through self-censorship and repressive legislation, all highlight the fallacy of political reform and Uzbekistan's lack of genuine compliance with recommendations outlined by the UN Human Rights Committee.

Vitality of Political Culture

Uzbekistan severely lacks political pluralism and genuine political opposition. The strength of the political culture in Uzbekistan is controlled and manipulated by the authoritarian rule of former Communist party leader, President Islam Karimov. A key subject of concern, as expressed in the concluding observations of the Human Rights Committee's report on Uzbekistan in 2001, is the "excessively restrictive provisions of Uzbek law with respect to the registration of political parties as public associations".

All political parties in Uzbekistan are forced to register with the central government to receive official status. The political groups who oppose Karimov's leadership have historically been sidelined and barred from official registration. The ramifications and the problems created by governmental registration are two-fold. Firstly, this process of registration is a way for the government to indirectly control and keep the activities of parties in line with norms accepted by the government.

The second consequence is the use of registration as a tool to deny opposing parties' access to the political process through the rejection of official status. The process of registration solidifies central power and forces opposing parties to conform and comply with views acceptable to the state. Registration, or the lack thereof, is thus used as a means for the government to legally control and legitimise their monopoly over state politics. These activities continue despite the observation by the Human Rights Committee that the "requirement [of registration] could easily be used to silence political movements opposed to the Government, in violation of articles 19, 22, and 25 of the Covenant [ICCPR]". The treatment of the political opposition by the Uzbek government helps clarify these accusations.

On paper, Uzbekistan has made some "positive" developments with respect to political freedom. In 2002, the opposition party Birlik was allowed to hold congress sessions and in 2003 the Uzbek government allowed the Erk opposition party to hold a national congress (Erk's first public meeting in over ten years). Both organisations, however, remained unregistered at the end of 2003.

These developments can be recognised as a step in the right direction, but reality paints a more complete picture. The leaders of the two main opposition parties in Uzbekistan, Erk and Birlik have both been forced into exile abroad.

Individuals and family members of those found exercising their Constitutional right to freedom of association through political organisations (protected under Article 33 and 34 of the Constitution) face surveillance, harassment, loss of employment, torture, and arbitrary detention at the hands of state authorities. State attempts to intimidate the participants and block the meetings of these "unofficial" political groups have been well documented by international human rights groups.

The leader of Erk, Mohammed Solikh, has been given political asylum by the government of Norway, yet still remains a target of the

Uncivil treatment

THE treatment of domestic human rights groups and human rights defenders also highlight the restrictions placed on civil society in Uzbekistan. In 2001, the Human Rights Committee was concerned that the Uzbek government had "not taken up an effective dialogue with national non-governmental human rights organizations". Despite the registration of two human rights groups, the condition and treatment of national human rights groups and defenders remains largely the same. Those associated with human rights organisations still face harassment and imprisonment. The US State Department has suggested that the Uzbek government has targeted and selectively punished human rights defenders. In 2002, two human rights defenders, Elena Urlaeva and Larissa Vdovina were subjected to involuntary psychiatric treatment. Independent human rights groups face similar obstacles enforced by government registration as those faced by political opposition groups. In its reply to questions by the Human Rights Committee, Uzbekistan stated that State interference in the activities of registered NGOs is prohibited. But the evidence suggests that unregistered NGOs do not enjoy the same protection.

Uzbek government. In November 2001, the government of Uzbekistan tried and convicted Mohammend Solikh in absentia on terrorism charges related to the February 1999 bombing associated with the Islamic Movement of Uzbekistan in Tashkent. The motivations behind these charges and the association of Solikh to this crime remain unclear, given that Mr. Solikh is recognised as the only independent individual ever to run against Karimov. It appears that Solikh has been used as an example to illustrate the punishment awarded to those who challenge the president's leadership.

The international community should pay close attention to the future treatment of political opposition groups in Uzbekistan. Registered groups are protected under Article 5 of the Political Parties Act. Under this act, "the state shall guarantee the protection of the rights and legitimate interests of political parties and shall afford them equal legal opportunities to fulfill the aims and objectives set out in their statutes". Unregistered political groups do not enjoy such protection. (see box)

A new requirement forces international NGOs to reregister with the Uzbek government by 1 March 2004. Critics argue that the aim of this new procedure is to tighten control over international groups involved in human rights and pro-democracy projects. Press statements from the Uzbek Foreign Ministry spokesman as summarised by the Associated Press report that this "new procedure allows any other ministry to veto a group's registration".

The Human Rights Committee acknowledges the existence of a variety of human rights monitoring institutions established by the state, but remained "concerned that none of these institutions is entirely independent of the executive branch of government". During the visit of the UN Special Rapporteur on Torture in 2002, Uzbekistan's Ombudsman expressed concerns over the ineffectiveness of her work, the lack of

financial and personnel resources available to her, and cooperation received from State authorities. In their first reply to the Human Rights Committee on 17 October 2002, the government of Uzbekistan stated that attempts would be made to refine the Ombudsman Act. Uzbekistan's commitment to this issue was also affirmed in a press release on 19 March 2003, yet developments with respect to this issue were not addressed in Uzbekistan's second reply to the Committee dated 29 January 2004.

Similar problems for civil society are founded in the government's control over the media despite the lifting of the official press censorship in May 2002. State control of the media in Uzbekistan is achieved indirectly through self-censorship by regulations imposed on journalists and editors through Uzbek law. New amendments to the press law illustrate the role of government oversight in controlling the freedom of the press. One such amendment grants the newspaper's board of directors, whose composition is subject to government veto, the right to oversee a paper's editorial content. An additional component of the new amendments holds journalists and editors personally responsible for the content of their publication, effectively strong-arming journalists to comply with previous governmental restrictions.

Journalists associated with non-state press (i.e. BBC, Radio Free Europe, Internews) faced harassment, intimidation and non-accreditation. The Uzbek government has refused the Voice of America and Radio Free Europe/Radio Liberty to broadcast from within Uzbekistan. There are 30 to 40 privately owned television stations, but no private publishing houses exist in Uzbekistan. The US State Department reports that newspapers are too expensive for most citizens, while the International Crisis Group has recognised a decrease in newspaper readership.

The Fallacy of Reform

The Human Rights Committee was also gravely concerned about widespread torture in Uzbekistan. Upon invitation, the Special Rapporteur on Torture conducted an investigative visit to the country in 2002, where he found torture to be systematic.

Positive steps have been taken by Uzbekistan to combat widespread torture, such as: the government's recognition of torture as a problem, the redefinition of torture in the Uzbek criminal code as that affirmed by article 1 of CAT, the creation of a National Action Plan to combat torture by the Human Rights Ombudsman, and an increase in the number of visits to detention facilities by the International Committee of the Red Cross, all reflect change but still fail to address the crux of the problem.

The most difficult challenge facing Uzbekistan is the actual implementation and adherence to the laws that protect the well being of its citizens. In its communication with the Human Rights Committee, Uzbekistan has skillfully shown its intention to reform and make progress towards internationally recognised norms. Whether or not these changes are driven in the spirit of genuine reform or whether they reflect attempts to placate the international community should be measured by how Uzbekistan's laws are put into practice.

To the people of Uzbekistan, reform seems distant, as freedom is fed in small doses. Unfortunately, those who suffer from the lack of reform are the Uzbek people themselves.

The European Parliament has called on the European Union to sponsor or co-sponsor a resolution on Uzbekistan at this year's Commission. The time has come for the international community to take a firmer stance on the abuse of leadership and the reality of reform in Uzbekistan. For, it appears that the only thing truly stable and secure in Uzbekistan is the position of Karimov himself.

Guatemala at a crossroads

Congress must ratify accord with the United Nations to battle rights abuses

MICHAEL CAMILLERI

A PART from the massive loss of life and physical destruction, no doubt the most devastating and enduring legacy of Guatemala's 36-year civil war has been the institutionalization of hidden power networks that have essentially hijacked the Guatemalan state and preserved impunity for abusers. Though armed conflict officially ended with the 1996 Peace Accords, Guatemala has grown increasingly violent in recent years.

Human rights defenders have proven particularly vulnerable; in 2002 and 2003, hundreds of crimes against civil society organizations and their leaders were reported, ranging from intimidation to assassination. Observers point an accusatory finger at a complex web of underground power networks that have illegal armed groups at their disposal. These networks corrode the rule of law, preserve impunity, and pose an increasingly grave challenge to Guatemala's democratic institutions.

Frustrated by the state's inability to dismantle these hidden networks, Guatemalan civil society groups have pressed authorities to develop a coherent response to the ineffectiveness of the nation's investigative and judicial mechanisms. Under pressure from domestic NGOs, international civil society, and the media, the Guatemalan government looked to the international community for assistance and in January of 2004 signed a historic agreement with the United Nations. The agreement promises to create an independent investigatory and (potentially) prosecutorial commission, under UN auspices, to combat the so-called "hidden powers" (*poderes ocultos*). The Commission for the Investigation of Armed Groups and Clandestine Security Organizations in Guatemala (CICIACS) is a novel and unprecedented attempt to strengthen the rule of law and buttress a nation's democratic institutions. Writing in the *New York Times* last November, Francisco Goldman observed that CICIACS represents Guatemala's "last best hope." The agreement with the UN still awaits approval by Guatemala's Congress, however, and ratification is by no means assured.

Hidden Powers

When Guatemalans talk about "hidden powers," they are referring to an amorphous network of powerful individuals who leverage extensive contacts in the public and private sectors to both enrich themselves from illegal activities and protect themselves from prosecution. These informal groups are tied to drug trafficking and organized crime, as well as corrupt elected officials, judges, and members of the police and the military. A recent report by the leading policy and research group the Washington Office on Latin America traces the networks' roots to the personal relationships, patterns of interaction, and structures of authority that developed in the military and intelligence services during the civil war.

Indeed, the top brass of these groups allegedly includes some of the most notorious names from Guatemala's brutal past, including General Efraín Ríos Montt, whose "scorched earth" policies included scores of massacres, and Col. Juan Guillermo Oliva Carrera, accused (though acquitted by Guatemalan Courts) of masterminding the 1990 assassination of anthropologist Myrna Mack. These men and their associates have exploited their contacts in business, government, and the military, as well as their experience in counter-insurgency and corrupt operations, to build a network that today holds much of the real power in Guatemala.

Hidden powers in Guatemala have a two-fold purpose: illicit enrichment and continued impunity. The WOLA report describes how

these networks reap huge profits through activities such as drug and arms trafficking, money laundering, car theft rings, adoption and immigration rackets, and illegal logging. They protect themselves from prosecution by taking advantage of their connections to elected officials, the police, and the judiciary, and when necessary by deploying intimidation and force.

Crucial in this regard are the illegal armed groups, small bands of men who are often members of specialized military or police units, that do the bidding of the hidden powers. Because many of the leading members of the hidden powers face accusations of grave human rights violations committed during the war, those targeted by the illegal armed groups regu-

CICIACS represents a unique opportunity for Guatemala to combat the criminal elements that have seized control of the state. The nation's Congress must ratify the accord with the UN, and the international community must demonstrate its commitment to this novel and vital framework for internationally assisted local justice.

larly include human rights defenders and others who seek to investigate and prosecute wartime abuses.

A Novel Approach

In January of 2003 Guatemala's Human Rights Ombudsman Dr. Sergio Fernando Morales Alvarado issued a resolution acknowledging the grave threat that hidden powers posed to human rights and the rule of law in Guatemala. He called on the government to establish an international commission to investigate clandestine groups and illegal security apparatuses in the country, and their possible links to the State. The Guatemalan Congress unanimously supported his resolution and the government soon entered negotiations with the Ombudsman and members of civil society to consider the structure of the proposed commission. In April 2003, the Minister of Foreign Affairs formally requested the involvement of the UN, and on January 7th of this year the UN and the Guatemalan government signed an agreement to create CICIACS.

The CICIACS Agreement empowers the Commission to investigate the structure and activities of illegal groups and clandestine security organizations, their modalities of operation, and sources of financing. In particular, the Commission will focus on attacks perpetrated against human rights defenders and other social sector activists; connections between illegal groups and the state, organized crime, and private security forces; and any other illegal activities which may constitute transnational crime.

The Commission is directed to enter into agreements with the Attorney General and the Head of the Public Ministry to govern cooperation between CICIACS and the Public Ministry in the investigation and prosecution of persons involved in illegal activities that fall within the CICIACS mandate. Notwithstanding this requirement, the Commission is also endowed with autonomous prosecutorial powers that could ultimately prove essential to its effectiveness. CICIACS is invested with the legal status of a private prosecutor (*querellante adhesivo*) as defined in the Guatemalan code of criminal procedure. In addition, CICIACS has the power to independently initiate and carry out criminal prosecutions on matters within the scope of its competence when, in the view of the CICIACS Commissioner, a failure to initiate or continue a prosecution would significantly impede the ability of the Commission to fulfill its mandate.

CICIACS will be led by a Commissioner appointed by UN Secretary-General Kofi Annan. The Commissioner is directed to assemble a staff of Guatemalan and international experts on human rights and organized crime, an innovative arrangement based loosely on the national-international character of the Special Court for Sierra Leone. The CICIACS staff will have significant powers of investigation, including unhindered and undelayed access to installations and materials of the state, whether civilian or military. In addition to its investigative duties, CICIACS will prepare legal reforms in consultation with the UN, the government, and civil society to bring Guatemala into compliance with international conventions on human rights and with the United Nations Convention against Transnational Organized Crime.

Obstacles Remain

CICIACS represents a novel and innovative approach to combating impunity and organized crime and to strengthening human rights and the rule of law. Perhaps more importantly, it has a very real chance of being effective in fighting the hidden powers that threaten to turn Guatemala into a mafia state. Despite the lengthy negotiations that preceded it, and the many parties involved, the final agreement on CICIACS is not a watered-down version of something better. The Commission maintains a significant degree of leverage within the justice system, including the ability to engage in prosecutorial activities; invoking these capabilities may prove necessary in order for the Commission to compete with the powerful vested interests it is tasked with dismantling.

Disappointingly, Guatemala's Congress has been slow to respond to this impressive cooperative endeavor. The CICIACS Agreement must be ratified by Congress in order for the Commission to become a reality. More than two months have now passed since the accord was signed. Cynics suggest that some Congressional representatives (particularly members of Ríos Montt's FRG party) are hesitating due to their links with the hidden powers. Publicly, opponents tend to argue that CICIACS violates national sovereignty, is unconstitutional, and grants overly broad privileges and immunities to CICIACS staff members. In response to these criticisms, the local human rights community has emphasized that the Guatemalan government itself sought UN involvement to battle corruption and violence, Constitutional requirements will be fully met when Congress ratifies the Agreement as an international treaty on human rights, and CICIACS staff members will enjoy the same privileges and immunities long enjoyed by UN personnel in the country.

There are signs the fate of CICIACS will soon be resolved one way or another, and supporters are cautiously optimistic. Newly elected President Oscar Berger has fully endorsed the Commission, but does not control enough votes in Congress to assure approval. On March 11th, members of Congress adjourned their ordinary session to attend a special seminar on CICIACS, and supporters now face a nervous few days or weeks.

Nonetheless, if Congressional ratification of the Agreement can be attained, it will mark a major victory for human rights and democracy in Guatemala, and one of the most hopeful days since the signing of the Peace Accords. Assuming ratification does occur, the international community should move quickly to endorse Guatemala's historic efforts and make CICIACS a reality. This will require providing the funding necessary for the Commission to confront Guatemala's hidden powers with vigor and effect.

Michael Camilleri is Vice-President, Harvard Law Student Advocates for Human Rights

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When the CHR failed...

Islam, addressed the concern that Islam was "frequently and wrongly associated with human rights violations and terrorism". This focus on one religion divided the Commission, yet was adopted by a recorded vote of 32 in favour, 14 against and seven abstentions.

The resolution on minorities was also positive, praising the work of the Sub-Commission Working Group on minorities and requesting the High Commissioner "to examine existing mechanisms with a view to enhancing their cooperation and effectiveness and to identify possible gaps in the protection of the rights of persons belonging to... minorities". However, little progress was made on the rights of indigenous peoples, as the definition and the issue of basic rights of indigenous peoples continued to divide members. Several Western States contended that the Working Group should be abolished as its mandate overlapped with that of the Permanent Forum on Indigenous Issues.

Another positive development was the establishment of a Working Group dealing with the question of an optional protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR) establishing an individual complaints mechanism. The resolution addressed the consideration of the need for an optional protocol, as opposed to the drafting of a protocol. It is an incremental, but nonetheless positive, first step towards recognising the justiciability of economic, social and cultural rights.

More critically, the Commission avoided any meaningful dialogue on the military invasion of Iraq, rejecting a proposal to hold a special sitting on 'Human Rights and the Humanitarian Situation as Consequences of the War' (18 in favour, 25 against, 7 abstentions), and opting instead to adopt an ineffectual final day resolution that failed to address current developments by retroactively condemning the extensive violations of human rights by the Government of Iraq. This was a case of political pandering, pure and simple, best illustrated by the case of the Chilean delegate, who was fired for his refusal to toe the government line in supporting the US decision to block resolutions holding it accountable for its actions in Iraq.

Following the failure of the Commission in its 58th session to adopt a resolution calling upon States to respect fundamental human rights standards in the struggle against terrorism, the initiative of several NGOs and the Mexican delegation led to the adoption of a resolution at the 59th session. It was a weak resolution, equivalent to a re-iteration of General Assembly reso-

lution 58/174 on the same subject. No human rights mechanism has been established to exclusively address this issue. Again, the US and European States voted against the resolution.

The Commission's cultural divergence was most evident in stalling of the Brazilian delegation's draft resolution on "Human Rights and Sexual Orientation", formally condemning discrimination against persons on account of their sexual orientation, whereby manipulative procedural stonewalling by the Organisation of Islamic Conference (OIC) nations, a vow of abstinence by Ireland and four Latin States (bowing to lobbying by the Holy See), the new Christian-right consciousness of the US, and supportive procrastination by the Chairperson ensured that the issue was sidelined until 2004.

On the promotion and protection of human rights, the important role of national institutions was stressed, and the Commission reiterated the importance of the programme of advisory services and technical assistance in the field of human rights. However, it is significant that the Commission tended towards adopting resolutions under agenda item 19 ("advisory services") rather than agenda item 9 ("human rights violations"), despite the fact that article 19 resolutions are expected to reflect a 'graduation' for those States that demonstrate a concerted effort to improve their human rights record.

During the 2003 session, African and Asian States, together with Cuba, repeatedly accused Western States of "politicising" the work of the Commission by criticising the rights records of other countries under agenda item 9. There was increasing opposition to country-specific reports and case studies presented during debates. Taking recourse to no-action motions, as they did on the draft resolution concerning Zimbabwe, African States made it clear that they would no longer tolerate being called into question over their human rights records.

Furthermore, the Commission ended the mandates of the Special Rapporteurs on Afghanistan, Sudan and former Yugoslavia, and rejected again all initiatives on Chechnya and Sudan, terminating the mandate of the Sudan Rapporteur. No new country specific mandates were created. Regarding thematic Rapporteurs, political venom was reserved by the US for Mr. Jean Ziegler, Special Rapporteur on the right to food, while the Algerian Ambassador waited until Professor Theo Van Boven, Rapporteur on torture, had left Geneva before publicly questioning his integrity and impartiality. In an unprecedented move, Deputy High Commissioner Bertrand Ramcharan was compelled to take the floor in Van Boven's defence.

At the time of the 2003 session, only 47 of the UN's 191 member States had issued standing invitations to human rights monitors.

Only one African country (Sierra Leone) and no Asian country had done so. The same African and Asian governments, which had the majority of votes in the Commission (27 out of 53 members) opposed country debates, and undermined the very work of those who they appoint by refusing them access to their own countries. The attack on country rapporteurs is expected to be a prelude to the eventual undermining of thematic Rapporteurs. During the 59th session, a decision proposed by Pakistan and Saudi Arabia was adopted by 28 votes to 24 (with 1 abstention), targeting the transmission of communications and urgent appeals from Rapporteurs to governments. In this decision 2003/113, the Commission requested effective coordination in the Office of the High Commissioner to "preclude any overlapping and/or duplication", and to ensure that communications and urgent appeals be forwarded to the government concerned "with written authorisation from the Special Rapporteur". This only succeeds in slowing down the process of urgent appeals and damaging their worth.

Procedurally, notable departures from the previous year included the establishment of the 'high level segment', allotting time to heads of government, ministers and so forth to express the importance of the Commission to their respective States. However, the allocation of the high level segment to the first week of the Commission meant that important work was delayed until the second week of the Commission, prompting observers to suggest that the third week of the Commission would be more useful to all concerned. Rapporteurs who had boycotted the Commission on account of their drastically reduced speaking time in 2002, were given more adequate time in 2003.

Coupled with an opportunity to address immediate questions from the floor, this brought their contributions more to the centre of the Commission's deliberations. This was a commendable practice, although restricted by time.

Gauging from the outcomes of the 59th session, it appeared that immunity from criticism (or in certain cases, absolution) could be secured through Commission membership. Regional bloc alliances and intensive trade-off lobbying meant that critical draft resolutions such as those on Chechnya, Zimbabwe and Sudan were defeated. This gerrymandering has brought increasing despair to previous High Commissioners for Human Rights, with Sergio De Mello sensing in 2003 that "delegates were losing sight of the noble goal of protecting human rights" and that "the word politicisation and all its variants [should] be retired from active service". Whether the 60th session will see sense in the recommendation remains to be seen.

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Big democracy fails test...

The Indian Government's reports have often been criticised for focusing on describing the legal safeguards in place to protect human rights, rather than the practical effectiveness of their implementation.

The Right to Food

Article 11 of the ICESCR enshrines the right to food as a basic human right. The Committee on Economic Social and Cultural Rights elaborated on this issue by noting in its 29th Session that 'the roots of the problem of hunger...are not lack of food but lack of access to available food...'

This is the context in which the right to food in India must be viewed. The Government often emphasises the country's transition from an agrarian deficiency to an agrarian surplus. However, this does not address the problem of the lack of a basic food supply to close to 400 million people, while the surplus rots in Government godowns. In a positive development however, the Supreme Court of India has passed orders asking the authorities in numerous states to ensure that families below the poverty line are provided with adequate food. The court has also undertaken to monitor the implementa-

tion of the orders. However, it is alarming that the right to food is only receiving recognition on account of an activist judiciary. It is clearly still imperative that the Government intervene to address this crisis.

The Right to Housing and Health

Article 11(1) of the ICESCR recognises a right to housing as part of the right to an adequate standard of living. There is also an emerging global consensus towards a stronger recognition of an individual's housing rights.

Contrary to this, the Indian Government - far from recognising any concrete right to housing - is busy rendering more and more people homeless. For example, in *NBA v. Union of India*, despite being briefed about the lack of adequate resettlement for the people that would be displaced, the court authorised the Sardar Sarovar Project observing that '...displacement of the tribals and other persons would not per se result in the violation of their fundamental or other rights...'. Furthermore, in a recent order the Supreme Court permitted further raising of the dam that would displace more people with no prospect for rehabilitation, again despite the opinion forwarded by the Special Rapporteur on Adequate Housing to the contrary.

Measures to promote better health are also being increasingly viewed as part of the duty of the Government arising out of the corre-

sponding human right to health reflected in Article 12 of the ICESCR. General Comment 14 of the Committee for Economic, Social and Cultural Rights states that the right to health requires availability, accessibility, acceptability, and quality with regard to both health care and the underlying preconditions of health. The main problem in India is the existence of a privatised and unregulated health care system. The profit motive inherent in the operation of a private health system means that healthcare is unaffordable for most poor citizens. The result is a massive disparity in healthcare available for the poor as opposed to the rich.

Conclusion

A cursory glance at India's human rights record exposes the Government's failure to translate its rhetoric in international fora into concrete domestic safeguards for human rights. India's most vulnerable citizens, principally the poor, and ethnic and religious minorities, continue to suffer from human rights violations that impinge upon the whole spectrum of their rights - political, economic, social and cultural. The Indian Government must dedicate on-going time and resources to the implementation of its human rights obligations. Otherwise, its ratification of international treaties will continue to be regarded as little more than a disingenuous exercise in international diplomacy.

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Derogating from justice...

detainee after receiving 'closed' material. Even that special advocate has limited opportunity to defend the detainee - for current SIAC rules do not require the Home Secretary to reveal all evidence that could assist the detainee's case. These proceedings have a chilling effect on the rule of law in Britain. Not only may a suspect be indefinitely detained, but his detention can be reviewed on the basis of secret evidence that he cannot see, refute or explain - and this in proceedings that ultimately concern subjective questions of character and dangerousness.

Further, the secret evidence may be tainted by torture. In July 2003, in the open component of a SIAC appeal, an anonymous MI5 Security Service agent ('witness A') reported that MI5 may assess evidence extracted under foreign torture to be reliable - and that such evidence may therefore be relied upon by the Home Secretary in SIAC proceedings. Naturally, it is possible that SIAC has never received or relied upon any such evidence - but we will never know. By relying on secret evidence in closed hearings that exclude the detainee in question, SIAC can never enjoy necessary public confidence in its impartiality or integrity.

Detainees may appeal SIAC decisions to the Court of Appeal. However, this does not confer adequate habeas corpus standards upon the process. This is because the Court can only entertain questions of law - a notion that it construes very narrowly. For example, in *A, X and Y v The Home Secretary* (2002), the Court was required to determine whether Britain faced an "emergency threatening the life of the

Shut up and put up...

THE wrongfulness of the ATCSA detentions is only compounded by the conditions to which detainees are subjected. Detainees are reportedly held alone in their cells for up to 22 hours a day, with very limited opportunity for exercise. One detainee - Mahmoud Abu Rideh - wrote to *The Guardian* after being transferred to the high-security Broadmoor psychiatric hospital following a suicide attempt. He wrote, "You do not see sun. You cannot tell whether it is night or day. Every thing [sic] is dark." Religious practices are sharply curtailed - the detainees (most or all of whom are Muslim) are apparently allowed 15 minutes' collective prayer on Fridays, without access to an imam. Amnesty International reports that detainees have been denied prompt access to legal advice, even after receiving orders for deportation.

The Observer claimed in December 2003 that at least half of the detainees are showing symptoms of serious mental illness. The newspaper claims that a North African detainee (who has suffered polio since childhood) can no longer recognise or communicate with other detainees. *The Observer* asserts that the man cannot walk, but that prison authorities will grant him neither a wheelchair nor even the opportunity to be carried by other inmates.

In short, the detainees' conditions are appalling. Indeed, though the Court of Appeal disagreed in *A, X and Y v The Home Secretary*, it remains arguable that the conditions of detention amount to "inhuman or degrading treatment" within the meaning of ECHR Article 3 and ICCPR Article 7. Importantly, this notion extends "not only to acts that cause physical pain but also to acts that cause mental suffering to the victim" (General Comment 20 of the Human Rights Committee, 1992).

nation" - a conclusion that SIAC had reached by applying principles of law to both open and closed evidence.

In reviewing SIAC's decision, Lord Woolf CJ said: "We have not seen the closed evidence. We were not invited to do so and it was not necessary for us to see the closed evidence, as this is an appeal only on law."

This is the review that Britain offers ATCSA detainees - a review that accords substantial deference to the Secretary's discretion, using secret evidence (possibly obtained under torture) in closed proceedings that may be appealed only on pure questions of law. A review it may be, but a proper right of habeas corpus - as demanded by both European and international law - it certainly is not.

The Faustian Bargain

Terrorists pose many terrible threats to liberal democracies. There are threats to human life, threats to national icons and threats to every citizen's sense of security and well-being. But terrorists also threaten the ideals of liberal democracy itself. These ideals - democracy, liberty, the presumption of innocence, the rule of law - lie at the core of open society and its complex conceptualisations of security.

One cannot fault a government for seeking to defend national security in a time of heightened threat. But a government that tries to do that by indefinitely detaining suspects in appalling conditions with minimal review of discretionary orders is missing the point: that the core liberal democratic ideals cannot be protected by being compromised. In Jefferson's words, they "cannot be limited without being lost".

Britain must stop trying to defend its national security by conceding its fundamental freedoms.

...from page 8

Speaking the language of dispossession...

and manifest their identity is unique in both scope and quality within the four States. The region has hosted a vigorous resurgence in all aspects of Kurdish culture since its political restructuring in the wake of the Gulf War. It is to be hoped that such freedom may be accorded to all minorities under the new Constitution, and that Kurds living both within and outside the region may continue to contribute to a diverse cultural life within Iraq until and beyond the election of the new Iraqi government, to take place by 31 December 2005.

The Islamic Republic of Iran

There is minimal information available regarding human rights violations suffered by the Kurds in Iran due to its refusal, until recently, to permit access by the UN and other foreign human rights monitors. The Kurdish language is not offered as either the medium or subject of instruction in the education system at any level. Non-dissident Kurdish media can receive active support if it promotes the conservative Islamic ideology but it attracts

harsher repression than Persian counterparts. As such, there are broadcasts and publications in the Kurdish language but these are heavily censored. Iran's receipt of the Special Rapporteur for freedom of expression and opinion in November 2003 may signify progress which could benefit the Kurds only if his recommendations are heeded by the government.

The Syrian Arab Republic

Media freedom is severely curtailed throughout Syria but the Kurdish press faces particular repression. The printing of newspapers, magazines and books in the Kurdish language is currently banned. The Kurdish language may not be taught or even spoken in school and, unlike other minorities, the Kurds may not open private language schools. The Kurds are often refused permission to celebrate their culture in community with each other and Kurdish cultural associations are often closed down.

To date, progress made regarding official acceptance and

protection of Kurdish culture and language continues to be achieved by piecemeal reforms which do not corresponded to international obligations, legal or political. As yet there is no evidence of a true change of attitude on behalf of the authorities towards these elements of Kurdish identity.

The governments of Turkey, Iran and Syria and the Iraqi Governing Council must be entreated to observe international obligations which they have undertaken with respect to the Kurds not only as a people entitled to the right of cultural self determination, or as members of a minority, but as human beings who are entitled to enjoy their human rights and fundamental freedoms without discrimination.

This article is based upon the author's report, The Cultural and Linguistic Rights of the Kurds in Turkey, Iraq, Iran and Syria, written for the UK based NGO the Kurdish Human Rights Project, which is to be published in March 2004.

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