

HUMAN RIGHTS FEATURES

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New ideas, old snags

The SG's speech is yet to sink in, but some early indications have emerged

THE second week of the annual sessions of the Commission on Human Rights (CHR) is, of course, when things, positions and 'flexibilities' fall into place, and the current session is no different, the SG's radical speech notwithstanding. Even as Mr. Annan's suggestions are referred "back to capital" and others, including HRF take time out to consider the recommendations, the CHR slides into a familiar pattern.

Last week, the CHR was treated to a diet of debates that are getting more insipid by the day - although India did try to inject some innovative language on engagement and marriages in its annual Item 9 bout with Pakistan. No matter that at the CHR, both countries have a strong marriage of inconvenience going when it comes to all non-Kashmir issues.

And Zimbabwe of course outdid itself, using language that HRF, a family paper, would not dare reproduce.

Attempts have also been made by the usual suspects to, no doubt, further their contribution to the work of the CHR. The Asian Group, for one, has been up to its old tricks already, circulating a paper that proposes substantive changes to the work of the Special Procedures, even though the inter-sessional period can only involve discussions on procedure as the resolution on Special Procedures is a biennial one (see story on this page: 'Too special to be ignored?').

On Nepal, the flurry of activity is misleading. Little can be surmised until India speaks, and so far, it has chosen to stay quiet.

The coming week, however, is expected to make things clearer.

In the outrage over Nepal, however, it must not be forgotten that there are other states, small enough so that they don't even bother taking seats at the CHR (anyone ever looked for the Maldives, or seen a Laotian representative around?), that bear down on their citizens, and which need as much international attention.

The point made by Mr. Ramos-Horta during the High Level Segment about a possible relocation of some UN agencies to developing countries was well taken, in the light of the scarcity of resources faced by small countries, activists and victims. In the case of the countries mentioned above, however, their absence at the CHR is not merely a problem of resources. (see story in HRF issue dated 21-28 March 2005, page 9). No, the Republic of the Maldives and the Lao PDR stay away because they have no interest in human rights. And they can afford to do so because nobody calls them to account. (see story in this issue, page 8)

An initial indication to the likely reactions to the Secretary-General's recent speech can be had from an informal consultation called by the Brazilian delegation to discuss the specific recommendation by the High Level Panel. This concerned a possible annual report on human rights by the Office of the High Commissioner for Human Rights. (see story on this page: 'Dead on arrival').

Finally, we welcome Belarus to the esteemed club of human rights defenders that is the LMG (see 'A Perfect Fit' on this page).

Too special to ignore?

MASSIMILIANO DESUMMA

THE Special Procedures are the reflection of the responsibilities of monitoring... [W]e fall silent and go to sleep after six weeks, but they [continue] working," said H.E. Dr. Makarim Wibisono, Chairman of the 61st Session of the Commission on Human Rights (CHR) in last week's interview with *Human Rights Features*.

Together with the Office of the High Commissioner on Human Rights, the Special Procedures are the eyes, ears and hands of the Commission. Independent experts, Special Rapporteurs and Working Groups are endowed with the difficult task of promoting and protecting human rights. Through visits, reports, urgent appeals, investigations and recommendations they execute the mandates received by the Commission.

Similar to the Broken Chair that is currently missing from its usual spot at the Place des Nations, the 61st session of the Commission on Human Rights was supposed to be an 'off' year for this issue since the resolution on Special Procedures was biennialized from the 56th CHR session onwards. Back then, the Asian bloc had argued that the work of the Commission had to be rationalised and an open ended inter-sessional working group on enhancing the effectiveness of special mechanisms eventually recommended abandoning an annual review of the question (E/CN.4/200/112). Ironically, in this 'off' year, the substantive aspects of the issue are being

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A Perfect Fit

AND so on to the infusion of fresh blood into one of the CHR's historic institutions. Belarus, no doubt a staunch believer in human rights and in the utility and relevance of the Commission on Human Rights, decided to boost the ranks of that honourable association that calls itself the Like Minded Group, or LMG. Joining hands with such well-meaning worthies as China, Pakistan and Algeria, Belarus has let it be known that it has arrived on the international human rights scene.

Belarus has of course "always been committed to the cause of human rights protection", having helped throw out last year's CHR resolution on Belarus and put an end to the mandate of Special Rapporteur on the situation of human rights in that country. Clearly unable to conceal its enthusiasm at being able to join the club, Belarus' *note verbale* to the CHR toed the LMG's morally defunct party line, rejecting the "current practice of considering and adopting resolutions on specific countries" and viewing the resolution as "a tool to achieve selfish political goals." Ultimately, characteristic of the "double standards approach", which is itself "a mockery of the principles of the Commission."

So let's put our hands together for this new and devout inductee to the esteemed LMG - the more the merrier when it comes to hampering and subverting the effectiveness and efficiency of the CHR.

Indeed, over the past year the Belarusian government has done all that it can to suppress dissent and what is left of the country's opposition. Torture is widespread and censorship of the media is common. Over the past

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Dead on Arrival

An informal discussion on the first High Level Panel recommendation fails to take off

AMONGST the recommendations of the High Level Panel on UN Reform for the Commission on Human Rights was a vague suggestion that the Office of the High Commissioner for Human Rights might compile an Annual Global Human Rights Report. The motivation for such an undertaking, and the contribution that it might make, was undisclosed, leaving the idea merely open for consideration.

Human Rights Features, in its issue dated 14-20 March 2005, suggested that this might not necessarily be a bad idea, giving a certain authority and cohesion to the deliberations of the spe-

cial procedures, treaty monitoring bodies, and so forth. This however, would depend on the Office following such a formula; namely, condensing the materials that already exist and presenting them in a more accessible form to the general public.

This would avoid drawing into the politicisation of the OHCHR, which is not mandated to condemn particular countries in its role as secretariat to the CHR. It would also allay legitimate concerns that such an exercise would

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That mythological divide

The Working Group on the elaboration of an Optional Protocol to the ICESCR is being thwarted by both sides of the ICCPR-ICESCR 'divide', including those States that routinely hold forth on the importance of ESCRs

GARETH SWEENEY

HER Excellency Louise Arbour introduced herself to the Commission on Human Rights (CHR) on the opening day by pointing to the pressing need to redress the schism that exists between supposedly indivisible rights as central to her mission as High Commissioner. "Struck by the continued way in which we view some rights as though they occupy discrete compartments", Arbour stated that "there can be no cause today to question the equal status of economic, social and cultural rights." On this basis, she expressed to the High Level Segment her wish that agreement can soon be reached to allow the entry into force of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR), "giving rise to a legal process that would allow individuals to bring their claims before an international forum in those situations where national recourse has been found wanting."

And yet, despite the fact, as Ms. Arbour rightfully asserted, that the basis for adopting such an optional protocol has "time and again" been affirmed, the sessions of the open-ended Working Group to consider options regarding the elaboration of an optional protocol to the ICESCR continue to provide the most contemporary examples of the legacy of divisiveness that has hindered international human rights law since the separation of rights in the drafting of the ICCPR and the ICESCR. Despite the unequivocal and final assertion by the international community as a whole in 1993 that all rights are "universal, indivisible and interdependent and interrelated", the activities of influential states would appear to render this sentiment to be shallow and rhetorical.

Pursuant to the World Conference on Human Rights, the Committee on Economic, Social and Cultural Rights (CESCR) discussed and issued reports concerning its work on a draft optional protocol and issued a draft for consideration by the CHR in 1997. The protocol mandates the CESCR with the competence to receive individual complaints and establishes a communications procedure in accordance with the mandates of other treaty monitoring bodies.

Rather than adopt the optional protocol, the CHR spent the following three years receiving communications from States, indicating a preponderant reticence, or blank dismissal, by many states to endorse the idea. The appointment of an independent expert for two years, followed by a Working Group whose mandate is assured until 2006, have at this stage provided exhaustive examinations of all issues relevant to the creation of an optional protocol. These have included, time and again, the justiciability of ESCRs, normative understandings of "progressive realization" and the obligations to "respect, protect and fulfill" ESCRs, the debates surrounding the availability of resources, allaying fears of an impact on national executive decision making, the complementarity of such a protocol with other treaty body mechanisms, the applicability of the Committee's 1997 draft protocol, and so forth.

The exercise here is not to re-iterate what is widely known about the applicability of an optional protocol and its various components. These are all, as mentioned, very well settled points, as can be discerned from: the general comments of the Committee and their contributions to the deliberations of the Working Group; comparative studies of national legislations; the protections afforded by other regional bodies such as the African Charter, European Social Charter, and the San Salvador Protocol; as well as the protections afforded by other (although, it should be emphasized, different) international monitoring bodies such as UNESCO and the ILO. Rather, the objective here is to illustrate

how certain states are determined to resist the elaboration of an optional protocol, in spite of the above, for whatever reprehensible motives.

Tail Chasing in 2005

Despite the exhaustion of creative means to scupper progress, the same bulwarks of obstinacy keep appearing. Ironically, the two sides of the relativist divide seem to work in tandem on thwarting progress. The United States, whose high moral ground on civil and political rights has lost credibility in recent years, also makes

For Italy, ESCRs are only a 'declaration of intent that carry moral and political weight but do not constitute direct legal obligations for the State party.' This did not prevent Italy, however, from co-sponsoring resolution 2004/29 to extend the mandate of the Working Group for two years.

On the other hand we have Cuba, which stated that "the establishment of a complaint mechanism under ICESCR is... necessary in order to realize the full enjoyment of all human rights." Perhaps Cuba might consider signing the ICESCR before it feels it has the right to preach to others.

no secret of its reticence towards the very concept of economic and social rights, even as core minimum standards. On the other hand, those who have traditionally trumpeted the cause of ESCRs as a means of deflecting from, or indeed as a means of legitimizing, their abuse of civil and political rights, have done so in the knowledge that ESCRs demand less scrutiny in the international arena. It appears that the last thing they wish for is an individual complaints mechanism under international law. In this instance, opposites attract.

A good opening salvo should be fired at Italy who, in a *note verbale* communicated to the Secretary-General pursuant to resolution 2003/18, declared that "ESCRs are only a declaration of intent that carry moral and political weight but do not constitute direct legal obligations for the State party." This did not prevent the Italians, however, from co-sponsoring resolution 2004/29 to extend the mandate of the Working Group for a further two years. This in itself is indicative of the malaise. And on the other hand we have Cuba, who responded that "the establishment of a complaint mechanism under ICESCR is not only viable, but also necessary in order to realize the full enjoyment of all human rights." Perhaps Cuba might consider signing the ICESCR before it feels it has the right to preach to others.

And it is the debates that surrounded the above-mentioned resolution 2004/29 of last year that provide the best illustration of certain States' positions. Its eventual adoption by vote, after seven votes on attempted amendments, was preceded by commentaries from an alliance not often visible at the CHR. The US openly rejected an optional protocol, expressing its concern that the language describing such rights as legal entitlements threatened sovereignty and gave rise to an "incorrect view". China, yes, China, reiterated the same points as the US. And, perhaps even more remarkably, India, a country that is often trumpeted as a State where some ESCRs can be justiciable by way of the Supreme Court's correlating of constitutional directive principles with the right to life, added that it is "premature" to consider developing an optional protocol as there is no clear standard of measuring progressive realization, and therefore monitoring State compliance would be virtually impossible. This is pure doublespeak.

Add to the uneasy alliance Pakistan and

Saudi Arabia, who moved in the voting process to include the importance of international co-operation, an amendment defeated by only one vote. And then Australia, who most cynically requested that the CHR "take note of" rather than "welcome" the report of the Working Group, a move that was supported only by the US, which speaks volumes. The latter, most memorably, then moved to discontinue the mandate of the Working Group, and was supported by Australia (a welfare state, it should be added), with Indonesia (a supposed champion of ESCRs) and the Russian Federation abstaining. To this hall of shame can be added the following, who voted in favour of Pakistan's request that a member of the CESCR not be invited to the Working Groups next session: Australia, Bhutan, India, Nepal, Pakistan, Saudi Arabia, Sierra Leone, Sri Lanka and the US. Add the peculiar abstentions of Bahrain and Qatar to the final vote alongside Australia, the US and Saudi Arabia, and such a consortium at the Commission is a rare sight indeed.

And so to the most recent meeting of the Working Group in January 2005. Here, once again, all relevant experts comforted with saintly patience those states that maintain extreme difficulty with grasping the applicability of an optional protocol. Canada proposed expanding the mandate of the Special Rapporteur on the right to education to consider individual complaints as an alternative to an optional protocol. France, Germany and Greece proposed limiting the scope to "serious violations" whilst Russia advocated an "a la carte" approach. Saudi Arabia challenged the legal status of the CESCR as a treaty monitoring body mandated by ECOSOC, a novel but fruitless attempt at obfuscation. Japan, Canada and Poland joined the US in remaining unconvinced as to the merits of an optional protocol, whilst the UK remained skeptical. Thus Romania, the US' ally for the right to democracy, requested a paper on how an optional protocol would have a positive impact on the implementation of the ICESCR. Other delegations requested a study to address, among other aspects, the "relationship between the optional protocol and existing mechanisms", the nature of ESCRs, "particularly in view of the risk of interfering in domestic political discussions about resource allocation", "the relationship between an optional protocol and existing mechanisms" and "the option of having no optional protocol." And so the endless cycle continues.

Portugal has this year tabled an uncontroversial procedural resolution endorsing the progress of the Working Group and requesting it to report once more to the CHR at the 62nd session. Whilst Portugal should be commended for having initiated the movement toward an optional protocol, the Commission does not need a working group to *consider* the elaboration of a draft protocol; it does not even need a working group to *elaborate* a draft protocol. This was undertaken eight years ago and is generally sufficient, subject to reasonable amendments as suggested by the Office of Legal Counsel and those whose motivation is a workable protocol. Instead the Commission has managed to stall progress by wasting time and resources on independent experts and working groups for what will be, at the very least, nine years, only to find itself, at the very most, back where it began in 1997.

Instead, belligerent States, with no hint of embarrassment, continue to feign incomprehension over rudimentary and well-settled points of law during the deliberations of the Working Group. It is a wonder that the members of the Working Group have any hair left. And these are the same Commission member states that publicly or otherwise lament the decline of the Commission as a body of repute. As the cynical prevarication over the optional protocol illustrates, this is no one's fault but their own.

RIGHT TO FOOD

State action key in fight against hunger

Eradicating hunger is not just about finding the resources, as Jean Ziegler points out in his report to the CHR

EVER more eloquent, bold, and relevant, Jean Ziegler, the Special Rapporteur on the Right to Food, has once again made an invaluable contribution to our understanding of economic and social rights with his annual report to the Commission on Human Rights. Expanding General Comment No. 12 (1999) of the Committee on Economic, Social, and Cultural Rights, Ziegler defines the right to food as "the right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear." By all accounts, the incidence of hunger has increased steadily in the past decade despite of glossy policy statements in international forums. Ziegler concludes that "[t]his makes a mockery of the promises made by Governments at the World Food Summits held in 1996 and 2002, as well as the promises contained in the Millennium Development Goals."

Widening inequalities and falling amounts of aid have left the poorest more vulnerable in spite of global economic growth. Concise and precise, Ziegler's latest installment covers the state of the enjoyment of the right to food and the development of new conceptual and regulatory tools by which to achieve it. In particular, it provides an overview of the issues relating to the development of international voluntary guidelines regarding the right to food, and to extraterritorial obligations of states in terms of this right.

Searching for accountability

If there is a shortage of funds for poor countries, there is no shortage of ideas and plans on how to assist them, including the proposal of the Governments of Brazil and France to create a fund to fight hunger and poverty worldwide, and the international voluntary guidelines on the right to food. The Special Rapporteur draws attention to the fact that the Voluntary guidelines on the right to food promote the coordination of domestic and foreign policies in the perspective of seeing the realization of the right to food. The new magic bullets proposed by international donors, however, do not secure an integrated rights-based foreign policy.

The Landau report to the French President, which underpinned the French position to the quadripartite summit on Action against hunger and poverty in September 2004, explored new ways to finance international aid through new international financial contributions mechanisms or international taxation. The report starts by identifying the failures of development cooperation from insufficient resources, high negotiation costs, inadequacy and inappropriateness in form, and high volatility. Rather than propose ways to reform international aid and increase its accountability, the Landau report searches for a resource stream that is both concessional and predictable. In fact, they secure funds, not their disbursement. None of the proposed international financing mechanisms solves the problem of the low effectiveness of current foreign aid.

By removing development assistance financing from the budgets of donor countries, they only, in effect, diminish accountability mechanisms both in donor and in recipient countries. "Yet", the Special Rapporteur writes, "eradicating hunger and poverty is not only a question of finding resources. It is also a question of challenging structural injustices and inequities of power which allow human rights abuses to take place." Bypassing the State in donor and recipient countries weakens in the long run the capacity of public action to build equitable social relations. In the end, the fulfill-

ment of the right to food will be fostered if international cooperation mechanisms work toward strengthening the States' responsiveness and public scrutiny in the North and the South. In this respect, the principles of good donorship are a necessary complement to implementing good governance programs and fighting corruption in developing countries. The elements of good donorship identified by the London-based Overseas Development Institute (ODI) include country leadership and ownership, capacity-building for the long-term, harmonization and simplification, transparency and information sharing, predictability, and subsidiarity.

Fine-tuning international responsibility

The Special Rapporteur lays out the contours of extraterritorial obligations in respect to the right to food. It includes an obligation to respect the right to food by curtailing policies such as embargoes, subsidies, or structural adjustment programs, which undermine livelihoods in developing countries. There is also an extraterritorial obligation to protect the right to food

According to the SR, eliminating hunger and poverty is also about "challenging structural injustices and inequities of power which allow human rights abuses to take place." Bypassing the State in donor and recipient countries weakens in the long run the capacity of public action to build equitable social relations.

through the regulation of corporations and non-state actors under the State's jurisdictions with a view towards protecting inhabitants in other countries.

Finally, Governments have an obligation to support the realization of the right to food in poorer countries including through the facilitation of the realization of this right and the provision of assistance in accordance with States' human rights obligations. However, even with this minimal requirement, a number of problems arise in the context where the Government concerned by violations of the right to food is actually the source of these violations or when it is unwilling to acknowledge them.

First, the fulfillment of extraterritorial obligations in terms of the right to food can be seriously compromised by the unwillingness of the Government where violations occur to acknowledge them. This has been the case in 2004 in Zimbabwe, where President Mugabe has denied food shortages and forecasted bumper harvests. Indeed, the Washington Post reported in July 2004, that food supplies remained idle in warehouses. UN agencies, the Post reported, were scaling back their programs and shifted to targeted programs at schools, orphanages, and medical clinics. The Government of Zimbabwe has also imposed tighter restrictions on NGOs, including international agencies such as Save the Children, World Vision and Care, accused of interfering with national affairs and supporting the opposition. Only this month, President Mugabe has acknowledged during a political rally the fact that the country would face food shortages. We are left to wonder if it only takes this admission for the international community to meet its incipient obligation to protect the right to food.

Second, the provision of assistance could be possible only in violation of humanitarian principles. In North Korea, international donors have continued to provide food aid based on needs in spite of the lack of humanitarian space. In a testimony to Congress in February 2003, the USAID Administrator, Andrew Natsios, who incidentally wrote a book on the North Korean famine, noted that "after eight years of international assistance, the Government of North Korea has done little to

reform the destructive policies that created one of the worst famines in the late 20th century. At the same time, the humanitarian community in North Korea must still operate in an environment that violates almost every principle upon which humanitarian assistance is based. In fact, out of all of the countries in which WFP operates, North Korea stands alone in its wholesale refusal to adhere to internationally recognized humanitarian standards." In September 1998, Doctors Without Borders (MSF) pulled out of North Korea because the Government of North Korea was manipulating humanitarian aid.

In March 2000, Action Against Hunger (ACF) in a report explaining its own decision to withdraw from North Korea stated: "By confining humanitarian organizations to the support of (...) state structures that we know are not representative of the real situation of malnutrition in the country the authorities are deliberately depriving hundreds of thousands of truly needy Koreans of assistance. As a consequence any humanitarian assistance provided is only helping the populations which the regime has chosen to favour and support, and which are certainly not the most deprived."

Since donor States act through UN and NGO partners in situations of complex emergencies, the preliminary criterion to establish the fulfillment of national and extraterritorial obligations in relation to the right to food should be the existence of a humanitarian space, which does not compromise the humanitarian principles of impartiality, neutrality and independence of relief aid.

Seeing the 'fourth world'

To conclude, we must stand cautioned against technical solutions that weaken the State and accountability mechanisms, and argued that extraterritorial obligations in relation to the right to food have to be grounded in terms of humanitarian principles, with a view towards enlisting States and civil society in the North and the South, and promoting a bottom-up approach to the fulfillment of the right to food. A bottom-up strategy relies on the mobilization of a global constituency for the right to food that would not only find famines but also hunger. Raising the profile of the right to food, involves sensitizing public opinion in the richest countries to the problem of hunger through increased awareness of hunger at home.

The Special Rapporteur provides a comprehensive assessment of threats to the right to food ranging from Ethiopia to North Korea. The Special Rapporteur's interest in US foreign policy could find an interesting outlet in concretely addressing food insecurity in the US itself. Indeed, Ziegler has eschewed the problem of hunger in industrialized economies. It is astonishing, however, to find that the wealthiest country in the world has not eradicated hunger. The US Department of Agriculture estimates that about 12.6 million people, representing 11.2 percent of the American population, suffered from hunger in 2003. According to UNICEF's Innocenti Research Centre, the USA is, alongside Mexico, the worst performer in terms of child poverty among OECD countries in 2005. Looking carefully at hunger even in the richest places is an imperative to advance the right to food and promote its universal application.

There is no question that violations of the right to food in developing countries affect a larger number of people and affect them more deeply than in industrialized countries. The world has relied for too long, however, on pictures of emaciated children in Africa to mobilize international assistance. The most effective way to build a constituency for the right to food that will support international cooperation and more equitable social relations is to foster awareness of hunger by exposing the 'fourth world' in the richest countries as well.

SAPs: Limiting options for development

SAPs are gradually being accepted as inevitable, despite the human rights consequences

DANIEL AGUIRRE

FOR over two decades human rights advocates and development practitioners have been concerned with the negative consequences of the Structural Adjustment Programmes (SAPs) initiated by the international financial institutions (IFIs) despite the assurances that the economic growth facilitated by these SAPs would lead to an enabling environment for human rights. The economic benefits of these programmes have not been conclusively shown while the negative affects on the human rights of the poor and marginalized within nations adopting SAPs, particularly concerning economic, social and cultural rights, have been well documented.

This article will discuss the failure of the international community to act on the repeated counsel of human rights practitioners and development experts within the United Nations system. Despite evidence of the violation of international human rights law resulting from SAPs, they appear to have been accepted as inevitable and part of the global development process. The UN Commission on Human Rights now focuses on discussing the human rights consequences of the surrounding harmful results of such policy, rather than criticizing the SAPs themselves. These policies have undermined the legitimacy of the IFIs and the international economic order in general within the developing world. By associating themselves with such policy, the human rights mechanisms within the UN risk the same fate.

The prevalent development paradigm

The "free market" global trade system based on deregulation, liberalisation and competitiveness has been presented as the only option for development. This proposition is based on economic arguments that hinge on the success of the global trade system and its ability to enhance human rights through economic growth. It is avowed that free trade is essential for the enjoyment of human rights. This system promotes self-interest, which raises the standard of living for all and should provide the funds necessary for the realization of human rights. It is assumed that this growth leads directly to improvements in the enjoyment of Economic, Social and Cultural Rights (ESCRs). This neo-liberal argument claims that human rights are provided for by macroeconomic growth.

The details of the economic failure of SAPs are beyond the scope of this article, which focuses on human rights law and the role of the Commission, but are sufficiently convincing. Despite these failures, the IFIs relentlessly pursue this agenda. SAPs aimed at the economic sector have become a system for the neo-liberal restructuring of the political and social organization of developing societies. The IFIs insist that corruption is the reason for the failure of SAPs and that only through good governance could an enabling environment for economic activity, and therefore human rights, be realized. This has allowed the IFIs to rapidly expand into all aspects of developing world governance.

Initially the IFIs were reluctant to be drawn into the debate on human rights. Most reforms to SAPs retain to the core of the old policy despite the warnings from the UN, civil society and human rights activists. The preference remains for the SAPs applied in the 1980s, ameliorated through poverty-alleviation programs. The failures of the SAPs led to a deepening of the economic conditionality agenda. However, due to the rise of human rights discourse within the international community, human rights issues have been forced on to the agenda of the IFIs. However, much of this programme concerning human rights is rhetorical, showing more concern for investors rights by concentrating on predictability and stability, Western liberal ideologies are specifically forwarded by the IFIs through SAPs as they provide stable and reliable investment opportunities. In doing so,

the IFIs directly influence human rights law policy making in the developing world. The IFIs still take a purely economic approach to governance and development. This has resulted in contradictory policies concerning human rights.

The IFIs have implemented "adjustment with a human face" incorporating social protection designed to shield the poor from SAPs. These programs are not sufficient to counter the negative consequences of SAPs and are often viewed as appeasing the poor only. The Heavily

SAPs can't be helped?

THE 2004 report of the Independent Expert (E/CN.4/2004/47) does not criticize SAPs, despite the convincing proof presented over the last decade of their detrimental effects. Instead, the report reviews the HIPC initiative and its contribution to ESCR and attempts to create linkages with Trade and AIDS issues. While this is a significant pursuit, human rights advocates would expect to see a strong condemnation of the regime that insists upon SAPs even in the face of their failure to promote human rights for over two decades.

The 2005 report (E/CN.4/2005/42) focuses on positive changes in SAPs alone. In this light, the documents are disappointing as they do not mention the validity of the foundation of the development problem but merely provide discussion on the merits and drawbacks of the IFIs attempts to soften the impact of SAPs through the HIPC agenda. The report seems to indicate that the international community accepts SAPs as inexorable and is prepared to work with whatever the IFIs will offer in terms of promoting a rights-based approach to development. By accepting that the SAP system is inevitable and concentrating only on the fallout of such a system, the Human Rights Commission is legitimizing it and becoming a tool for capitalist market expansion.

Indebted Poor Countries Initiative (HIPC) was designed to address the fact that these countries are unable to implement structural adjustment as such policy has exacerbated economic problems and made it more difficult to achieve human rights realization. The goal of the HIPC is ostensibly debt relief and poverty reduction. However, in order to qualify, the country must conform to a SAP. This undermines the initiative, which has been touted as an exit from debt promoting growth and the release resources for social expenditure. The HIPC is limited and can only work if the causes of socio-economic inequality are addressed by debtor countries and the international community. This requires a critical look at the system of development based on SAPs that has brought about and exacerbated human rights problems in developing nations.

The international community's response

The disappointing fact remains that this is all common knowledge within human rights development discourse. The United Nations human rights mechanisms have repeatedly expressed concern at the human rights aspects of SAPs and the international economic order that promotes such initiatives. The consequences of SAPs for human rights were a continuous theme of the late 1990s in all charter based UN agencies. In fact, as early as 1992 the Commission was informed that despite positive changes in SAPs, the structural adjustment process continues to have a daunting effect on human rights and upon the capacity of nations to fulfill and respect human rights. The report cited the impact of the adjustment process on national sovereignty; the issue of participation; the integration; the lack of viable alternatives; the lack of protection for marginalized groups and of discussion concerning the human rights affects of SAPs as top priorities concerning human rights. Regrettably, all of these concerns remain valid 13 years later.

The benefits of a globalized economy cannot be reaped through rapid liberalization alone. To make the most of growth there has to

be human rights policy. Governments have to implement policies for social development and protection, poverty eradication, and income distribution. This remains difficult while attempting to conform to a SAP with meager resources. These concerns have not been addressed appropriately in human rights terms and the international community remains mired in precisely the same debate, impotent in the face of a dominant economic system. The Commission, that once mandated its organs to argue strongly against the SAP regime, now fails to encourage dissent. It is outrageous that these issues remain despite the endeavors of practitioners, activists and academics to address them.

The momentum gained in the 1990s and early 2000s by the human rights bodies of the UN in criticizing SAPs has been lost. The last year of debate has been overshadowed by the debt issue, which admittedly has drastic human rights consequences. However, most of these debts were accumulated under the auspices of the IFIs' structural adjustment programs themselves. By concentrating on the human rights consequences of debts, which occur as a result of a development system bent on economic growth at all costs, those in the UN human rights community concerned with development are missing the point completely. A development system that puts economic concerns such as liberalization, deregulation and privatization above a human rights-based approach is permanently incongruent with the protection, promotion and fulfillment of all human rights interdependently.

Conclusion: The SAPs debate in 2005

The Human Rights Commission no longer seems concerned with taking action to prevent the well documented abuses of ESCR associated with SAPs. Administrative and logistical concerns have hampered the efforts as well as ill-defined mandates and organization of the independent expert's functions. Moreover, operational delays are unacceptable considering the magnitude of the violations in question. CHR resolutions no longer repeat the same points, reaffirming the human rights dimensions of SAPs and have no recommendations with little guidance for action concerning the IFIs.

In fact, the latest report of the Independent Expert on the effects of structural adjustment policies on the enjoyment of human rights (E/CN.4/2005/42) insists that all problems with SAPs have been solved! Perhaps this reflects the impotence of the Commission regarding the international community, the IFIs and its development policy. Moreover, by adding foreign debt to this mandate in 2002, the task becomes more convoluted. These are two enormous issues in terms of the ESCR of millions of people and should be prioritized separately and with a higher level of importance. These problems are apparent in the reports of 2004 and 2005 (see box).

Poverty, marginalization, and the lack of legitimacy remain the most daunting hurdles within international development discourse. Many lessons can be learned from ESCRs, the Right to Development and a Rights-Based Approach. However, none of these systems can be utilized while the current approach to structural adjustment is entrenched as absolute. This approach must be significantly altered. The Human Rights Commission is looked upon as a legitimating source for human rights-based critic of the international system of development. Six years ago, organs of the Commission's human rights mechanisms called for openness in the policy making of the IFIs to fundamental transformation of unjust economic and political power structures despite resistance from dominant social and political groups within the global economy. Where are those voices in 2005?

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ITALY

Reform bid threatens judicial independence

A new bill permits the interference of the executive in the promotion and discipline of the judiciary's members

ANNA SCHENK

With inputs from ANNIE TURNER

THE constitutional warranty of the independence of the judiciary in Italy is under threat by judicial reforms proposed by a bill recently introduced and ratified by Prime Minister Silvio Berlusconi's government. The bill permits the interference of the executive into the promotion and discipline of the judiciary's members while simultaneously weakening the power of the independent, constitutionally-established body currently regulating Italian magistrates. There have been both domestic and international objections to the bill, with the most recently publicised that of President Carlo Azeglio Ciampi's refusal to ratify the reforms.

Outline and anticipated ramifications of the proposed reforms

The primary argument of opponents to the proposed reforms relate to a concern that the independence of the judiciary will be undermined by statutorily-endorsed executive interference. Pursuant to Article 104, the Italian judiciary has a constitutionally-entrenched right to be constituted as "an autonomous and independent organ" that "is not subject to any other power of the State." This aligns with Article 1 of the United Nations Basic Principles on the Independence of the Judiciary, which states that the "independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or law of the country." The reforms proposed by Prime Minister Berlusconi's government fail to uphold this element of judicial independence.

In a United Nations press release dated 17 December 2004, Leandro Despouy, the Special Rapporteur on the independence of judges and lawyers of the United Nations Human Rights Commission, outlined objections against the proposed reforms. These fundamental criticisms have been adopted as a basis of analysis for the purpose of this article.

Interference of the Executive

Pursuant to the proposed bill, the Minister of Justice will affect the Chief Prosecutor's nomination. The reforms propose a system of case management whereby both case delegation and case withdrawal to the Deputy-Prosecutors is regulated by the Chief Prosecutor. This hierarchical structure, ultimately presided over by the executive, displays a disregard for the separation of powers doctrine and leaves the system wide open for exploitation by the Executive. The Special Rapporteur believed it would have the effect of "reduc[ing] the autonomy of Deputy-Prosecutors and pav[ing] the way for possible Government interference (sic)."

Weakening of the power of the CSM

Currently the judiciary is self-governed by a constitutionally-mandated and independent Higher Council of the Judiciary (Consiglio Superiore della Magistratura - the CSM). Under the reforms, the role and powers of the CSM will be weakened. Pursuant to Article 105 of the Constitution, the CSM currently attends to the judges' recruitment, assignments, transfers, promotions and disciplining. If the reform is successful, both the promotion and disciplining of magistrates will be affected. The CSM will lose "part of its constitutional competence over the promotion of magistrates" which the Special Rapporteur believes introduces a risk that proposed qualification exams "may be used as a means for unduly interfering with magistrates' career". The situation will be exacerbated by the role that the Minister of Justice is to be given in disciplinary proceedings over members of the judiciary. This exertion of political influence over the judiciary is a violation of the funda-

mental constitutional requirement of judicial independence.

Increase of judicial backlog

The method of the proposed reintroduction of exams may have a potentially "negative impact on an already serious judicial backlog." According to a report published 11 December 2001 by the Italian Ministry of Justice, more than 4,700,000 cases were pending and about 90 percent of crimes committed in Italy were going unpunished. Article 6 of the European Convention on Human Rights states that "everyone is entitled to a fair and public hearing within a reasonable time" and Italy is notorious for being the state that has received the largest number of sentences from the European Court of Human Rights for the violation of this article. Arguably any increase in the number of bureaucratic procedural requirements for admission into practice will be of great detriment to Italy's existing inefficient judicial system.

Ignoring the need for autonomous investigating magistrates

Currently, "Italy is the only democracy in which the same corps of independent career magistrates performs both judicial and prosecuting functions." Under this system and the supervision of the CSM, a practitioner could "switch from the function of an attorney to that of a judge and vice versa." The proposed reforms establish a system whereby practitioners must choose whether to become a prosecutor or judge within five years of qualifying. It is suggested by *The Economist* that this "is designed to reduce the chances of collusion in trials between participants who should be entirely independent of each other." Two arguments have been formulated against the proposed division; defence lawyers claim there should be "an even sharper break between prosecutors and judges" while others believe that in a country like Italy, "the need for strong, autonomous investigating magistrates exceeds the risk of occasional abuses."

Objections to the proposed reforms

On 16 December 2004, the bill was vetoed by President Carlo Azeglio Ciampi, who stated that parts of the reform were "blatantly unconstitutional". In a United Nations press release, Leandro Despouy, the Special Rapporteur on the independence of judges and lawyers of the United Nations Human Rights Commission, welcomed President Ciampi's veto of the proposed reform. In a letter dated 15 December 2004 addressed to President Ciampi, Despouy condemned the reforms, stating that they "represent a worrying limitation to the guarantees of independence".

Labelled as "a rare political move" President Ciampi's act has politicised the sentiment expressed by Italy's judiciary. In protest of the proposed reforms, a strike was called by the National Magistrates' Association, whose members account for 90 percent of Italy's judges and prosecutors. They claimed that 80 percent of judges and prosecutors refrained from attending work during the one-day strike. This was the third strike over the past year in protest against the ratification of the bill. In further objection, over half (4,500) of Italy's 8,000 magistrates signed a letter claiming that the new reforms would make them "less free and independent".

Both the United Nations Human Rights Committee (UNHRC) and the Committee of Ministers of the Council of Europe undertake close scrutiny of Italy's judicial system and its consistent failure to maintain adequate human rights protection in this area.

The UNHRC has criticised the present government's political attacks on the judiciary, the practice of holding offenders for lengthy periods in preventative detention and the prac-

tice of relying on the defendant's testimony. The inattention to the rights of the abused, and Italy's failure to develop a sound rights-based legal culture are further issues of strong critique.

On 8 December 2004 the Committee adopted two interim resolutions to assess Italy's compliance with several judgements of the European Court of Human Rights. They dealt with the Italian authorities' failure to enforce domestic judicial eviction decisions in favour of dispossessed apartment owners and the violation of a freemasons' association's rights regarding restriction of its members from accessing posts in the civil service of the Marches Region.

Incentive for the introduction of the reforms

It has been suggested by opponents to the bill Prime Minister Berlusconi was motivated by retribution against the judiciary in introducing the reforms. In response to a 2003 conviction against Cesare Previti for the paying of bribes and the buying off of judges, Prime Minister Berlusconi stated that "[t]he aim of these judges is not to establish justice, but instead to strike at those who have a mandate to rule Italy." Further, Prime Minister Berlusconi has previously used his parliamentary majority to change laws relating to three of the four proceedings that were hanging over him when he took over as head of government.

The future of the reforms

Despite international and domestic criticism, Prime Minister Berlusconi stated that the bill would be ratified by February. Subsequent to President Ciampi's veto, the bill has returned to Parliament, where it is likely that it will be ratified a second time. President Ciampi cannot refuse to sign the bill again. The most probable outcome will be an enforced acceptance of an undemocratic violation of the doctrine of the separation of powers between the Italian judiciary and the executive.

Around the WORLD

TURKEY: Rights advisor resigns

The chairman of the Turkish prime minister's human rights advisory board has confirmed to the BBC that he will resign from his post. Yavuz Onen, who is leaving with five others, has bitterly criticised the attitude of the Turkish government towards human rights. His departure is an embarrassment for the government.

...The advisory board and the government had clashed before, following a report from the board that criticised the country's attitude towards its minorities and questioned some of the fundamentals of Turkey's constitution.

The government effectively ignored it; at one point, locking it out of its own offices.

- BBC News (Istanbul), 26 March 2005

NEPAL: Making it easy

Last month, Nepal's King Gyanendra seized power in the capital Kathmandu, imprisoned political party leaders and vowed to crush the nine-year old Maoist insurgency that has killed 11,000 people and crippled the economy.

In public at least, the Maoists have taken it all in their stride.

"After the king's move it has become easier," said Comrade Adiga, Nepali for Firm. "Before, the political parties were creating all sorts of confusion. But now they are not there. Our fight is now head-on with the king and we think we can win it."

- 'Nepal's Maoists take heart from king's power grab', Reuters, 22 March 2005.

What law for Guantanamo?

CLAIRE TIXEIRE

FOR the whole 26 months we were detained there, we were told, when we asked what our rights were, "you have no rights, this is Cuba," stated former Guantanamo detainees Shafiq Rasul and Asif Iqbal.

This was Cuba, but this was also Camp X-Ray, a United States detention center at the Guantanamo Bay, Naval Base. And, pursuant to a 1903 Lease Agreement between Cuba and the United States, the latter exercises "complete jurisdiction and control" over Guantanamo, while the former retains "ultimate sovereignty." Two key questions have been raised when trying to establish what the Guantanamo detainees' rights are: 1) who has jurisdiction over the non-U.S. citizens held at Guantanamo to determine the lawfulness of their detention? And, 2) what is the body of law applicable to these detainees?

It was only after determining which courts had jurisdiction to hear claims on behalf of the Guantanamo detainees that the question of what rights the detainees have could be answered.

There is nothing new in saying that there was a before and an after September 11, 2001. Unfortunately, an illustration of this has been how the U.S. Administration departed from very well established principles of law in order to obtain better intelligence from suspected terrorists. As a result of these new policies, fiercely defended by administration lawyers, hundreds of individuals vaguely suspected of having links with terrorist groups such as al-Qaeda, were seized abroad and brought to Guantanamo, to serve indefinite detention. There, the detention conditions were such as to ensure that no interference from the outside world was possible, including judicial scrutiny.

The Bush Administration decided that all detainees held at Guantanamo would see their status fall under the category of "enemy combatant," denying their right to be given the prisoner of war status recognized by the Geneva Conventions. They were never charged of any wrongdoing, permitted to consult counsel, provided access to military or civilian tribunals and were never informed of their rights under domestic or international law. Not even military lawyers were allowed on the base. No one was able to supervise the interrogations and conditions of detention, raising serious doubts as to the humane treatment of the detainees.

While the Government maintained that the Geneva Conventions do not apply to Guantanamo and that the federal courts do not have jurisdiction over the detainees, it never put forward another legal regime. Guantanamo became known as a "lawless enclave," "a prison beyond the law."

Back to the Magna Carta: *Rasul v. Bush*

As early as February 2002, shortly after the first detainees were sent to Guantanamo, and despite the widespread unpopularity of the cause, lawyers from the Center for Constitutional Rights (CCR) launched a difficult litigation in the United States. They filed petitions seeking writs of *habeas corpus* on behalf of four Guantanamo detainees in United States District courts, pursuant to 28 U.S.C. Section 2241, under which the detainees' lawyers argued that the United States had a duty to establish the lawfulness of the detention by due process. CCR and their co-counsel challenged the Presidential Executive Order of November 13, 2001, which authorized indefinite detention without due process of law as unconstitutional and a violation of international law, since the protection against arbitrary detention was guaranteed by the U.S. Constitution but also by international law and by virtually every nation's domestic law.

In response, and among other arguments, the U.S. government argued that the detentions

were based on the President's common law war powers and that the matter was a political question not justiciable by the courts. From a stricter legal point of view, it argued that the federal judiciary was powerless to review the prisoner's detention because they were foreign nationals

Back to basics

THE Supreme Court quoted Justice Jackson's reference to Magna Carta in a 1953 case: "Executive imprisonment has been considered oppressive and lawless since John, at Runnymede, pledged that no free man should be imprisoned, dispossessed, outlawed, or exiled save by the judgment of his peers or by the law of the land. The judges of England developed the writ of *habeas corpus* largely to preserve these immunities from executive restraint." *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 218-219 (1953) (dissenting opinion). Article 39 of the Magna Carta, sealed by King John of England in 1215 provided that "No free man shall be taken or imprisoned or deprived of his property or outlawed or exiled or in any way destroyed, nor will we go or send against him, except by the lawful judgment of his peers or by the law of the land."

imprisoned in Cuba, beyond the "ultimate sovereignty" of the United States.

After two successive failures to win their arguments in the District of Columbia, CCR lawyers and their co-counsels successfully asked the U.S. Supreme Court to give its final

The work of the lawyers defending the detainees in Guantanamo Bay is to ensure that each can have the opportunity to challenge his detention should he desire to do so, but also to protect the rule of law and due process in a country that claims to be a model of democracy.

ruling. On June 28, 2004, in *Rasul v. Bush*, the Supreme Court decided, by a 6-3 margin, that U.S. courts did have jurisdiction to consider challenges to the legality of the detention of foreign nationals captured abroad and held at Guantanamo Bay, even though Cuba had "ultimate sovereignty" over the Naval Base. Justice Kennedy explained how the "unchallenged and indefinite control" that the United States exercised over Guantanamo "had produced a place that belongs to the U.S." The Court further held that since the *habeas corpus* statute does not differentiate between U.S. citizens and aliens and since the federal courts have jurisdiction over citizens held at the base, they should also have jurisdiction over the claims of aliens.

In addition, the Justices agreed that such a ruling was "consistent with the historical reach of the writ of *habeas corpus*" whose roots go back to Magna Carta (see box: 'Back to basics').

After this landmark decision, a plethora of events had to follow. The doors of federal courts were now open for foreign detainees held in Guantanamo for more than two years to ask the United States why they were being held.

How to Make *Rasul* Meaningful?

Following *Rasul v. Bush*, lawyers were finally entitled to file *habeas* petitions on behalf of Guantanamo detainees and CCR did so in the District of Columbia, with the support of many new co-counsels. They asked the courts to "declare that the prolonged, indefinite, and restrictive detention of Petitioner[s] is arbitrary and unlawful" under both the U.S. Constitution and international law.

Also, nine days after the issuance of the *Rasul* decision, the Pentagon ordered the establishment of "Combatants Review Status Tribunals" (CSRTs) at Guantanamo, allegedly to review each detainee's status as "enemy combatant".

The issue for U.S. judges now is whether or not these new tribunals obviate the need for *habeas* review and satisfy the requirements of due process. Indeed, in these post-*Rasul* litigations, which are still ongoing, two kinds of substantive issues are raised and deeply linked. Firstly, what types of hearings should petitioners get in order to challenge the legality of their detention? And secondly, what rights do the foreign detainees have, under what body of law? Are they accorded the protections of the Geneva Conventions, of the American Constitution, of international law? The more rights they will be entitled to enjoy, the better the due process of their hearings will have to be.

According to the detainees' lawyers from CCR and the many new lawyers now also involved, in order to make *Rasul* meaningful the detainees should be given real factual hearings in Federal Courts. They should have access to legal representation and have the right to be informed of the charges against them, to present evidence on their own and to cross examine their accusers. However, the CSRTs are not neutral tribunals. In these proceedings the detainees have no right to assistance of counsel, but are instead assigned U.S. military personnel as "personal representatives" having no confidential client-attorney relationship. No evidentiary rules have been established. The detainees have no means of obtaining and presenting evidence. Neither the members of the tribunals nor the convening authority are neutral decision makers as they belong to the U.S. Armed Forces.

According to the U.S. government, these tribunals are enough to dismiss all *habeas* petitions and, while the Guantanamo detainees now have access to US courts, they have no rights they can enforce before these courts.

Two different District Judges were asked to reject the Bush Administration's efforts to dismiss 12 *habeas* petitions, resulting in two almost perfectly opposite decisions. Judge Richard Leon ruled on January 20, 2005 in favor of the government, holding that *Rasul* did not provide the detainees a legal basis to be freed. He held that "the extent to which these rights and conditions should be modified or extended is a matter for the political branches to determine." Interference from the courts would hinder "the President's ability to protect our country from future acts of terrorism." According to him, the foreign detainees had no recognizable constitutional rights, which is highly questionable in the light of the *Rasul* decision. The judge also held that the Geneva Conventions were not self-executing in Guantanamo.

Eleven days later, in striking opposition to this ruling, District Judge Joyce Hens Green held the CSRTs plainly illegal. She reaffirmed that the foreign detainees could not be imprisoned outside the law and that they had a constitutional right to a fair hearing. She further stated it was illegal for President Bush to determine that an entire group of detainees were not prisoners of war protected by the Geneva Conventions, and that intelligence obtained under torture and coercion could not be used to justify the detainees' imprisonment.

Both of the decisions having been appealed, the *habeas* petitions will be heard together in the Circuit Court of the District of Columbia in the coming months. In the meanwhile, on February 11, 2005, in order to spearhead the effort to obtain due process for each detainee still held at Guantanamo, the Center for Constitutional Rights filed a *habeas* petition on behalf of the hundreds of unrepresented individuals whose identities are still unknown (*Does 1-570 v. Bush*). The work of the lawyers defending these detainees is to ensure that each one of them can have the opportunity to challenge his detention should he desire to do so, but also to protect the rule of law and due process in a country that claims to be a model of democracy.

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Zimbabwe: A one-sided conversation?

KAAVYA ASOKA

THE High-Level Segment of the 61st Session of the UN Commission on Human Rights (CHR) kicked off with the speeches of several distinguished representatives of member-states and other countries. Some speeches were of course more distinguished than others, particularly for the calibre of their international diplomacy - like that of the Honorable P.A. Chinamasa, Minister of Justice, Legal and Parliamentary Affairs, Zimbabwe. With the parliamentary elections coming up in a few short days (31st March 2005), we thought it only fitting to clarify some of the points made by Zimbabwe's representative, rather than to let him get away with what seemed like a one-sided conversation.

"Our Government is doing its best to ensure that our people are able to exercise this sacred right (to vote) freely and peacefully."

In January 2005, Zimbabwe African National Union-Patriotic Front (ZANU-PF) supporters in the Chipingi South district of Manicaland violently attacked and torched the homes of Movement for Democratic Change (MDC) sympathizers, and ruthlessly beat a number of adults and children. Amnesty International suspects that at least 40 persons have fled to Mozambique, afraid to return for fear of being attacked again upon their return.

Residents of Chitungwiza, another suburb near Harare, live in the constant fear of being attacked by ZANU-PF supporters and youth militia, who operate in the area with police complicity, and therefore complete immunity. Between January and March 2005, at least six MDC candidates have been arrested or detained.

Goodrich Chimbaira, a candidate for the MDC, was arrested in January 2005 for supposedly conducting an illegal meeting at his residence. He was charged under the infamous Public Order and Security Act (POSA), that requires the holding of public meetings to be registered with the police.

On 16 February 2005, the police raided an MDC training session and arrested the MDC Director of Elections, Ian Makoni, who was also charged under POSA.

Thirteen campaigners for the MDC were arrested and fined Z\$25,000 in February for insulting the Deputy of Foreign Affairs by displaying their support for the opposition party.

Roy Bennett, member of parliament and candidate for the MDC, was sentenced to 12 months in prison for assaulting Justice Chinamasa in a debate on land reform last year, in retaliation for racist comments made against him by Chinamasa. Bennett's farmhouse has repeatedly been occupied by ZANU-PF members in the past, and Chinamasa has been quoted as saying that Bennett will never enter his home again.

"...we have effected Electoral Reforms whose overall effect has been a complete overhaul of the institutions, processes and systems relating to Elections. This has rendered more transparent the manner we conduct our elections."

The escalation of violence and violation of human rights - through state-sponsored intimidation and attacks on the independent media, opposition party supporters and other human rights activists and defenders - is a well-documented, typical run-up to election time in Zimbabwe. The arbitrary arrest and torture of dissenters is common not only before and during elections, but even in the aftermath.

The members of the opposition MDC and their supporters have faced severe harassment at the hands of the ZANU-PF through their manipulation and abuse of the police force, judges and militia. National laws buttress these phenomena - the Public Order and Security Act (POSA, 2002), the Access to Information and Protection of Privacy Act (AIPP, 2002) and the most recent wonder, the NGO Bill, are serious

violations of the rights to freedom of assembly and association, expression and information guaranteed by international human rights standards. (see box)

It is against this backdrop that in August 2004, Zimbabwe adopted the Southern African Development Community (SADC) guidelines governing democratic elections, and integrated them into the subsequent electoral reforms that were implemented. On paper, Zimbabwe has indeed effected electoral reform. Reforms include conducting the entire voting process within a single day to minimize possibilities for tampering, increasing the number of polling stations, the creation of an electoral court to undertake disputes between individuals or political parties regarding polling, and the appointment of an independent electoral body called the Zimbabwe Electoral Commission (ZEC), that would be responsible for conducting and monitoring elections. But superficially changing a few laws and throwing in a transparent ballot box does not address the atmosphere of fear and violence that has characterized elections in Zimbabwe for at least half a decade, and the corruption that has permeated the electoral processes. The ZEC, for example, while an independent

Clampdown

THE NGO Bill, drafted in 2004, curtails access to foreign funding to all kinds of civil-society groups that deal with human rights or governance issues, and is a direct violation of the right to freedom of association, a crucial issue given the levels of corruption in Zimbabwe's governance. The African Commission on Human and People's Rights in addition to several NGOs have called for several of these laws to be amended to conform to international human rights standards, but to no avail.

body, will be monitored by the Electoral Supervisory Commission (ESC), its predecessor, that has now been boosted to the status of monitoring the electoral commission instead of the electoral process. Of course, the ESC is stocked with government representatives.

Reginald Matchaba-Hove, Chairperson of Zimbabwe's Election Support Network (a coalition of NGOs monitoring the election), and Jessie Majome of the National Constitutional Assembly (another coalition of Zimbabwe's civic society and rights groups) have already contended that many of the electoral reforms, such as voter education, are useless, as they come too late to have any effect whatsoever. Amnesty International has publicly declared, in a report dismissed by President Robert Mugabe, that free participation in the election process will be impossible. Human Rights Watch, who published a recent report on the parliamentary elections, has also concluded that the election can in no way be free or fair.

'We have invited many foreign governments, institutions and individuals to observe us as we vote on 31st March 2005.'

Neither the Southern African Development Community (SADC), the body behind the SADC guidelines for democratic elections that Zimbabwe supposedly respects, nor the Electoral Institute of Southern Africa (EISA), supposedly two of the 'most credible' monitoring institutions with regards to elections in the region, will be attending the elections on 31 March 2005, much to the distress of observers. The European Union (EU) has of course been banned outright, while the United States was simply not issued an invitation. The Commonwealth, of which Zimbabwe was a part till 2003, has also not received an invitation. In short, any group that has been critical of the government in the past, has not been invited to monitor the elections - such as the Congress of South African Trade Unions (COSATU) and the Electoral Institute of Southern Africa.

The circuitous and expensive process of foreign countries, African countries and NGOs applying and receiving accreditation from the ESC, has dissuaded many and even prevented

interested groups from attending the elections as monitors. As far as comments by the few observers go, Tony Leon, head of the South African opposition Democratic Alliance (DA) and member of the South African parliamentary observer mission to Zimbabwe has deemed the electoral process as nothing short of "alarming", with the wide-spread intimidation of voters and opposition party members in the weeks preceding the elections. Another South African party, the Independent Democrats, also observing the elections, simply withdrew from their duties as they felt it was a waste of their time and money to bother with an election which was patently obvious to them would be neither free nor fair.

'British interference in our internal affairs commenced with their financing the founding of the opposition party and has continued on with their partisan hostile broadcasts beamed to the population of our country to sow dissent and lawlessness with the goal of unconstitutionally changing our government.'

The absurdity of this remark in the light of ZANU-PF's combined strategy of indoctrinating, threatening and bribing Zimbabweans, can only be highlighted by a recent news story about a local Zimbabwean woman that appeared on 21 March 2005. The headline read 'Parliamentary election pits "Tony Blair" against Robert Mugabe' A 65-year old subsistence farmer in rural Matabeleland, Thokozile Hlatshwayo told IRIN News, "Tony Blair is one of the whites we defeated in 1980, and I wonder what makes him think that he can win the election...If he is voted into power we know that he will take away our land and return it to the minority population.'

Hlatshwayo's misunderstanding, of course, stems the ZANU-PF rhetoric of the elections being a 'protest against Blair' and its equating, quite arbitrarily, the MDC with 'white minority rule', in addition to its insidious attempt to validate its actions by hearkening back to its confiscation of land from the white minority population and 'redistributing' it to people like Hlatshwayo. The ZANU-PF's aphorism for the election - that voting for the MDC is 'as good as voting Tony Blair into power', is revealed as all the more frightening by this story because it is not only evidence of the sheer power that the party has wielded over the Zimbabwean population through the repressive state-controlled media, but also of the extreme vulnerability of Mugabe's vote-bank, and therefore the fragility of country's future.

'We have faced many challenges recently but we have not failed our people. Our people have faith in their government, which works for their interests.'

International corruption watchdog Transparency International ranked Zimbabwe 114 on a list of 145 countries on its Corruption Perceptions Index (CPI) 2004 with a score of 2.3 on a 10-point scale. In other words, Zimbabwe is perceived by corruption analysis experts to be one of the most corrupt countries in the world, where politicians and public officials are perceived to abuse public resources for their own private gain by the public at large.

'We are who we are.'

This, of course, is true, although perhaps not in a manner in which Justice Chinamasa intended. Zimbabwe is a country plagued by AIDS, food shortages, and severe economic deterioration. Zimbabwe is a country where political violence, government corruption, impunity of public officials, and lawlessness run unchecked. Zimbabwe is a country whose laws violate the rights to freedom of expression and association, to participate in government, and to be free from torture and arbitrary detention. Zimbabwe is a country that violates international human rights standards and its moral obligations to its citizens in every possible way. In short, Zimbabwe is a country that has failed its people in more ways than one.

MALDIVES

Look who's putting up a show

The Maldivian President claims to be setting the stage for reforms; the international community must ensure that it doesn't end up being a farce

ON 25 February 2005, 12 officers of the Maldivian National Security Service (NSS) implicated in the custodial death of 19-year old Hasan Evan Naseem on 19 September 2003 in Maafushi jail, were finally awarded their sentences. Eight officers accused of murder were sentenced to death, and the other four were acquitted. If Evan Naseem's story is any introduction to the perilous human rights situation in the Republic of Maldives, then the conclusion is not difficult to draw. In the Maldives, the lives of the guilty and the innocent are equally valued by the Government - which is to say, not at all.

In a subsequent interview with Mariyam Manike (Naseem's mother) by a prominent Maldivian news agency, she expressed her concern that the sentences given to the convicted officers would be lifted, thus allowing the cycle of impunity for NSS personnel to continue, and consequently sanctioning the unaccounted for deaths of prisoners in Maldivian jails. Evan Naseem's story is one that underscores the precarious human rights situation in the Maldives, where unchecked custodial deaths and torture, impunity of prison and government officials, and the continued use of the death penalty should make it clear that the Government of President Abdul Gayoom has no respect for the lives, rights or freedoms of the citizens of the Republic of the Maldives, and his rule is an affront to the very spirit of democracy. Against this background of government sanctioned murders and delayed delivery of 'justice' (if one can call it that), how much weight can the international community and the citizens of the Maldives really place on Mr. Gayoom's promises of 'reforms'?

The Context of Human Rights Violations

The totalitarian regime of President Gayoom has had an adverse effect upon the human rights of the civilian population of the Maldives. The crackdown on 180 pro-democracy activists in August 2004 despite President Gayoom's promises just two months earlier for constitutional reforms that would significantly reduce his stranglehold upon Maldivian politics is a testimony to the seriousness with which Mr. Gayoom takes international standards of human rights. The incident in August 2004 is but one part of a larger pattern of human rights violations characterized by arbitrary arrests, illegal detentions and detentions without fair trials, police torture, and the severe repression of media and civil dissent. It is not surprising that the recent parliamentary elections - first postponed and then conveniently held in the aftermath of the devastation caused by the tsunami which killed 82 Maldivians and injured many others, in addition to severely debilitating the economy - only assists in upholding the farce of free and fair elections.

Despite being a member of the United Nations and the Commonwealth, the actions of the Maldivian Government under the leadership of President Gayoom go against both the Universal Declaration of Human Rights (UDHR) and the Commonwealth-Harare principles. The Maldives is party to a meager number of UN human rights treaties that does not include the International Covenant on Civil and Political Rights (ICCPR) or the International Covenant on Economic, Social and Cultural Rights (ICESCR), both of which constitute the very foundation of international human rights standards.

In addition, the lack of constitutional guarantees for the freedom of expression, the ban and arrest of members of political parties, the unfettered powers and immunity for the National Security Service (NSS), the lack of separation between the judiciary and the government, and the general corruption that has per-

meated every level of Mr. Gayoom's government make international scrutiny and pressure the only check upon the regime of Asia's longest serving leader.

Stifling Dissent

The pro-democracy rally on 14 August 2004 calling for the release of four reformists jailed earlier in the week, the resignation of hard-line ministers in President Gayoom's cabinet and the resignation of the erstwhile police commissioner of Male, was met by violent police repression, resulting in protestors being baton-charged and tear-gassed. The subsequent suspension of civil

It is critical, now more than ever, that international pressure and unrelenting scrutiny are sustained, in order to ensure that international standards of human rights are integrated into the constitutional reforms promised by President Gayoom

liberties through the imposition of a two-month long State of Emergency and the banning of any views critical of Gayoom's government could only be topped by the arrest of about 200 of the 5000 protestors, which included the former attorney general Mohammed Munavar (also a member of the Citizen's Majlis) and former minister Ibrahim Hussain Zaki. It is hardly incidental that the Emergency delayed the scheduled debate in parliament regarding the constitutional reforms proposed by Gayoom earlier in the year, which would significantly weaken the powers of the executive.

Freedom of Expression

The Republic of Maldives ranks at 157 (out of 167) on Reporters Without Borders' (RSF) press freedom index, thus making it one of the ten countries most restrictive on press freedom. RSF also denounced Gayoom's crackdown on the media, Internet and SMS services, calling the Maldives 'the world's most repressive in terms of freedom of expression on the Internet'. Freedom of expression in the Maldives has also been seriously jeopardised by laws such as those banning speeches and articles critical of Islam, in contravention of Article 25 of the Maldivian Constitution that guarantees the right of citizens to express their beliefs or ideas orally or in written form. The non-existence of independent media within the country is also a telltale sign of the complete suffocation of free expression. Editors Ahmed Didi, Ibrahim Luthfee, and Mohamed Zaki were given sentences of life imprisonment and Fathimath Nisreen was given a 10-year sentence in February 2002 for the publication of an Internet magazine *Sandhaanu*, which was critical of the government.

Arbitrary arrests, torture, custodial deaths

Amnesty International (AI) has condemned the arrest, detention and torture of protestors and political dissidents by the Maldivian Government. The European Parliament tabled a resolution calling for a suspension of all non-humanitarian aid to the Maldives until all political detainees connected with the events of August 2004 had been released. Despite this, numerous accounts of detainees being subjected to torture and inhumane treatment by the police, prison guards, and the NSS were reported. Detainees, including some members of the Special Majlis, have been kept in solitary confinement in cells measuring no more than eight feet by eight feet. AI also reported that prisoners

and detainees have been subjected to severe beating around the head, waist, and genitals, handcuffing for several days, and blindfolding for long periods. In addition, prisoners inhabit unhygienic and cramped prison cells, and are allowed severely restricted visits. The case of Hasan Evan Naseem, mentioned earlier, has become the representative case of systematic torture and NSS brutality, especially in the light of the recent reports brought out by the Dhivehi Observer containing the individual testimonies of doctors and others (600 official statements received altogether) who have publicly confirmed that the cause of his death was due to the severe beatings and injuries he sustained at the hands of prison authorities. In the riots in Maafushi prison sparked by Evan's death, at least 18 prisoners were shot and several killed by prison guards and police who were empowered to shoot on sight by the authorities.

Recent Elections

In the report published by the Human Rights Commission of the Maldives (HRCM), it was concluded that "the elections for the People's Majlis of the Maldives held on 22nd January 2005 was not an election that in general was free, unbiased or removed from undue influence". The general elections, which were postponed due to the havoc wrought by the tsunami, were held amidst what reformists have deemed 'irregularities', such as government intimidation of voters in remote areas of the islands, buying of votes, and threats to withhold reconstruction aid. A news report quoted Mohamed Nasheed, a Maldivian journalist and Chairperson of the Governing Council of the opposition Maldives Democratic Party who has been in and out of prison at the whims of the government and repeatedly tortured on different occasions, as saying that "the people in the rural islands are made to understand, in no uncertain terms, that reconstruction and development of their islands can only be possible if they vote for the government's choice."

The Government has yet to register the Maldivian Democratic Party (MDP) or any other political party, and in the recent elections persisted in placing restrictions on campaigning for elections. MDP supporters were imprisoned prior to the elections, with many pro-reformers withdrawing their candidacies due to government intimidation. Government sanctioned violence is also not restricted to prisoners - Muad Mohamed Zaki and Ziyad are but two of a number of members of the opposition, who have ended up in an intensive care unit due to their injuries from police beatings.

The election commission itself is not adequately independent, as all six members, including the election commissioner, are appointed by the President. Centralised ballot counting in Male by government officials further increases the possibility of tampering. According to a recent survey of voters in the Addu Atoll of the Maldives conducted by the *Dhivehi Observer*, 90 percent of the population was in favour of counting ballots on their own islands instead of sending them to Male.

Inviting observers from the European Union (EU), the South Asian Association for Regional Cooperation (SAARC), the HRCM and the Commonwealth to monitor the electoral process has been viewed by many as an attempt at deflecting critique, and "legitimiz[ing] a grossly unfair electoral process", as sending observers merely on voting day is ineffectual if no attention had been paid to the lead-up to the election - which included throwing half the political opposition in prison, preventing them from being registered, and intimidating them into withdrawing their candidacy. The almost 150 candidates who were forced to stand as

CONTINUED ON PAGE 12

TORTURE

Uzbekistan: Living up to its obligations?

MATTI PRINGLE spells out civil society's efforts to support the UN Special Rapporteur on torture

MORE than two years have passed since the former UN Special Rapporteur on torture, Theo van Boven, characterised the use of torture in Uzbekistan to be systematic. The findings of Mr. Van Boven's mission painted an undeniably wretched picture of the treatment of those individuals deprived of their liberty in the country's detention facilities, despite claims made by Uzbek authorities otherwise.

The elapse of more than two years since the Special Rapporteur's visit should remind the international community that it must do all that it can to ensure that the government of Uzbekistan takes concrete steps to address and eradicate the widespread practice of torture within the country. In 2005, by embarking upon a project to determine the extent to which the UN Special Rapporteur's numerous recommendations have been practically implemented by Uzbek authorities, the Geneva-based NGO - the Association for the Prevention of Torture (APT) (www.apr.ch) - aims to do just that.

Although there should be considerable international interest in Uzbekistan's use of torture and flagrant human rights violations, it appears that Uzbekistan might avoid a United Nations Commission on Human Rights (CHR) resolution once again - yet another year for Islam Karimov to avoid his day in court. At this point delegates and representatives at this year's CHR should pay close attention to the findings of the independent expert on human rights in Uzbekistan, Mr. Latif Huseynov, to find out more about the reality of abuse within the country and Uzbekistan's progress towards fundamental human rights protection.

Straight to the Top

Arguably, the most shocking, if not the most quoted finding in the UN Special Rapporteur on torture's report on his visit to Uzbekistan was that torture or similar ill-treatment were "systematic as defined by the Committee against Torture." The extensive and indiscriminate nature of abuse allegedly committed by public officials was undeniably striking.

According to Theo van Boven's findings, the copious testimonies gathered during the mission were so consistent in their description of torture techniques and the contexts in which they were perpetrated that the pervasive and persistent nature of torture could not be refuted. Such abuses were also as likely to be committed against criminal suspects accused of petty crimes as persons charged with serious crimes, including those allegedly detained for crimes against the state.

Most significantly, there was no doubt in the mind of the Special Rapporteur at which level political responsibility lay for such human rights violations. The level of abuse was believed to go straight to the top. Wherein, "the system of torture was condoned, if not encouraged, at the level of the heads of the places of detention where it takes place" - such as police stations, pre-trial detention centres and prisons - or by the head investigators. The Special Rapporteur's more detailed observations were unequivocally damning:

"If the top leadership of these forces and those politically responsible above them do not know of the existence of a system which the Special Rapporteur's delegation was able to discover in a few days, it can only be because of a lack of a desire to know ... The very hierarchical nature of the law enforcement bodies also makes it difficult to believe that the top leadership of these forces is not aware of the situation. The result is that impunity largely prevails among those charged with investigating suspected criminal activities."

It was certainly no coincidence that concerns similar to those found in the report had previously been echoed by other international

human rights monitoring bodies, including the UN Committee against Torture and the UN Human Rights Committee.

Domestic and international human rights NGOs had also repeatedly articulated similar concerns.

Systematic Abuse, Systematic Failings

In his report the UN Special Rapporteur on torture effectively handed the Uzbek authorities a broad plan of action, mapping out how they should set about eradicating systematic torture in Uzbekistan. If torture and ill-treatment were deemed to be systematic in the country, then it

The key question the APT seeks to address in 2005 is the extent to which the recommendations of the UN Special Rapporteur have been practically acted upon by the government of Uzbekistan.

was hardly surprising that so were the administrative, legislative and judicial failings - which permitted abuse to arise in the first place. The Special Rapporteur therefore outlined in his report a large number of far-reaching measures to address his acute concerns and to set right these failings.

The prescribed remedy ranged from highly symbolic, albeit crucially important acts such as publicly condemning torture at the highest political and operational levels of state, to sweeping organizational reforms such as establishing the independence of the judiciary. Uzbekistan was also urged to implement a complete array of measures and safeguards aimed at countering abuse, including the criminalization of torture in domestic legislation, the guarantee of an entire range of fundamental rights of detention as well as the inclusion of the right of habeas corpus into domestic legislation.

Considerable weight was also placed on opening up detention facilities to independent, external scrutiny as an effective means to prevent torture. A specific monitoring role for NGO representatives and the Ombudsman's Office was foreseen in this respect.

Crucially, the UN Special Rapporteur also recommended that investigations into allegations of torture and ill-treatment be carried out in accordance with international human rights law standards; that is promptly, independently and thoroughly by an effective and independent body capable of prosecuting the alleged perpetrators. The numerous instances of abuse, allegedly committed by Uzbek officials, attached to the appendix of the UN Special Rapporteur on torture's final report, strongly inferred that investigations had rarely, if ever, been conducted along these lines in Uzbekistan.

Searching for Answers

The key question the APT is therefore seeking to address in 2005 is the extent to which the recommendations of the UN Special Rapporteur have been practically acted upon by the government of Uzbekistan. In addition, the APT project, also aims to address the wider, more general issue of to what extent, if at all, the recommendations of authoritative international and regional human rights bodies are implemented in practice at the national level. Anyone but a complete stranger to the annual UN Commission on Human Rights or to the periodic sessions of the UN treaty monitoring bodies, such as the UN Committee against Torture, will be aware that the issue of non-implementation remains a common problem.

Regrettably, the process of follow-up and implementation of the recommendations of past visits of the UN Special Rapporteur on torture to a range of countries has also been equally as problematic. In undertaking its project on

Uzbekistan and collaborating with other civil society actors, the APT is thereby seeking to assist the invaluable work of the Special Rapporteur on torture.

Uzbekistan is not the first country in which the APT has adopted this approach. In the case of the UN Special Rapporteur on torture's visit to Brazil in 2000, the APT sought to address the issue of non-implementation by collaborating with other human rights actors in the country to produce an up-to-date report on the status of implementation of each of the Special Rapporteur's recommendations, indicating the advances made and measures still to be implemented. (See APT report *'Tortura no Brasil - Implementação das Recomendações do Relator da ONU'*, available at www.apr.ch). In view of this successful undertaking in Brazil, the UN Special Rapporteur on torture encouraged the APT to consider replicating the project in other countries he has visited, particularly in other regions. It is in this context that the APT's programme of activities in Uzbekistan in 2005 is being undertaken.

Next Steps: the State of Implementation?

By the time of the 61st session of the CHR, the first phase of APT's project - visas permitting - is expected to be underway. The APT intends to travel to the Uzbek capital, Tashkent, to hold a series of in-country consultations with a range of relevant actors, including domestic NGOs, government authorities and international representatives. On the basis of the in-country consultations and the numerous secondary sources of information available on Uzbekistan the APT will draft an up-to-date report, indicating the advances made by the Uzbek authorities and measures still to be implemented.

After the completion of the draft report, the APT intends to return to Uzbekistan in order to hold further consultations with partners in the country and to obtain their comments on the draft report. This return visit to the country will also allow the APT to obtain any additional information, which may be required, and to clarify any other outstanding issues. The report will then be finalized by the APT and thereafter transmitted to the newly appointed UN Special Rapporteur on torture, Manfred Nowak.

The main outcome of the project will be the composition of a comprehensive, reliable report on the implementation of the UN Special Rapporteur on torture's recommendations by the Uzbek authorities. It is envisaged that the report will inform his future work on Uzbekistan and strengthen his capacity to gauge the measures the Uzbek authorities must still undertake in order to meet compliance with international human rights obligations.

Irrespective of the collaborative efforts of the human rights community to support the vital work of the Special Rapporteur on the issue of implementation, there is still much to be done, and the progress made at last year's CHR should not be lost. Ultimately, the onus of responsibility to live up to and implement their international human rights obligations lies squarely on the shoulders of the Uzbek government.

But, constructive and continued international engagement at the 61st CHR is necessary to ensure that real progress is made. Otherwise, the protection that Uzbekistan enjoys will serve as yet another example of how to hoodwink, avoid and subvert the intended purposes of the Commission.

With that in mind, let us therefore hope that - two years down the line - there is more positive information to report about Uzbekistan's efforts to eradicate torture and protect fundamental freedoms.

Matti Pringle is the Europe and Central Asia Programme Officer at the APT.

THAILAND

New office, new promises

But the newly re-elected Thai Prime Minister's rights-friendly declarations must be taken with a pinch of salt

MATTHEW STROMQUIST

ON his re-election to a second term as Prime Minister, Thaksin Shinawatra sought to adopt a qualification he will have a hard time living up to. News reports quoted him as saying he would advance civil and political rights during his second term. "I will uphold human rights in this country," Thaksin said during a ceremony to mark his retaking of office. He did not elaborate on why this admirable project was not begun during his first term.

He was also reported as having singled out the issue of disappearances as one that would receive the government's attention.

However, critics of the Prime Minister's policies have already pointed to deficiencies in these new pronouncements.

Even Thailand's own former Foreign Minister, Mr. Surin Pitsuwan, has expressed his extreme dissatisfaction over both the human rights priorities of Prime Minister Thaksin's government and Thailand's cooperation with UN agencies. Mr. Surin was specifically outraged by Thailand's continued refusal to not extend a personal invitation to the UN Special Rapporteur on extrajudicial, summary and arbitrary executions to visit the country to investigate the deaths of 78 Muslims in October 2004.

Mr. Thaksin's first four years in office were marred by a persistent, remarkably open and notorious, decline in the respect for human rights. This campaign of undermining the very institutions designed to protect the most fundamental of human rights, including Thailand's own 1997 Constitution, and the international covenants and treaties which Thailand is a party to, was a step back from the late 1990s, which seemed to offer hope that Thailand would become a beacon and human rights standard bearer for all the countries of Southeast Asia.

Armed now with an electoral victory, and no doubt what he perceives as a broad mandate to continue the policies of the past, the next few years might see an even steeper decline in Thailand's human rights record. While there is no question that the government now faces the unprecedented task of recovering from the recent tsunami tragedy, it must not use this national emergency to further erode some of the gains of the 1990s, when Thailand moved toward a culture of human rights.

Further, as an ally to the United States in the "global war on terror", Thailand has used the rhetoric of promoting the "rule of law" to do in fact just the opposite. This is part and parcel of the peculiar and insidious logic which lies behind Thailand's participation in the "global campaign against terrorism": peace and democracy through the barrel of a gun.

Incidents of Violence and Governmental Retribution in the Southern Provinces

The government of Thailand has responded brutally and with a disregard for human life in its encounters with alleged insurgents in the South. While there is no question that a violent insurgency is wreaking havoc on the lives of people in Southern Thailand, and that the government certainly has a right to defend itself and provide for the protection of its citizens, this does not grant the government a mandate to disregard its international legal obligations to do so humanely and within the bounds of human rights.

28 April 2004 was a bloody day in the three provinces of Yala, Pattani, and Songkhla. In one instance, after insurgent forces were surrounded, their hideout was stormed by the Thai military in what the government later described as an attack "disproportionate to the threat posed by the militants." Hundreds of insurgents have been killed over the past year.

The response by the government has shown that they are less concerned with actual-

ly arresting and prosecuting violent insurgents, and more interested in the shadowy practice of a take-no-prisoners mentality, with wide discretion given to the military and police, and very little accountability.

Human Rights Watch has recently reported that, as of yet, there have been no prosecutions of any of the military and security personnel who were involved in this bloody incident. Not only do such assaults not conform to international humanitarian law standards and the need to respect human rights in all confrontations, such actions are inherently counter-productive to the wider struggle against violence in the South.

The killing of insurgents with such

Mr. Thaksin's first four years in office were marred by a persistent decline in respect for human rights. This campaign of undermining the institutions designed to protect fundamental freedoms was a step backwards from the 1990s, which had offered hope that Thailand would become a standard-bearer on human rights for all of Southeast Asia.

impunity corrupts the moral legitimacy of the government and acts as a major recruiting tool for insurgents, ensuring more encounters of violence in the future.

It would behoove the Thai government, instead, to bolster the established, but weakened, arms of civil society and the criminal justice system to make good on its avowed rhetoric of promoting the "rule of law."

The imposition of martial law in the southern areas has further inflamed the violence. In late October 2004, after a government crackdown on demonstrators in the Narathiwat province, which resulted in several deaths after the police fired live ammunition into the crowds, 78 Muslim men suffocated to death under the most horrendous and inhumane conditions. After being detained, the men were reportedly loaded into the backs of trucks, piled four people high, with their hands tied behind their backs. En route to a military prison, they suffocated or were trampled. These cannot be seen as accidental deaths, but must be called what they are: extra-judicial killings at the hands of the security and police officials.

Although a governmental panel has recently been formed to investigate the incident, there is an urgent need for a completely independent investigation, outside of the purview and control of the Prime Minister's office.

Further, as Amnesty International has pointed out, the continuation of martial law in the Southern provinces amounts to a de facto state of emergency, outside of the strict guidelines for such action stipulated by Thailand's obligations under Article 4 of the International Covenant on Civil and Political Rights (ICCPR).

This record of violence in the South has been accompanied by scores of other "disappearances", most notably, Somchai Neelapaijit, the Muslim human rights lawyer who went missing in March 2004. The one-year anniversary of his disappearance just passed on 12 March 2005, and the government has yet to divulge any substantive details on the status of the investigation into his presumed death. Despite the arrest and impending trial of five policemen believed to have been involved, the government remains steadfast in downplaying or obfuscating the situation.

The "War on Drugs"

The Thai government, under the leadership of

Prime Minister Thaksin, has also instituted what amounts to a permanent and brutal "war on drugs." Over the course of only three months in 2003, more than 2,200 people were killed. By painting suspected drug offenders as "security threats," the Prime Minister consciously created a social environment in which police were given wide-ranging powers, with the tacit, if not overt support of the government.

Thailand's Interior Minister, brashly displaying the government's contempt for drug users, showed little concern that such people could just "vanish without a trace." As he put it, "Who cares?" The government has yet to investigate how police conducted their "raids" on suspects, and there are reports that a significant number of these killings may have been extrajudicially carried out by security forces. In October 2004, the Prime Minister announced another phase of the brutal "war on drugs." If it is anything like the first phase, we can only expect the death toll to continue to rise.

The National Human Rights Commission

Constituted in 2001, pursuant to the Human Rights Protection Act of 1999, the National Human Rights Commission (NHRC) has yet to fully mature into an independent and effective institution for the promotion and protection of human rights in Thailand. This has not entirely been the fault of the NHRC. There have been a series of rather public encounters between the Prime Minister and the NHRC which have once again exhibited the Prime Minister's obvious disdain of their work.

While having been able to make some powerful statements condemning the violence that accompanied the Thai-Malaysian Gas Pipeline Project in 2002, and the government's brutal "war on drugs" campaign, the Commission has not tackled the kinds of daily monitoring and investigative work that makes for a truly effective NHRC.

While the NHRC does have a certain amount of discretion as to how its funds will be used, there is no guarantee that it will even receive the adequate funds, as dispersal is entirely up to the government. The NHRC has shown that it has the capability to act independently. It is up to the Prime Minister to embrace the cause of human rights publicly, not cover behind derisive comments which further antagonize the NHRC's work. As a Commissioner remarked, "The National Human Rights Commission has submitted many cases with comment and advice, but the government has never replied."

The measure of a government's human rights record is not only how it respects and promotes human rights, but also how it responds in the face of accusations of human rights violations. In Thailand, this has meant feigned ignorance, passive dismissal, or a defiant defense.

All of these reactions by the government confirm that it has refused both to take allegations of human rights abuses seriously, and to accept the necessity of having an institutional structure that can make real strides towards reform.

The hope is that the Thai government will come to realize that ensuring accountability and promoting respect for human rights are in its national interest.

But the re-election of Mr. Thaksin may prove to usher in an even darker era. After all, this is the former police officer-turned Prime Minister who declared unabashedly, "There is nothing under the sun which the Thai police cannot do."

Concerned parties should therefore pay close attention in July of this year when Thailand's initial state report on compliance with the International Covenant on Civil and Political Rights (ICCPR) is to be reviewed by the UN Human Rights Committee.

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Watching out for the Special Procedures...

smuggled in through the back door by the same group that complains incessantly about the time and resources spent on certain issues.

Last year the Czech delegation led the negotiations on the resolution entitled: "Human rights and special procedures". They managed to achieve agreement on expanding the scope of the earlier resolution on Thematic Procedures to include all the Special Procedures (E/CN.4/RES/2004/76). It turned out, as expected, to be an arduous undertaking, chiefly due to strong opposition by the LMG and Cuba. While claiming to favour the strengthening of the Special Procedures, these countries tried all means possible to weaken the very foundation of their mandates. Within the informal meetings on the Resolution the LMG and Cuba tried to twist the language, for instance, to not protect people cooperating with Special Procedures or to limit cooperation with civil society. This battle ended with the passing of the resolution with 18 abstentions, but no vote against.

Meanwhile, inside room XVII, Special Rapporteurs were attacked by members of the CHR, with Spain reacting with outrage to the report of the Special Rapporteur on Torture, Theo van Boven, and Israel taking on Jean Ziegler, the Special Rapporteur on the right to food. All of this is part of a worrying ongoing tendency to weaken Special Procedures, and the newest attempt to move towards this goal is being made at the present session.

The lack of consensus on last year's resolution appears to have given some countries within the Asian Group an excuse to make the next move. A paper has been circulated by the Asian Group for consultation among the regional groups in the months preceding the current session. The paper is allegedly intended to improve the effectiveness of special procedures. Coming from the very countries that demonstrated strong opposition during last year's informal meetings on the resolution, this seems implausible.

The scope and content of this paper must be treated with caution. Building on the recommendations of 2000 and the Secretary General's report "Agenda for Further Change" (A/57/387) the paper contains some suggestions that might usefully seek to address the apparent lack of standardisation in the work of Special Procedures and the feeling in certain quarters that the Office of the High Commissioner on Human Rights is falling behind in the implementation of existing guidelines and recommendations issued by the Commission.

Nonetheless these shortcomings do not explain why the recommendations in the Asian Group's paper go as far as demanding for a code of conduct for Special Procedures, which would curtail the mandate holders and would not allow them to carry out independent investigations. It also addresses issues such as the length and format of reports, issues that were already addressed in last year's resolution. On several other issues, such as cooperation with civil society or appointment procedure, this paper clearly duplicates, or rather, circumvents what was already decided in last year's resolution.

The other regional groups, however, have clearly not been amused by what appears to be the Asian Group's attempt to push this through as an Asian initiative and have let it be known that while the strengthening of the Special Procedures can continue in the inter-session period, there should be no formal, substantive moves during this year's session.

Last Monday the Czech delegation, being the author of last year's resolution called for an open-ended meeting, in order to clarify the state of play. The representatives of the Asian Group, smartly cornered by the Czech, found themselves compelled to inform everyone in the room of their intentions, NGOs included.

Postponing an in-depth briefing to some time after internal Asian Group consultations, China and India disclosed that they intend to produce a document, which, after passing through the Extended Bureau, could be adopted during this session of the Commission under Agenda Item 3.

The representatives of the Asian Group claimed they were seeking a broad consensus and believed the involvement of all stakeholders to be crucial. Then, they turned around and indicated their evident displeasure at the presence of NGOs in the meeting room, and refused to recognise civil society as a stakeholder. This, furthermore, blatantly contradicts last year's resolution on Special Procedures, which, in article 5, invites civil society to actively cooperate and support Special Procedures. They also claimed they were not aiming at duplicating the resolution adopted during the 60th session.

Three regional groups, the Western Group, the Eastern Group and GRULAC have

The Asian Group may have hoped that their latest attempt at bringing significant substantive changes to the work of the Special Procedures had a chance this year with an Asian Chair.

However, the Chair, so far, has been fair and firm as he carries out his task, and it is reasonable to expect that he will continue in the same manner.

responded prior to the 61st Session of the CHR to the Asian Group's paper. During Monday's meeting their representatives reiterated their objections. By the end of the meeting, agreement was reached on the continuation of work on enhancing of special procedures under certain conditions. It was agreed that what had already been achieved through last year's resolution and prior to that, should not be

renegotiated. And that there should not be any substantive decision during the current session of the CHR; only a decision on how to proceed with inter-session work could be considered. Such work would have to be inclusive of all stakeholders: mainly states, mandate holders, OHCHR and civil society. Inputs should be considered by all regional groups on equal footing. Finally, it was stated that there should not be a time limit for this process.

The political manoeuvre, which is being orchestrated this year by the Asian Group, brings to mind a draft resolution circulated in 1997 on Rationalisation of the Work of the Special Procedures which ended up being adopted as a decision a year later (1998/122) and created the open ended inter-session working group on enhancing the effectiveness of special mechanisms. Much of the damage to the work of the Commission and the Sub-Commission was the result of this underhand initiative.

This year, the speculations of some members of the Asian Group, however, do not seem as accurate as on previous occasions. A week has passed now since the promise of disclosing the details of a draft decision by the Asian Group and it is possible that the Asian bloc is finding agreement within the bloc more difficult to achieve than expected. That should have been the easy part, since it seems very unlikely that any decision could pass by consensus if the remaining groups' suggestions were to be taken on board. Yet, there appears to be a willingness to find a common position.

The Asian Group may have hoped that their latest attempt at bringing significant substantive changes to the work of the Special Procedures had a chance this year with an Asian Chair. However, the Chair, from all indications so far, has been fair and firm as he carries out his task, and it is reasonable to expect that he will continue in the same manner. Also, as the Russian delegate pointed out, the Bureau, whether Expanded or limited, has no competence to make inter-session decisions.

As Week 3 begins, the radars of those interested in conserving the strength and capacity of the Special Procedures must be set on high alert. If the Special Procedures are weakened, there is little sense in reviewing or renewing mandates. A chair is not useful with a broken leg; to make it useful, the CHR needs to fix the broken leg, not break the remaining three!

EVENTS

THE HUMAN RIGHTS CRISIS IN NEPAL: How the Human Rights Commission Can Act

Presented by the International Commission of Jurists, Amnesty International, Human Rights Watch and the International Crisis Group

Speakers: Nicholas Howen (International Commission of Jurists), Irene Khan (Amnesty International), Sushil Pyakurel (National Human Rights Commission of Nepal), Anna Neistat (Human Rights Watch), Nick Grono (International Crisis Group), Govinda Sharma Bandi (Advocacy Forum, Nepal), and Pradeep Shankar Wagle (Nepal Bar Association).

Tuesday 29 March, 13:00-15:00 pm
Room XXII, Palais des Nations

BRIEFING ON TIBET

Wednesday 30 March 2005, 13:00 to 15:00 hrs
Room XX, Palais des Nations

COLOMBIA: HUMAN RIGHTS AND HUMANITARIAN CRISIS

Briefing by the Colombian Commission of Jurists (CCJ), the Coordinación Colombia-Europa-Estados Unidos, the Oficina Internacional para los Derechos Humanos-Acción Colombia (OIDHACO) and the International Commission of Jurists (ICJ)

Wednesday 30 March, 13:00-15:00 pm
Room XI, Palais des Nations

CHILDREN'S HUMAN RIGHTS CAUCUS BRIEFINGS

- Omnibus resolution on the rights of the child - the development of this year's negotiations
Wednesday 30 March 2005, 9-10 am
Room E-3025

- The Right to Education
Special Rapporteur on the right to education
Thursday 31 March 2005, 9-10 am
Room E-3025

- Children's Right to Health
WHO and the sub-group on the right to health
Friday 1 April 2005, 9-10 am
Room E-3025

'THE UN DEMOCRACY CAUCUS: ITS ROLE IN PROMOTING AND PROTECTING HUMAN RIGHTS'

Organised by Freedom House, the Democracy Coalition Project, and the Transnational Radical Party

Thursday 31 March 2005, 13:00 - 15:00 pm
Room XXIII, Palais des Nations

HUMAN RIGHTS IN PAPUA

Meeting sponsors: Geneva-based Franciscans International, the World Council of Churches and Geneva for Human Rights.

Thursday 31 March 2005, 18.00-20.00 hrs.
Varembé Centre, Geneva

THE DOGS OF WAR

Discussion on Mercenaries and Human Rights

Friday 15 April 2005, 13.00-15.00 hrs.
Venue to be advised

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

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Dead on arrival...

eat into the OHCHR's already impossibly tight budget in a manner not commensurate with its contribution.

The very early informal consultations by Brazil on the operational paragraphs of a draft resolution should therefore be welcomed at the very least as a swift positive response to the High Level Panel's recommendations. It is a short and straightforward resolution that "requests the High Commissioner to submit to the 62nd session of the CHR (2006) a proposal containing complimentary ideas for the elaboration of a global report" (OP 2), in the eventuality, pursuant to this, that the CHR "decides to adopt an annual Global Report of Human Rights" (OP 1). At the first informal discussion, many raised the view the OP 2 would suffice, not binding the Office to having to compile a global report if it finds no value in the exercise.

Whilst Brazil should be commended on the initiative, they let themselves down by not conveying in any real sense what they themselves foresaw as the additional value of a global report. Their non-paper on the resolution speaks of a "momentum" existing, and that other UN programs do the same, but it still doesn't stake a claim to a global report's worth. Their explanation that the increasing politicisation and selectivity of the CHR necessitates a Global Report doesn't make any obvious sense.

And so the vultures descended to pick apart the first recommendation of the High Level Panel to be put to the test before the Commission. The African group were irate that they were not consulted in advance before having to belittle themselves before an audience of NGOs, and so they sulked en masse. Norway more or less thought it was a waste of time. The Algerian

delegate talked in circles about a Global Report politicising human rights, where "to politicise human rights is to devalue human rights". Clearly he has found himself in the wrong job. Egypt saw it as a potential "cut and paste" exercise that would be too difficult to deal with during the six-week session of the CHR. Had he got up early to read the Secretary General's proposals for reform, he might have known that there is a way to deal with that shortcoming.

China claimed that there is "too much reporting". Australia said it was premature and unnecessary. But the prize for shooting the turkey went to India at the finale, whose voluble dignitary declared that this "problematic and controversial" subject would "inevitably" politicise the OHCHR. It is, apparently, "not wise" to pronounce on countries as we already have agenda item 9. Also, how could the staff of OHCHR be trusted to be fair and representative (*aka* the Cuban conspiracy)? In fact, whatever the High Level Panel thinks it has to say on the Commission, the dignitary expressed with what could only be perceived as restrained contempt, this idea would only "weaken the OHCHR" and "we should stay clear of this idea not only this year but all together." In fact, all that appears to exist, he concluded with aplomb, is a consensus against a global report.

Well, despite the efforts of Brazil to only table an elaboration of the idea, this appears so. The High Level Panel's first recommendation to surface is dead on arrival. It is at times like this that Kofi Annan's proposals, released only hours before the Brazilian consultation last Monday, seem so appealing. Not only because it typifies the Commission's conservatism, but also because during the consultation delegates continued to refer to the Secretary General's forthcoming proposals.

One renowned NGO even referred to the report as being released on 30 March! If they are all that far behind the times, better they be put out to graze.

from page 1... **A perfect fit...**

year, the government of Belarus suspended the operation of at least 25 newspapers, eleven of which were closed in the month preceding Belarus' 17 October 2004 elections. During the elections, which were declared by the OSCE as being neither free nor fair, citizens actually voted to eliminate term limits for the office of the President allowing the country's benevolent leader, Mr. Aleksandr Lukashenko, to run again in 2006. Unfortunately, the list of abuse goes on and on - so stay tuned for more details in next week's edition.

For now, may we just say to Belarus, "welcome to the club". You fit right in.

...and an un-Likely member

In this group of Like Minds, however, there is one that stands out for its Unlikelihood. HRF has previously alluded to the incongruity of Sri Lanka being a member of this disreputable club. For a country that has made significant strides in the area of transparency and compliance with international human rights standards, it sits uneasily among the lot of paranoid and opaque states, one of which is the second-largest democracy in the world. Even as China, Pakistan, Algeria, Egypt and Cuba regurgitate their domestic paranoias during their discussions at the CHR, and India demonstrates a breathtaking contempt for the UN's human rights mechanisms and sneers at any attempt at standard-setting (**see story on page 1: 'Dead on arrival'**), Sri Lanka has chosen to behave differently. It has acknowledged its shortcomings in the area of human rights, including on sensitive issues such as torture. It ratified the Convention Against Torture as early as 1995 and acceded to the first Optional Protocol to the ICCPR in 1997. Sure, its National Human Rights Commission could do with an overhaul, and the recent lifting of the moratorium on the death penalty is troubling. However, its past record indicates a positive mindset and there is reason to hope that this approach will inform future policies on issues such as standing invitations, the OP-CAT, the second OP to the ICCPR and perhaps even on the idea of CHR membership criteria.

Why then does it deign to take a place among the human rights offenders and the opaque democracies (no pun intended) that populate the LMG and which have undermined the very body that they now accuse of standing discredited?

Time to move up the human rights ladder, Sri Lanka, and show the world how it is done.

from page 8...

Maldives: All eyes on President's reform plan...

independents due to the ban on political parties, contested the 42 seats for parliament. While the opposition MDP alleges that it won 18 seats, the President claims they won only 12. It is a pity that this hardly makes a difference to their power over parliament as the appointment of not less than eight members is left exclusively up to the President, giving him control over one-sixth of the entire parliament.

Constitutional Reform

The President is Commander in Chief of the armed forces, the Minister of Defense and National Security, the Minister of Finance and Treasury and the Governor of the Maldivian Monetary Authority. The judiciary of the Maldives is under the control of the Executive due to the President's power to review High

Court decisions, and appoint or dismiss judges, neither of which requires an opinion from the People's Majlis.

Despite being a signatory to CEDAW, women in the Maldives are not allowed to run for the post of President, which is reserved for Sunni Muslim males, the religious requirement also being extended to members of the People's Majlis and the President's cabinet. In addition, the Constitution declares the Sunni branch of Islam to be the official state religion, which has been interpreted by the government as a mandatory requirement for its citizens.

President Gayoom has publicly stated that any other religion is prohibited, and he has managed to employ the Home Affairs Ministry into the service of 'safeguarding and strengthening religious unity'. All the above provisions are enshrined within the Constitution of the

Maldives, which has already been amended by the President once before.

The Constitutional amendments proposed by the President, which promise to establish a multi-party democracy, curtail the duration of duty and the powers of the President, and create the position of Prime Minister within a year, is a start, even though it does not comprehensively address all the issues mentioned above.

The release of 200 protestors arrested in August 2004, its accession to the Convention Against Torture (CAT) in April 2004, and its consideration of a 'National Criminal Justice Action Plan' to enhance the accountability of the law-enforcement process are all steps in the right direction for the Maldives.

However, it is critical, now more than ever, that international pressure and unrelenting international scrutiny are sustained, in order to ensure that international standards of human rights are integrated into the constitutional reforms, thus firmly institutionalizing human rights in the Maldives.

Comments and suggestions are welcome

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