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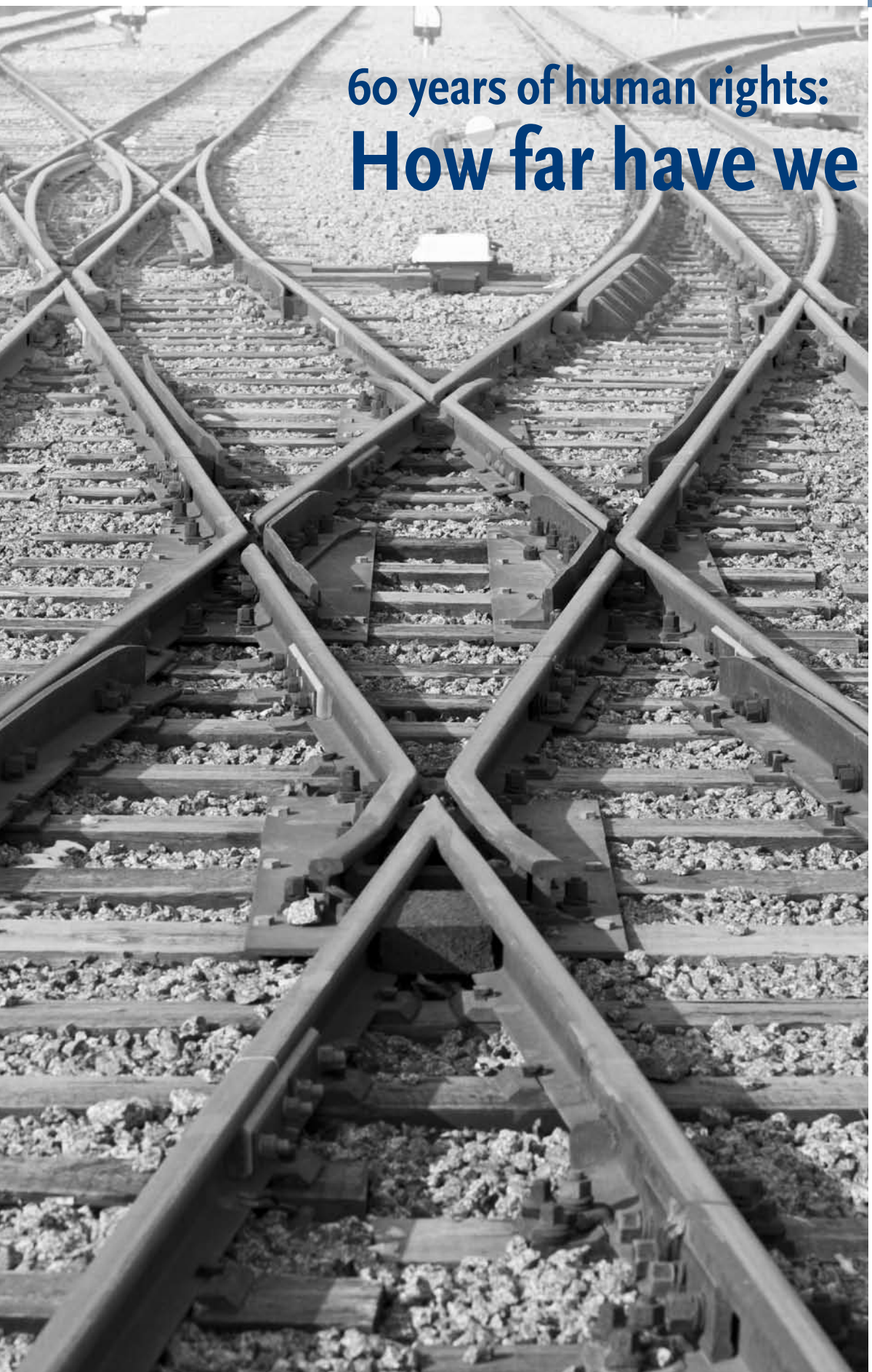
VOLUME 13

New Routes

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A journal of peace research and action

PUBLISHED BY THE LIFE & PEACE INSTITUTE



60 years of human rights: How far have we come?

SIXTY YEARS AGO:
Two documents that still challenge the world

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From donors to facilitators, from recipients to rights holders

INTERNALLY DISPLACED PERSONS:
A neglected issue on the international agenda

Towards a universal protection of human rights

LATIN AMERICA:
Human rights – the rights of the poor

CIVIL SOCIETY BEHIND BARS:
Courage in the face of repression

HUMAN RIGHTS IN HAITI:
Growing awareness in a failed state

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HUMAN RIGHTS – ANNIVERSARY AND CHALLENGE

This issue of New Routes was delivered from the printers on 10 December, which was a day of special significance this year. On that date sixty years ago, the United Nation's Universal Declaration of Human Rights (UDHR) was adopted in a Paris still marked by the German occupation during World War II. But three years earlier peace, or at least armistice, had been reached at last, and a number of measures were taken in order to assure that the atrocities that had recently shaken the world would never be repeated. One of these measures was the efforts and negotiations that laid the foundation for the UDHR.

"All human beings are born free and equal in dignity and rights." Many people know the beginning of the Declaration's Article 1 by heart. However, reality is all too often quite different from these solemn words. Sixty years is a relatively long period of time, and much has happened regarding the promotion and implementation of human rights. Still, lack of respect for, deliberate violations against, and insufficient knowledge about human rights, both among rights holders and duty bearers, are sadly prevalent. The questions 'how far have we come?' and 'where are we heading?' seem relevant and necessary to ask.

This New Routes issue is about human rights. But it is also about courage. The courage of people who question and highlight violations and breaches of these universal rights. People who risk their freedom and even life for the freedom of others. You will meet some of them in the articles when you read, for example, about the work of human rights organisations in Latin America by Tom Bamat, the efforts of the international movement CIVICUS by Mandeep S Tiwana and Tanzilya Salimdjanova, or the struggle of the National Human Rights Defence Network on Haiti by Pierre Esperance.

In his article, Ove Bring gives a picture of 'how it all began' in Paris and of the initiators and actors behind the coming into being of the UDHR. Human rights in relation to displaced persons, economic activities and the Rights Based Approach are described in the articles by Elizabeth Ferris, Michael Windfuhr and Jenny Zetterqvist, respectively.

Hopefully, this New Routes will give you inspiring and challenging thoughts about a 60-year old, very topical issue. Your reactions and comments are, as always, most welcome!

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This year denotes six decades since the UN General Assembly passed two of its most epoch-making documents, the Convention against Genocide and the Universal Declaration of Human Rights. Both these historic documents emanate from an urge to prevent a repetition of the misdeeds of the Second World War. Two individuals that played a decisive role in this process were Raphael Lemkin and Eleanor Roosevelt.

SIXTY YEARS AGO:

Two documents that still challenge the world

Ove Bring (Translated by Peter Vinthagen Simpson)

Paris, December 1948. The French capital is playing host to the UN General Assembly which has been summoned for its third session. The UN headquarters on Manhattan in New York is not yet finished. For Parisians, the event is something to be proud of, a break in the monotony. The city is rundown and threadbare after years of occupation. The remains of German military road signs litter the streets. But at the Palais de Chaillot, a 1930's complex on the north bank of the Seine opposite the Eiffel Tower, the occasion is a lavish one. It is there that the UN diplomats mingle and meet. Expectations for the UN are high, despite the dawn of the Cold War proper. The Soviet blockade of West Berlin is ongoing. An air of optimism persists however. Media interest in the events of December 9th and 10th is intense.

Eleanor Roosevelt (1884-1962), President Roosevelt's widow and formerly the "first lady" in the USA, has headed a commission, which has developed a provisional draft for a Universal Declaration of Human Rights. She has spent the past two months in Paris facing a committee, defending, compromising and renegotiating the text of the document. It will now be put to the vote in the assembly's plenum. December 10th is the scheduled date.

But already the previous day the assembly was scheduled to vote on another text concerning a specific aspect of human rights – the provisional draft for a legally-binding Convention on the Prevention and Punishment of the Crime of Genocide. Media interest is here focused on someone who, in contrast to Eleanor Roosevelt, is inclined to shun the limelight. Raphael Lemkin is neither a diplomat nor negotiator, but as a lobbyist and a private person he has acted to push for the international community to adopt a convention against genocide. It is for the most part "his" convention that would be put to the vote.

As we would see both documents were to be adopted. This signalled the modern process towards an ambitious system for the protection of human rights through conventions and the development of procedures. This would happen globally, under the auspices of the UN, and regionally, through interstate organisations in Europe, America and Africa. Previously progress had only been made within the framework of national legislation.

Minorities in new nation-states

One could be mistaken for thinking that human rights developed lineally on a timeline, from the Enlightenment theorists and rights declarations in revolutionary America and France, via liberalism and the League of Nations (LoN), to contemporary values and the United Nations. This is hardly a true reflection of events. European states in the 1800's did show sporadic interest for humanitarian interventions in the fringes of the Ottoman Empire, but international initiatives grounded on the inherent value of human beings did not occur. The age of the LoN, between the two world wars, was not accompanied by any significant change in this regard, even if international cooperation to combat the slave trade resulted in a convention in 1926.

> ***The UN Charter includes neither a list of human rights, nor a system to ensure that they are followed.***

The LoN was generally more committed to the protection of minorities than individuals. The reason hitherto forwarded for this was that the new territorial order defined in the Treaty of Versailles meant that certain ethnic groups suddenly became minorities in, to them, new nation-states, the German population in Polish Silesia being a case in point. Another explanation for the interest in the protection of minorities could have been the harassment suffered by Armenians and other Christian groups in Turkey during the First World War. One of the first applications of the term genocide was made in Stockholm in a meeting about the Armenian question in 1917 when Hjalmar Branting spoke about an "organised and systematic genocide".

Placed in a broader context the LoN's commitment to the protection of minorities was however set to become counterproductive politically. The autumn of 2008 denotes seventy years since Adolf Hitler invoked "the oppression" of the Sudeten Germans in Czechoslovakia to justify a military invasion, which lead to the Munich agreement on September 30th 1938 when the western powers agreed to abruptly sacrifice Czechoslovakia to the Germans. The remainder of the country was then later carved up, and Hungarian and Polish minorities were reunited with their respective "native countries" while Nazi Germany took its slice.

UN PHOTO/X



Members of the UN Commission on Human Rights, Charles Malik, René Cassin and Eleanor Roosevelt, discuss the Draft Covenant on Human Rights. Behind them, US Advisers Marjorie Whiteman and James Simsarian.

Hitler summoned his generals to Obersalzberg on August 22nd 1939, before the invasion of Poland, and urged them to be ruthless with Germany's eastern neighbours. According to the minutes of the meeting, witnessed by the Berlin-based US journalist Louis Lochner, Hitler invoked the failings of the collective memory, asking: "Who, to day, talks about the annihilation of the Armenians?"

During the Second World War a contrary message emanated from Washington. President Franklin D. Roosevelt spoke in his address to congress in 1941 about the Four Freedoms – freedom of speech and expression, freedom of religion, freedom from fear and freedom from want. The word "fear" had been given an actual physical meaning within Europe's dictatorships, even before evidence of the Holocaust had begun to emerge.

The Polish-Jewish lawyer Raphael Lemkin (1900-1959) arrived in the USA during the war as a refugee and propagated for organised international action to address "crimes against humanity". He had first come to Sweden in 1940 and had lectured at Stockholm University. Lemkin lectured regularly about Nazi crimes, which he documented, and he lobbied for international criminal legislation which would be put in place after the war to judge those guilty of crimes against humanity. He lost his own family in the Holocaust and worked to develop a definition and name for this worst case example of crimes against human dignity. In 1944 he worked at the US War Department in Washington and published the book Axis Rule in Occupied Europe, a weighty tome extending to 712 pages. On page 79 he introduced the concept of "genocide" to the English language. The word is a hybrid of the Greek geno (people, tribe) and the Latin cide, a derivation of caedere (killing).

> ***It was possible to formulate fifteen rights that represented common cross-cultural values.***

Lemkin underlined that the concept in its legal sense did not require the total physical destruction of a national or ethnic group, it was sufficient to establish the deliberate elimination of a cultural identity. The crime in question would be subjected to universal jurisdiction. In other words suspected perpetrators could be charged in all countries and extradited to any country in a position to conduct a trial. This new concept became swiftly established in the media, and "genocide" was included in *Webster´s New International Dictionary* already in 1945.

Human Rights Commission

San Francisco played host in the spring of 1945 to negotiations over the charter of the new world organisation. The preamble to the UN Charter, signed on June 26th, included commitments relating to war, peace, collective security and human rights. Regarding the latter the peoples of the United Nations underlined their faith "in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small".

The UN Charter includes neither a list of human rights, nor a system to ensure that they are followed. The framers of the Charter presumed that international diplomacy, under the auspices of the UN framework, would develop a legal regime with definitions and control mechanisms. For this purpose a specific

Commission on Human Rights was founded to consider the issue. It was made up of 18 members with the UN diplomat Eleanor Roosevelt appointed as chairperson. Among her colleagues was René Cassin, a lawyer of Jewish heritage from Alsace who lost relatives in the Holocaust and served in de Gaulle's exile government in London. He was awarded the Nobel Peace Prize in 1968.

Cassin often pointed out that, to him, the main purpose of the exercise was to learn the lessons of Nazi crimes and prevent their repetition. Soviet communism's crimes against humanity were well-known but did not arouse the same emotions in the immediate aftermath of the war. As chairperson, Eleanor Roosevelt was obliged to become involved in the constant disputes with Soviet Russian delegates, who tried to throw as many spanners in the works as possible. The Commission's primary task was to frame what would become the Universal Declaration of Human Rights.

Roosevelt shared Cassin's position on the role of the Second World War in the Commission's work, but for her it was also important to incorporate and develop her deceased husband's Four Freedoms. That "freedom from want", with its economic and social dimension, should be included as a subject for negotiation was by no means given. Roosevelt had to persuade the Democratic administration in Washington of the merits of the idea. It was a tough task but she eventually managed to get President Truman's personal approval on the issue.

A central role in the draft committee was played by two philosophy professors who were at the same time diplomats, P C Chang from China and Charles Malik from Lebanon. The pair challenged each other intellectually and contributed differing perspectives. Chang represented Confucianism and Malik the politics of the Arab world combined with western philosophy. Chang argued that the provisional draft declaration for submission to the UN Secretariat should be multicultural and eclectic. Roosevelt wrote in her memoirs that Chang was a "pluralist" and that he insisted on the inclusion of several versions of the truth in the text, not just the western understanding. This argument was primarily directed towards (or against) Malik, who studied philosophy under Heidegger, was a Greek Orthodox Catholic and perhaps as a result of this had a more focused approach. Malik wanted to protect the individual sphere and individual rights against state oppression. Learning the lessons of the Second World War was once again the focus.

It was important for the drafting committee to be universally representative, as it had been given the task to produce a universal text. Roosevelt had reason to be happy with its composition. Hansa Mehta, a politician from India, played a major role during discussions. She had a commitment to the social issues of her native country that she brought with her to the international negotiating table. Together with Minerva Bernadino from the Dominican Republic, she contributed to the declaration's formulation about gender equality. The ambassador and general Carlos Romulo from the Philippines also played a major role in the Commission and would later become known as a defender of national sovereignty against western human rights rhetoric. Moreover, the committee included delegates from Chile, Egypt, Yugoslavia, the Soviet Union and Great Britain. The British presence was however surprisingly insignificant.

When work started in 1947 the Commission began cooperating with a working committee at UNESCO which was examining the existence of common factors within the human rights philosophies of different cultures. The UNESCO committee sent a questionnaire to various learned people around the world. Among those who responded were Mahatma Gandhi, a Confucian philosopher from China, a poet and a philosopher from Bengal, the Italian philosopher Benedetto Croce and the British philosopher Aldous Huxley. The replies were encouraging. They showed that it was possible to formulate fifteen rights that represented common cross-cultural values, even if not all of the cultures expressed themselves in legal rights terms. Roosevelt's commission had therefore secured an international grounding. The declaration which was taking shape could thus be described as a genuinely multicultural project.

> ***The main purpose of the exercise was to learn the lessons of Nazi crimes and prevent their repetition.***

Genocide convention

While this work continued, the UN Secretariat, in its provisional headquarters on Long Island, was working on a provisional draft for a convention on genocide. Raphael Lemkin was commissioned as an expert to give his viewpoints on the text that was under development. Lemkin had been disappointed that the Nuremberg Tribunal did not use his term "genocide" in its judgement of the German war criminals in 1946 and instead used the more general formulation "crimes



UN PHOTO/X

Eleanor Roosevelt holding a poster with the epoch-making Universal Declaration of Human Rights, adopted despite the falling temperature between the super powers of the time.

against humanity". It thus became increasingly important for him that his idea of an international convention, which defined genocide and stipulated a punishment of the crime, could be realised.

The Secretariat committee's draft convention was submitted in the summer of 1947. The definition of genocide described the annihilation and persecution of not only ethnic, national and religious groups, but also "political groups". This was something that the Soviet Union could not accept, as Stalin's brutal purges were directed specifically against political groups. When the General Assembly's second session opened on Long Island in September the Soviet Union questioned the entire convention project. They argued that the whole project should be scaled down to a convention against race discrimination. The majority held another opinion, however, and the Assembly adopted a resolution that confirmed the project in its original form.

> ***"The declaration which was taking shape could thus be described as a genuinely multicultural project.***

Negotiations continued during the spring of 1948 and the Soviet position was now that the phenomenon of genocide should exclusively address the racial ideologies of Fascism and Nazism. Discord also raged as to the Convention's scope. Agreement was reached, however, on the issue of which courts would be able to rule on genocide. An ambitious international jurisdiction was decided against and instead demands were made on the legal system of the state in which the crime was committed. It would be the national courts that would pass judgement on individuals in cases of genocide. This agreement was complemented in the text to allow for the possibility of international courts to be established in the future (which has now occurred with the establishment of the International Criminal Court in the Hague, in operation since 2002).

Two epoch-making documents

When the meeting of the General Assembly opened in Paris in September 1948, the genocide text was referred for deliberation in the Assembly's seventh (legal) committee. Somewhat surprisingly, Soviet objections over the issue of "political groups" now had support from several countries, among them Belgium, Iran, Egypt and a number of Latin American states. Consequentially this reference was removed from the definition of genocide. It was, however, understood that in a more general human rights context all human beings would have the right to freedom from political persecution. The text of the Convention was now complete and could be submitted to the plenary meeting of the General Assembly.

Raphael Lemkin would later feel that his project had been surpassed by Eleanor Roosevelt and her commission's more overarching and grandiose explanation of human rights. He considered the Convention against Genocide, even if more limited in nature, to form the actual foundation in a human rights system. He would therefore have been satisfied that the Convention was to be the first of the two human rights documents to be considered by the Assembly. The explanation for this could lie in the fact that the genocide text was a binding legal convention for member states, while the Declaration of Human Rights was merely a statement of intent, although as would be realised, with the potential to be developed into international law. It is unlikely that the order of business was decided on principle, it occurred merely as a result of the two issues being dealt with in separate committees.

On December 9th the Convention was adopted by 55 votes to nil. Three delegates were absent. A rousing round of applause filled the plenary chamber in the Palais de Chaillot. Lemkin was touched and received a number of personal congratulations.

The Universal Declaration of Human Rights was adopted the day after with a vote count of 48-0-8. No states voted against, but eight states registered their abstention – the Soviet Union, South Africa, Saudi Arabia and five communist countries in Eastern Europe. Eleanor Roosevelt could breathe a sigh of relief. For her personally, and for international cooperation, this was a moment of triumph. Despite the Cold War's palpable frost in December 1948 the UN had managed to push through two epoch-making documents on human rights.

Human rights at the core of the UN

In a video message to a major United Nations conference in September 2008 with 2,000 representatives of NGOs from 90 countries, Secretary-General Ban Ki-moon noted that human rights have been at the core of the UN's work since 1948.

"For six decades, human rights defenders have sacrificed liberty, comfort and even life to ensure that all human beings can enjoy the rights enshrined in the [Universal] Declaration [of Human Rights] – irrespective of their race, religion, ethnicity, gender, or other status", he said.

Top United Nations officials highlighted the important role played by civil society in advancing human rights around the world. This annual conference is usually held in New York, but this year's event took place in Paris to mark the 60th anniversary of the Human Rights Declaration, which was adopted in the French capital in 1948.

"It is our duty to ensure that these rights are known, understood and enjoyed by everyone, everywhere. It is often those who most need their human rights protected, who also need to be informed that the Declaration exists – and that it exists for them," the Secretary-General told the gathering.

The President of the General Assembly, Srgjan Kerim, stressed the value of partnership between the UN, its Member States and civil society, adding that the goal of achieving human rights for all can be achieved with such partnerships.

United Nations Regional Information Centre

A new outlook on human rights has seen the light in the Rights Based Approach that has been developed in recent years. It has its starting point in international human rights law, which grew out of the Universal Declaration of Human Rights. This approach poses new challenges and possibilities for all actors within development work

NEW ROLES:

From donors to facilitators, from recipients to rights holders

Jenny Zetterqvist

Churches and ecumenical organisations have a mission to ensure every person's right to live in dignity. While inherent human dignity cannot be taken away, it is continuously exposed to violations in a variety of situations. The protection and promotion of human rights are therefore crucial in efforts to eradicate poverty and oppression, to prevent discrimination against individuals and vulnerable groups of people, to build peaceful societies and to prevent violent conflicts.

One of the challenges is to enable those in positions of power to realise in full the threats to human dignity that overshadow so much of our world. Still, 60 years after the adoption of the Universal Declaration of Human Rights, there are too many gaps between the commitments made in the Declaration and the world's current readiness to act in accordance with the obligations of international human rights law.

The lens of human rights provides development and humanitarian assistance with a new approach to address the needs and rights of people, and to contribute to a just and sustainable world. This article will introduce some of the basic ideas of a Rights Based Approach, based on the experiences of non-governmental actors engaged in an ongoing process to integrate the new approach into development work.

A commitment to international human rights law

In 1998, the 50th anniversary of the Universal Declaration of Human Rights was celebrated in several places and in a variety of meetings all over the world. During the 1990's, human rights received increasing attention amongst both governments and civil society, including ecumenical networks. There had been a lot of attention paid to increasing awareness of the normative framework of human rights through training and advocacy activities in several global human rights conferences.

The same year, the United Nations (UN) High Commissioner for Human Rights, Mrs Mary Robinson, visited Uppsala, Sweden, to give the first Dag Hammarskjöld lecture. In her elaboration on the challenges for the 21st century, she stated that the challenges that confronted Dag Hammarskjöld have multiplied. At the same time, humanity has developed an impressive body of international laws and human rights mechanisms to address the call of hundreds of millions of people who experience serious violations of human rights on a daily basis, through torture, hunger, homelessness, displacement, violence against women and lack of access to safe water.

> ***"Humanity has developed an impressive body of international laws and human rights mechanisms.***

As UN High Commissioner for Human Rights, Mary Robinson had in the late 1990's also participated in discussions on how to integrate human rights into development work by taking into account the interdependence and indivisibility of civil and political rights on one hand, and economic, social and cultural rights on the other hand. The compatible components of the human development approach and the human rights approach were addressed. Emphasis was laid on bridging the two approaches and practices by seeing the connection/linkages between the task to meet everybody's basic needs, on one hand, and, on the other hand, the need to focus on the implementation of human rights.

The elaboration on the implementation of human rights has continued through a variety of activities within non-governmental organisations and the ecumenical network. The focus has been on encouraging people to know their rights and to alert those in power to respect, protect and fulfil human rights. The human rights monitoring mechanisms established at the global and regional levels have been used, as well as the integration of a Rights Based Approach in development and humanitarian assistance to strengthen ways of addressing poverty and oppression. How to apply a Rights Based Approach could, however, differ from organisation to organisation, depending on differing needs as well as the mandate and context of individual development programmes.

Below are some of the basic ideas of the Rights Based Approach, and some reflections of interest to be elaborated on further in practice.

Making root causes visible

The Rights Based Approach is anchored in a commitment to international human rights law.

It is first of all a process that puts the human being and his or her inherent dignity at its centre. The focus is on integrating universal human rights in development work in such a way that they become both the point of departure and the intended future result. The focus on human rights provides the process with a globally recognised framework, irrespective of whether the development programme is about agriculture, access to water, health care, education, HIV/AIDS, debt cancellation or women's participation in peace negotiations.

The approach equips development actors with analytical and practical tools to elaborate on a development problem by translating the identified needs of people into human rights. More effort is put into the analysis of the root causes to a development problem and to addressing these causes more strategically. The emphasis is on shifting the focus from mainly considering the effects of a development problem into giving more attention to the root causes.

> ***The Rights Based Approach is anchored in a commitment to international human rights law.***

The integration of the human rights framework into the development process leads to the understanding that people who have needs should therefore actually be addressed as rights holders. In that capacity they have a recognised mandate according to international human rights law to also know and claim their human rights vis-à-vis the duty bearers. It is therefore of importance to strengthen people's abilities to make decisions and to take hold of the development process. People should have a mandate to act and control resources, not as beneficiaries but as rights holders. The concept of capacity does not only include the technical or functional knowledge for handling a certain development programme, but also emphasises confidence and the capacity to take positions.

The roles and the responsibilities of the two groups – rights holders and duty bearers – are defined differently, but the common trait is that both have a role to play in making change happen. The duty bearers are those with legal, political, economic and moral obligations to contribute to the realisation of human rights and to just and sustainable societies. The representatives of the state hold as duty bearers a legal obligation according to international human rights to respect, protect and fulfil human rights. There are also other actors in society that could be recognised as duty bearers, such as companies and religious structures, depending on the results of the analysis of the development problem and the strategies chosen. The duty bearers could be active either at the community level or at the national or global levels.

Another aspect of the Rights Based Approach is the emphasis on the role of non-governmental organisations in development programmes as facilitators in a process of empowering the rights holders to obtain the capacity to know and claim their rights. The whole process of empowerment is crucial building knowledge and skills. This aims to increase people's self-confidence and willingness to take up their role as rights holders. The facilitating role of the non-governmental organisations also includes a process in which the duty bearer accepts his or her responsibility to put effort into development.

In strengthening people to be independent actors in their efforts to live in safety and dignity, it is crucial to include and elaborate in more detail on the meaning of the key principles of the Rights Based Approach: non-discrimination, equality, participation, empowerment, transparency and accountability. They are all more or less familiar from previous phases in human development practice. However, by integrating the framework of human rights with its core conventions, the interpretation of the principles will have a broader meaning.

One example is the interpretation of the principle of non-discrimination. According to international human rights law this is not only a principle, but also a legally binding non-derogable right. This means that the state, as a duty bearer, should never set the right aside for any reason. This right has explicitly formed the basis for giving women, minorities, indigenous people, disabled people, migrant workers and children special attention in the human rights system and in the right to development on equal terms. The challenge is to actually contribute to its implementation.

The sixth principle of accountability is added to the list of principles, which highlights the role of the duty bearers in addition to the rights holders, the target group in development. The advocacy activities, therefore, become more crucial, as well as the need to address the challenges through advocacy. The role of the facilitator is not to advocate for a group of rights holders, but to facilitate a process that leads the rights holders to advocate for themselves and to enter into a dialogue with the duty bearers on the latter's obligations to address the development problem identified.

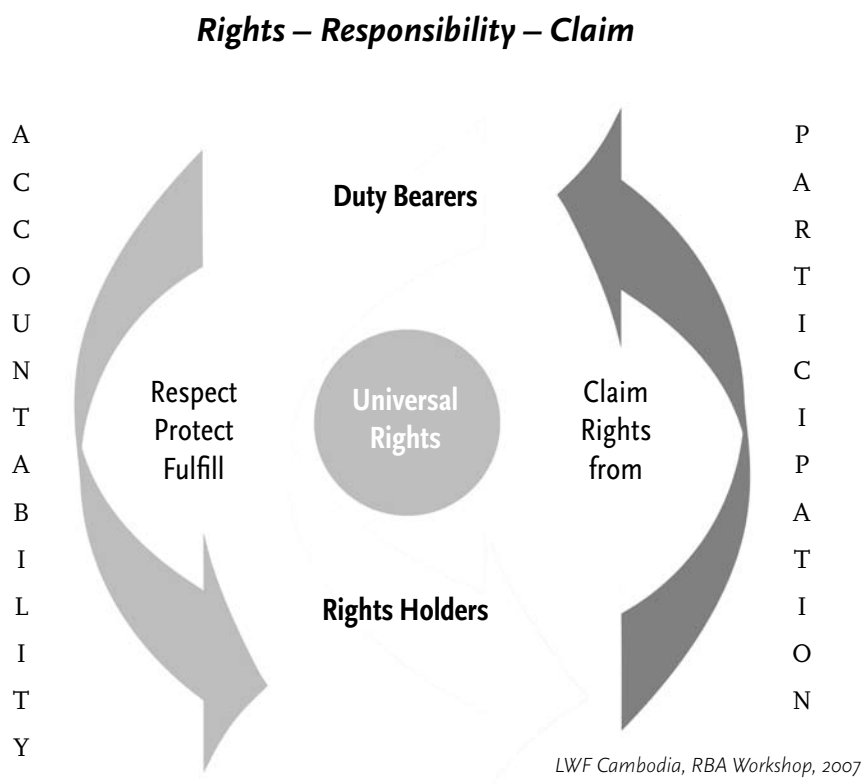
To make such a process possible, the strategy also includes a stakeholder analysis that identifies the duty bearers that could be of key interest for the process to reach the objectives of the development programme. This also includes a decision on the level of advocacy, that is, whether to be active at the community level, or the national or global levels.

Challenges in applications of the approach

There are several challenges in integrating a Rights Based Approach into development and humanitarian assistance. Each requires its own analysis and strategy, taking the specific context into account.

One challenge has to do with the role of the development actor, the non-governmental organisation. The Rights Based Approach initiates a process to change mindsets and attitudes by reflecting on the meaning of no longer addressing the target group of people as beneficiaries, but as holders of rights. Linked to this is the implication of the role of being a facilitator, rather than a doer and a donor. The Approach examines the tradition of speaking in terms of charity by comparing the differences between a needs based approach on one hand and a rights based approach on the other.

A second challenge is linked to the principle of accountability, and the need to address the issue of power relations in a strategic way by carefully considering a certain political, economic, social or cultural context. This has been obvious when gender-based discrimination and gender-based violence have been brought up in the workshops. The issue has also been underlined in relation to the need to take the physical security and feeling of safety into consideration when the development programme is implemented in a politically sensitive



LWF Cambodia, RBA Workshop, 2007

situation, either locally or nationally. Below are two examples of this second challenge that have been highlighted by practitioners.

1. A repatriation process from a female perspective in Africa

In the preparatory phase of the repatriation of refugees from a refugee camp in Kenya to Southern Sudan, a female group of refugees had raised concerns with respect to returning. Their reason was not linked to the issue of access to material assistance, such as food and shelter. Instead, they referred to the culture of their region of origin and the risk that they would no longer be given protection against violence and gender-based discrimination. They feared that they would miss the opportunity to be decision makers in matters of immediate impact on their situation, and that they would no longer feel the safety of a social network sharing the same needs.

Their questions raised the critical point of whether all of the efforts put into raising awareness of gender equality and the right to access to human rights would be left behind. The input highlighted a crucial need to discuss the impact of a pluralistic legal context in development and humanitarian assistance, and to address the intersection between the context of culture and the recognition of the universality of human rights in the application of a Rights Based Approach.

One of the recommendations stemming from a discussion of these challenges in a seminar at the World Social Forum 2007 was to strengthen coordination between refugee camps and areas of return when preparing for repatriation, by including familiarisation with the situation in the country of origin before the return and increasing awareness of human rights among the refugees and the recipient community.

2. A conflict over land from a community perspective in Asia

A second example of addressing power relations is a land rights conflict from an area in Cambodia, where the implementation of a Rights Based Approach has been applied for many years with a special focus on the grassroots level.

A village community learned that the leader of the neighbouring village had agreed to sell forest land to a private person. According to the community, the specific area of forest land did not belong to the neighbouring village. It was used by the community for cattle herding and fire wood. The perception was that it could not be owned individually, and could therefore not be sold.

It was difficult and sensitive for the community to discuss the case and to claim their right in relation to the duty bearers that they had identified. National networking was used as a method to overcome the challenge, and the local leadership was in contact with a national human rights organisation to get more specialised advice on how to take the legal aspects of the case in particular further through the legal system of the country. However, at the same time the community had to address the immediate situation concerning their relationship with the neighbouring village and the person who had offered to buy the land.

The situation raised a lot of issues regarding the need for a legal as well as a socio-political analysis of the problem. The case was an illustration of several of the key issues in Rights Based Approach training, such as an understanding of the context of economic and political power relations, the need to carefully identify the different stakeholders and their roles and responsibilities, the experiences of holding a less favoured position as the rights holder when papers were asked for as proof of ownership in an unclear situation of land rights regulations, and the question of choosing wise strategies to convince the duty bearers to realise and accept their duties.

To live the human rights

As a member of a facilitating team in a workshop on the Rights Based Approach last year, I worked together with colleagues from Buddhist and Muslim traditions. Every day opened with a morning reflection. On one occasion, one of my colleagues referred to the principle of accountability. For a moment we reflected on an illustration of a Buddhist gesture of a hand that pointed with one finger at a problem that has to be addressed by an identified duty bearer. The key message was, however, to focus on the fact that three fingers of the hand at the same time pointed back to us as a community and as individuals.

Within the context of the 60th Anniversary of the Universal Declaration of Human Rights, this morning reflection confirmed that the call of today is still one of trying to live the human rights in such a way that the rights holders, their inherent dignity, needs and rights, are at the core of our efforts to contribute to a just and sustainable society.

While the concept of refugees was defined in a UN convention in 1951, it took another 30 years until internally displaced persons were recognized as a group with special needs and rights. Their double position as both displaced and citizens in their own country sometimes blurs the roles of actors in charge of their protection and assistance. The last decade has seen the elaboration of a much-needed set of Guiding Principles for this group.

INTERNALLY DISPLACED PERSONS:

A neglected issue on the international agenda

Elizabeth Ferris

As we commemorate the 60th anniversary of the Universal Declaration of Human Rights (UDHR), it is timely to focus on international efforts to uphold the rights of those who have been forced to leave their homes and communities. This article will describe the evolution of human rights standards for internally displaced persons over the past decade and then discuss challenges to the implementation of these standards in the future.

The international refugee regime

For more than 50 years, the international community has acknowledged its responsibility to protect people fleeing their countries in search of safety. In 1921 the League of Nations created a high commissioner for refugees to assist refugees in Europe, mainly from the USSR and Eastern Europe. In the aftermath of World War II and the massive needs of some 30 million displaced Europeans, the fledgling United Nations developed an international system to respond to refugees. The system included: a clear definition of who is a refugee, a convention prescribing the way in which refugees should be treated and an international agency, the United Nations High Commissioner for Refugees (UNHCR) with a mandate to protect and assist refugees.

Refugees were defined in the 1951 convention as those who: "as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it". [1]

Over the years, the system for protecting and assisting refugees has evolved and expanded. Most notably the Convention itself was changed with the addition of the 1967 Protocol which expanded the geographical applicability of the Convention; originally intended to benefit only those displaced as a result of events in Europe, the Protocol made it applicable to people fleeing persecution throughout the whole world. The Convention, originally intended to meet the needs of individual victims of persecution was able to respond to situations of mass influxes of hundreds of thousands of people fleeing civil conflict. UNHCR, created for a three year period to meet what was perceived as a temporary need, saw its mandate renewed every few years and its field presence expanded to include most countries of the world.

But it is important to underscore that this international refugee regime was created in the context of the Cold War and was intended to protect victims of persecution – rather than civil conflict – by allowing them to find safety elsewhere. It has never been a perfect system. Although Article 14 of UDHR guarantees the right of all human beings to seek asylum in other countries, it is the responsibility of governments to determine who is allowed to enter their territory. The 1951 Refugee Convention has been applied in ways consistent with governmental foreign policies. Thus, in the United States, Cubans fleeing to Florida were considered to be refugees and given expedited access to residence and citizenship, while Haitians arriving on the same shores faced more restrictive processes and were often detained and deported.

In the 1980s the system came under strain as a result of a dramatic increase in the number of people seeking asylum in developed countries, particularly in Europe. Alarmed at this trend, European governments sought to deter the arrival of asylum-seekers by instituting visa requirements, sanctions against airlines transporting people without the proper documentation, detention of asylum-seekers and other punitive measures. UNHCR often found itself in the 1980s and 1990s challenging governments on human rights – often the same governments that provided the bulk of UNHCR's funding.

Entitled to citizens' rights

In the beginning in the 1980s, there was increasing concern about another group of people forced to leave their communities – but who were not able to cross an international border. These people, who came to be known as internally displaced persons (IDPs), were not entitled to the same legal protections as refugees, although they were often fleeing the same conflicts and even though they were often more vulnerable to violence because of their proximity to

the conflicts. Following a period of intense diplomatic and lobbying activity, the then UN Human Rights Commission appointed a special Representative to the UN Secretary-General on IDPs (RSG) in 1992, Francis Deng.

In 1994 the Commission asked him to analyze existing legal instruments applicable to IDPs[2] to determine what additional legal measures might be necessary. The review found that large numbers of existing human rights instruments were applicable to IDPs who were citizens of their own countries although governments and others were often unaware of how these instruments applied to IDPs. Since there was little interest or political will in drafting a new convention on internal displacement, an alternative was sought. Francis Deng, supported by his colleague, Roberta Cohen of the Brookings Project on Internal Displacement, set up a process by which legal experts around the world brought together the relevant portions of international human rights law, international humanitarian law, and by analogy, refugee law into the *Guiding Principles on Internal Displacement*.

It took two years and a series of consultations to draft the *Guiding Principles*. The 30 principles were based on existing law and spelled out a series of protections: protection against arbitrary displacement, standards for protection during displacement and protection during return, resettlement and reintegration. The *Guiding Principles* are a set of non-binding guidelines which were not negotiated by states nor subject to their ratification. This was an innovative approach to developing international legal norms and standards. Rather than being negotiated by representatives of governments, they were drafted by experts. While this enabled a much quicker drafting process, it also meant that significant effort was needed to obtain the support of governments who were expected to implement the Principles.

Some argued at the time – and the arguments continue to surface – that a binding international convention was needed. But negotiating treaties generally takes years. Even when negotiated, a treaty may not receive the necessary ratifications to enter into force,[3] and even when signed and ratified, conventions may not be applied. Because the *Guiding Principles* are based on existing

> ***It is the responsibility of governments to determine who is allowed to enter their territory.***

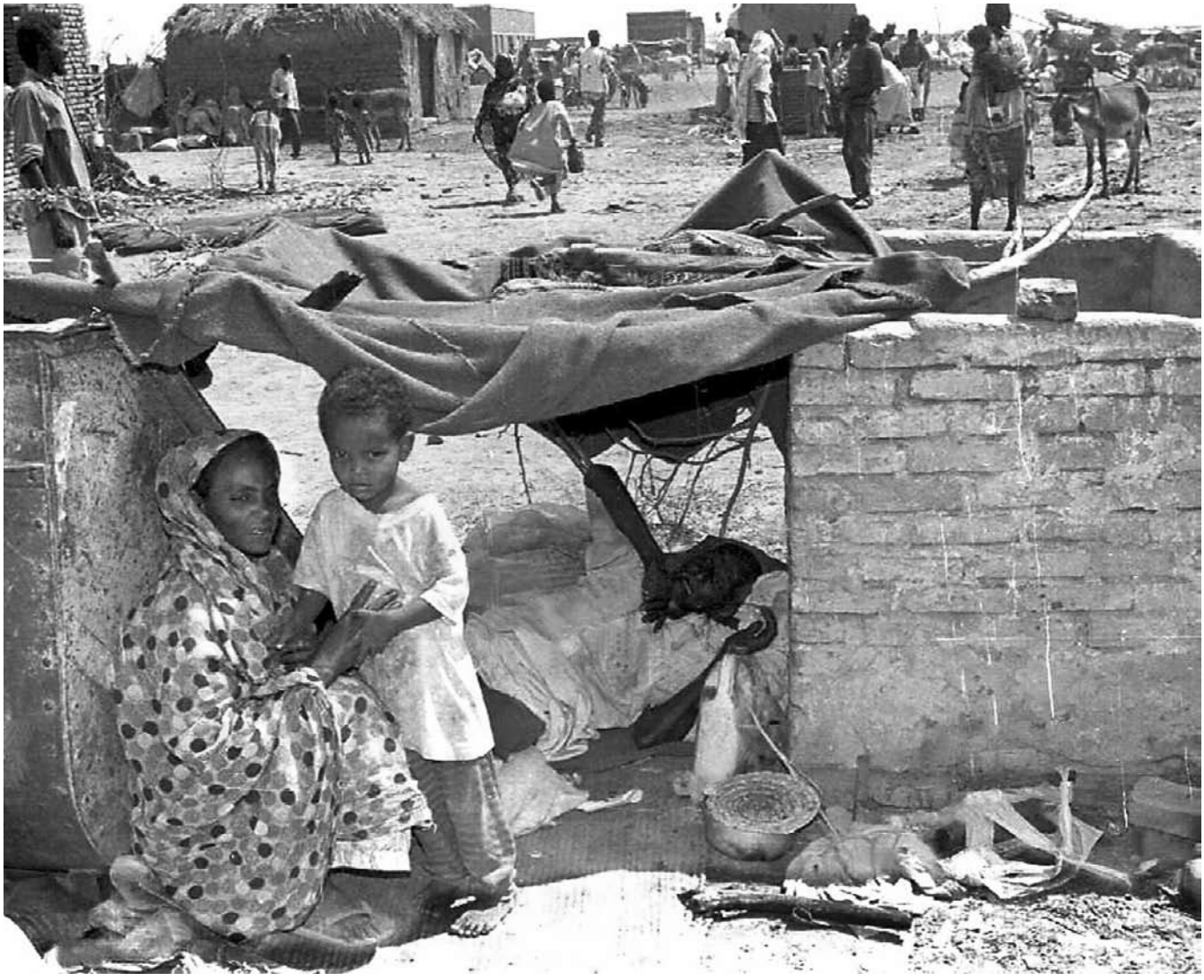


PHOTO: SCANPIX

Article 25: Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care.

international law, they sidestepped this process. There was also concern that negotiating a binding treaty on internal displacement would trigger a negative reaction on the part of governments fearing any infringement on their sovereignty.

The *Guiding Principles* begin with a definition of internally displaced persons as "persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border".[4]

> ***There are still gaps in the international mechanisms to ensure that IDPs are protected and assisted.***

This definition differs from the definition of refugees in that it includes those displaced by natural and man-made disasters as well as those fleeing conflicts. While the assumption is often made that refugees and IDPs are basically the same – with the exception that IDPs remain within their national borders – in fact there are important differences, including the principal difference that IDPs are citizens of their countries and thus entitled to all the rights and responsibilities therein. It is national governments who are responsible for protecting and assisting IDPs and there is no international agency charged with responsibility for them.

While the refugee definition has over 50 years of interpretation, analysis, implementation and practice, the *Guiding Principles* are only 10 years old. Scholars and practitioners can thus refer to UNHCR Executive Committee conclusions and a substantial body of jurisprudence to analyze practices and trends in implementation of the refugee convention on the national level. Unlike the case of refugee law, the corresponding body of law and legal standards applicable to IDPs is still in its infancy.

Falling between UN chairs

The *Guiding Principles* were presented to the UN in 1998 and over the years have acquired substantial credibility. At the 2005 World Summit, governments unanimously recognized them as an "important international framework for the protection of internally displaced persons"[5]. Presently some 20 governments have policies or laws on internal displacement which, to varying degrees, have incorporated aspects of the *Guiding Principles* into their legislation.[6] The African Union has drafted a convention on IDPs which is scheduled for presentation to its members in 2009 and which would represent the first binding international instrument on IDPs.

IDPs and their advocates have used the *Guiding Principles* to advocate with their governments to protect the human rights of IDPs. Most notably, in Colombia, where some three million people have been internally displaced, the Constitutional Court has relied on the *Guiding Principles* in making its decisions requiring the government to adopt additional measures in support of IDPs.

While UNHCR was mandated to protect and assist refugees, no UN agency was charged with responsibility for IDPs. In practice, UNHCR often assisted IDPs, but this was undertaken on a case-by-case basis at the request of the UN. The UN's Humanitarian Reform process, launched in 2005, was largely motivated by the need to address the gap in the international system in responding to IDPs who by this time numbered more than twice the number of refugees. Under the Humanitarian Reform process, UN agencies, NGOs, and the Red Cross/Red Crescent movement were charged with working together in clusters, each led by a designated agency. UNHCR was given responsibility for leading the work in the clusters on IDP protection, emergency shelter and camp coordination and management for IDPs displaced by conflict.

For those displaced by natural disasters, the UN resident representative or humanitarian coordinator in a particular country was asked to consult with the three UN agencies with a protection mandate – UNHCR, UNICEF, and OHCHR – to determine which should assume the cluster lead. In practice, it has proven difficult to obtain the commitments of UN agencies to take on responsibility for IDPs. UNHCR, considered by many to be the natural organization to do so, was initially concerned that responsibility for IDPs could weaken its mandated work with refugees. Although UNHCR is presently working with IDPs in a large number of countries, its commitment to IDPs depends on its receiving extra-budgetary funds for this.

Recently, UNICEF commissioned an external evaluation to consider whether it could take on responsibility for IDPs in natural disaster situations, but so far the agency has resisted taking on this commitment. While the issue of internal displacement is firmly on the international agenda, there are still gaps in the international mechanisms to ensure that IDPs are protected and assisted.

New focus on natural disasters

In the initial years after the *Guiding Principles* were introduced, the emphasis was clearly on those displaced by conflict with relatively little attention directed towards those displaced by natural disasters or by development projects. In 2004, the tsunamis in Asia led Walter Kälin, the present RSG on the Human Rights of IDPs to examine the human rights implications of those displaced by natural disasters. Following a visit to the region, he led the Inter-Agency Standing Committee in a process of adopting *Operational Guidelines on Human Rights and Natural Disasters*. These Guidelines point to a number of problems that are often encountered by persons affected by the consequences of natural disasters including unequal access to assistance, discrimination in aid provision, enforced relocation, sexual and gender-based violence, loss of documentation, recruitment of children into fighting forces, unsafe or involuntary return or resettlement, and issues of property restitution.[7]

> ***Those affected by natural disasters have the right to request and receive protection and assistance from their governments.***

The Guidelines emphasize that people do not lose their basic human rights as a result of a natural disaster or their displacement. Rather all of those

affected by natural disasters, including those who are displaced, are entitled to the protection of all relevant human rights guarantees. As residents, and usually citizens of the country in which they are living, they are entitled to the protections afforded to all residents and citizens, even though they may have particular needs related to the disaster and thus require specific assistance and protection measures. As with all situations of internal displacement, the primary duty and responsibility to provide such protection and assistance lies with the national authorities of the affected countries. Those affected by natural disasters have the right to request and receive such protection and assistance from their governments. These guidelines, which were formally adopted by the InterAgency Standing Committee in June 2006, are presently being used to train disaster responders on ways of ensuring that human rights are protected in the midst of disaster.[8]

Although the Internal Displacement Monitoring Center collects data on the numbers of people displaced by conflict, there are no accepted global estimates of the number displaced by natural disasters, even though it is generally accepted that the scale of disaster-induced displacement is much greater than that caused by conflict.[9] In the course of the past year, for example, over 400 natural disasters took 16,000 lives, affected close to 250 million people and displaced many millions. As climate change is likely to increase both the number and severity of natural disasters, there is a need to put into place mechanisms to ensure that the human rights of those forced to flee floods, earthquakes, cyclones and other disasters are protected.

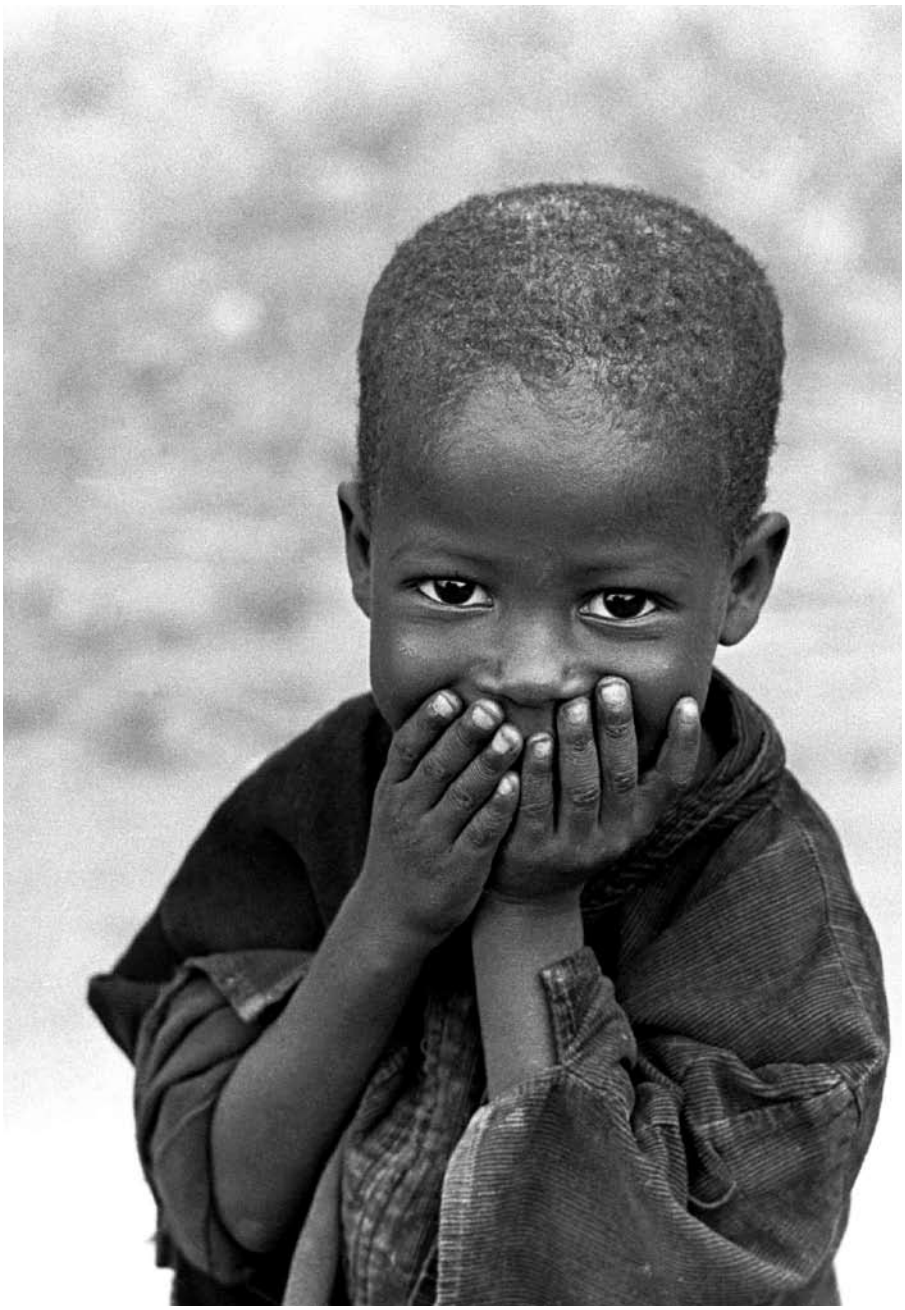


PHOTO: PETER WILLIAMS

Article 1: All human beings are born free and equal in dignity and rights. *A smile from Biafra.*

Division of responsibilities

Because internally displaced persons are the responsibility of national governments, questions about international action on their behalf inevitably raise questions of sovereignty. In Darfur, for example, where 2.5 million people have been displaced in the last five years, it is the government of Sudan which is responsible for their assistance and protection. Although there are over 15,000 humanitarian workers in Darfur and over US$1 billion is provided every year to assist displaced Darfurians, problems with access and security limit the ability of humanitarian actors to meet the needs of those affected by the conflict.

It is up to national governments to determine whether and how humanitarian agencies will be allowed to assist people displaced within their territory – whether they are displaced by conflict or by natural disaster. Thus in the aftermath of Cyclone Nargis, the government of Myanmar initially restricted entry to humanitarian agencies even though by most accounts the government was unable to respond adequately. It is likely that in the coming years, questions of sovereignty will remain central to the ability of the international community to respond to the needs of those displaced internally.

Although much has been done to disseminate the *Guiding Principles*, much more work is needed to ensure their implementation at the national and local levels. Laws and policies by national governments are needed to ensure that the human rights of the displaced are upheld. Civil society, including national NGOs and National Human Rights Institutions, has a crucial role to play in monitoring the implementation of laws and policies. Internally displaced persons themselves need to be given the opportunity to participate in decisions that affect their lives. Peace agreements which are negotiated to bring about an end to conflicts should address internal displacement. Finding solutions for internally displaced persons is a crucial component of peacebuilding. If solutions are not found for them, peace and stability will be difficult to sustain.

Promotion of the human rights of those displaced by natural disasters is likely to become more important in the future. Further work will be needed on legal issues of those affected, for example, by rising sea levels and by the expected intensification of slow-onset disasters, such as drought. Presently, for example, those forced to leave their countries because of the effects of climatic changes brought about by global warming are considered as economic migrants. If small island states are submerged by rising sea levels resulting from climate change, the international community will need to grapple with their status: for example, should they be treated as refugees? If so, should the 1951 Convention be expanded?

The 10-year history of the *Guiding Principles on Internal Displacement* illustrates that it is possible to put a neglected issue on the international agenda and to develop an international legal framework in a relatively short period of time. As Walter Kälin has stated: "the *Guiding Principles* go beyond a simple compilation and restatement of those human rights and humanitarian law guarantees that are applicable to situations of internal displacement. They provide a fully-fledged framework for identifying protection needs and for planning, implementing and monitoring protection activities."[10] The challenge for the future will be to ensure that this framework is not only more widely implemented, but that it is adapted to respond to new situations which displace people.

1 Office of the UN High Commissioner for Human Rights, Convention relating to the Status of Refugees, Adopted on 28 July 1951 by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons convened under General Assembly resolution 429 (V) of 14 December 1950. Available at http://www2.ohchr.org/english/law/refugees.htm

2 Compilation and Analysis of Legal Norms pertaining to internally displaced persons, UN Doc.E/CN.4/1996/52/Add. 2.

3 It took 10 years for the UN Convention on the Rights of All Migrant Workers and their Families to receive sufficient ratifications to come into force and even now, the fact that it has not been ratified by the government of a country which receives large numbers of migrants, limits its applicability.

4 United Nations, *Guiding Principles on Internal Displacement*, 1998 http://www.brookings.edu/projects/idp/gp_page.aspx.

5 UN General Assembly GA Resolution A/60/L.1 para. 132

6 See the newly created website www.idpguidingprinciples.org for examples of laws and policies referencing the *Guiding Principles*.

7 IASC *Operational Guidelines on Human Rights and Natural Disasters*, Washington: Brookings-Bern Project on Internal Displacement, June 2006, p. 8.

8 *IASC Operational Guidelines on Human Rights and Natural Disasters*, Washington: Brookings-Bern Project on Internal Displacement (June 2006); *Operational Guidelines and Field Manual on Human Rights Protection in Situations of Natural Disaster*, Pilot version, Washington: Brookings-Bern Project on Internal Displacement (March 2008).

9 See www.internal-displacement.org

10 Walter Kälin, "The role of the *Guiding Principles* on Internal Displacement", Forced Migration Review, Special Issue: Putting IDPs on the map: achievements and challenges (December 2006).

UN Advocacy Week with focus on human rights

– As Christians, we are called to stand with those who are victims of oppression, poverty or violence, Rev. Elenora Giddings Ivory, Director of the World Council of Churches (WCC) Programme on Public Witness said in advance of the WCC's United Nations Advocacy Week in November this year. The week was marked by an overarching framework of Human Rights at 60 Years, as both the WCC and the Universal Declaration of Human Rights celebrate their 60th anniversary this year.

The declaration is an early example of successful church advocacy. The Commission of the Churches on International Affairs, a consultative body of the WCC, effectively pressed for the inclusion of the article on religious freedom – to change one's religion or belief and to manifest one's religion or belief in worship, teaching, practice and observance – as essential to freedom, justice and peace.

Human rights have been a priority on the ecumenical agenda ever since. The WCC enables victims of human rights violations to give testimony. The WCC contributes to the sessions of the new UN Human Rights Council with written and oral submissions on issues such as religious freedom and intolerance, socio-economic and cultural rights, and issues relating to migration, racism and xenophobia.

– In our work, we try to enact this biblical and theological mandate from our understanding of where our individual faith traditions say we should be, but more importantly where Jesus said we should be, Giddings Ivory said.

The advocacy week, organised annually by the United Nations Liaison Office of the WCC in New York, brings together over 120 people working on advocacy issues in churches, national councils of churches, specialised agencies, regional ecumenical organisations and regional advocacy networks. It provides a significant moment for churches willing to address questions of power and structural injustice through a concerted and coordinated ecumenical approach to strengthen their networks, agree on priority advocacy issues and develop common strategies.

The broad constituency base of churches, firmly rooted in the local but also belonging to a worldwide community, provides an opportunity for advocacy not only at the United Nations but in capitals in nearly every country in the world.

The WCC works to defend human dignity by addressing human rights from an ethical and theological perspective. It responds to requests from churches to support their work when human dignity is threatened. This project attempts to accompany churches and strengthen their advocacy work for human rights. This requires a holistic approach where civil and political rights, economic, cultural and social rights are addressed in an integrated way.

The concept of human rights must comprise economic, social and cultural rights. In times of economic crisis, the weaknesses of human rights law and international law become apparent. More debate is needed about the degree to which human rights obligations can be extended to private actors, as well as the role of governments in regulating economic activities.

Towards a universal protection of human rights

Michael Windfuhr

It is currently easy to make the link between human rights and the economy. The world food crisis this year and the current financial crisis highlight the profound impact of economic trends on the realisation of human rights, particularly economic, social and cultural rights. The number of hungry and malnourished people has increased from 854 to about 923 million during this year's food crisis. The recent global financial crisis will likely lead to a recession period, during which many people will lose their jobs and income.

How can these trends be analysed from a human rights perspective? What are the human rights violations that can be found and described? The increase in the number of hungry people alone is not necessarily an indication of a human rights violation. The implementation of certain government policies that led to these developments, and the fact that governments omitted to react adequately and support those in need are possible facts that must be analysed from a human rights perspective. Such a detailed analysis would enable us to identify human rights duty bearers, and possible human rights breaches or violations.

> ***The human rights instruments available for victims of violations are often weak or non-existent.***

While the Universal Declaration of Human Rights celebrates its 60th anniversary in December 2008, the analysis of the relationship between human rights and economics or economic development is still not fully understood, and the human rights instruments available for victims of violations are often weak or non-existent. This can be explained on the one hand by the fact that the overall understanding of economic, social and cultural human rights is currently evolving quickly, but is still far from being adequately developed. On the other hand, economics or development is to a large degree organised and implemented by private actors, such as transnational companies or small and medium enterprises.

Human rights law has been developed primarily to hold government actors accountable for their human rights obligations. The area in which international law and human rights law are most developed is labour relations. The International Labour Organisation (ILO) is the oldest of the specialised agencies of the United Nations, and has developed its own body of international law with more than 185 conventions and recommendations. The ILO is already constructed in such a way as to better deal with private actors. In its structure, employers and trade unions are formal members together with the states. Therefore, the ILO offers its own instruments for human rights monitoring and protection.

The instruments of the ILO, which are quite well developed for the formal economy, come under pressure from trends in economic globalisation. Additionally, it must be noted that while the ILO also tries to deal with the problem of economic development beyond the formal sector, many of the profound human rights violations happen within the informal economy, where the ILO is hardly able to cover these problems. Four out of five workers worldwide can be said to belong to the informal economy.

The degree to which human rights obligations can be extended to private actors and the role of governments in regulating economic activities nationally and internationally are debates that are currently gaining momentum, particularly due to the increase in economic globalisation. But many have either started recently or are under development and are not finished. This article therefore tries to describe the current status of the debates and to identify the cleavages and conflicts in the discourses.

Risk areas in economic activities

The connection between human rights and the economy is often seen in the contexts of economic activities, such as exploitations of resources as well as labour rights and working conditions. Economic actors often contribute to the substantial deterioration or destruction of living conditions. At the same time, it is increasingly difficult in times of economic globalisation for people affected by such activities to hold the relevant actors accountable and to find an adequate recourse. The relevant questions to be answered are: What can be described as human rights obligations and which recourse mechanisms are available at the national and international level to deal with the situations?

The impact of economic activities on human rights can be divided into directly and indirectly-affected persons. The employees are normally those who are under the direct influence of the company, while the impact that a company has on neighbouring communities can be counted as indirect effects. The following areas of economic activities can be seen as very relevant for human rights violations:

- Working conditions in the informal economy are often particularly difficult. Violations can be those of rights at work, such as bad or unhealthy labour conditions, exceedingly long working hours, low pay etc. They can also cover acts that are related to extremely precarious working and living circumstances, such as child labour, bonded labour or slave labour. It is often very difficult to regulate these conditions, because they occur either in informal settings or at the end of long production chains under home production conditions, such as in the textile industry.
- Development and infrastructure investment activities can lead to problems such as forced evictions of people living in the areas. The removal of persons often goes hand in hand with prosecution or bad treatment in order to make them move. When they move they can be confronted with inadequate compensation or poor resettlement schemes. Since 1980 alone, around 80 million people have been displaced worldwide to enable the construction of dams, often without adequate compensation and resettlement schemes.
- Much of the foreign direct investments (FDI) in Sub-Saharan Africa, as well as in other developing countries, are investments in the extractive industries. In many cases, FDI in the extractive industry sectors go hand in hand with a number of human rights problems, be it the pollution of the land through oil spills or waste dumpsites, the forced removal of people due to surface mining, pollution or the removal of water resources.
- In many areas of FDI, particularly in the extractive industries, the security of the production sites tends to be taken over by private security companies. Particularly in states with a difficult governance situation, national and international companies look for private security firms. Such companies might be involved in the killing of persons, intimidation of neighbours etc.
- One of private companies' activities linked to human rights might be their huge lobby influence on the formulation of national laws or other regulation instruments that are related to FDIs. Land laws, as well as mining legislation, are areas of high importance to guarantee that human rights violations linked to investments are kept small or are avoided. But when laws or regulations are made to serve the interest of the investor only, human rights violations are likely to happen.

The list does not intend to say that FDIs always or regularly go hand in hand with such violations, but for many countries such forms of violations or a combination of violations have been or can be documented.

Holding companies accountable at the national and international level is often not easy. Affected communities are frequently poor and do not have the financial capacity to go to court. If they can take the case, the courts might be very slow or biased, so that it is difficult to obtain a favourable sentence. In dealing with international investors it becomes even more complicated for affected persons or communities to appeal against a complaint, because there are often no legal possibilities (judicial and non-judicial mechanisms) to sue the actors adequately, or such possibilities are not accessible physically or economically.

There are several emerging international initiatives under way in order to improve the accountability of private actors to human rights law or national law. One example is the work of the Special Representative of the Secretary-General on the issue of Human Rights and Transnational Corporations and other Business Enterprises, John Ruggie, who delivered the report of his first three years of work to the Human Rights Council in 2008.

Extraterritorial effects

Historically, human rights were developed to protect the freedoms of an individual against government abuse of power, and to guide government action to respect, protect and fulfil the enjoyment of all human rights. The implementation of human rights requires a government that is willing and able to realise these rights. It requires acts of commission and acts of omission from the government. Government policies are influenced in two ways by the current globalisation process: (1) Governments have to make sure that their own national or international activities do not harm the enjoyment of human rights of persons living in other countries. (2) Globalisation affects governments' capacity to commit or omit action. If external effects are becoming important or decisive in determining national policy decisions and resources, governments might be effectively con-

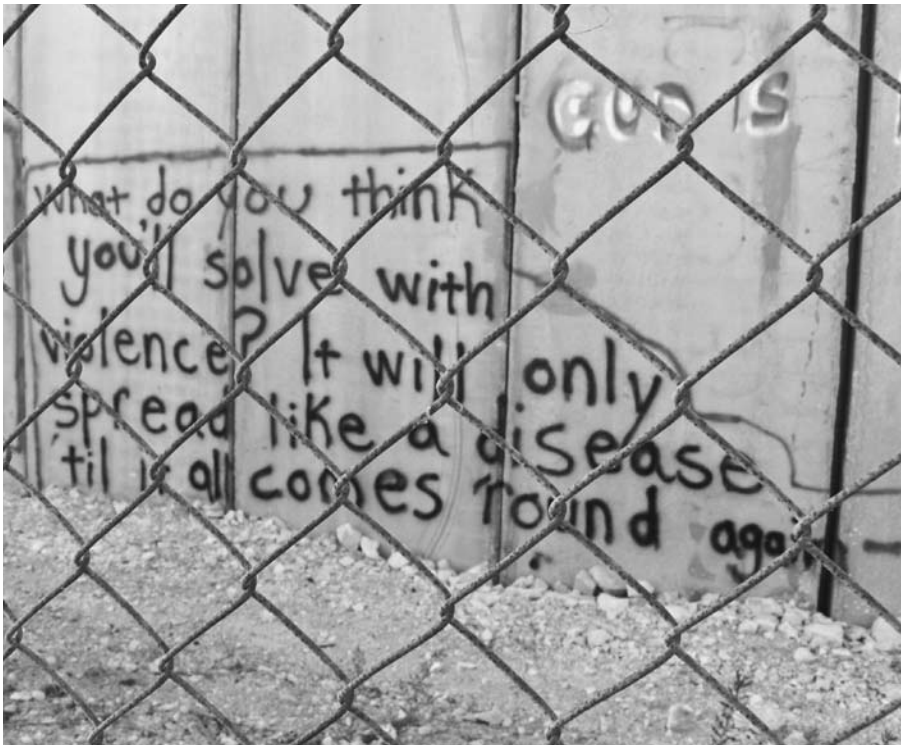


PHOTO: EAPPI

Article 13: (1) Everyone has the right to freedom of movement and residence within the borders of each state. (2) Everyone has the right to leave any country, including his own, and to return to his country. *The message on Israel's separation wall gives evidence that the paint brush may speak louder than the gun.*

strained from choosing adequate policy options required to guarantee the implementation of certain rights.

Today therefore, the human rights movement has to address these additional problems: Firstly, how to deal with situations in which government policies might have adverse effects on people living in other countries. How is it possible to hold governments accountable when their policies have 'extraterritorial effects'? Secondly, the issue that weaker states often do not have full control over the use of available resources, either because international treaties or conditionalities limit government action, or because international private actors have become so powerful that it is more and more difficult to influence investment decisions or to formulate regulations. Thus, answers are needed to the question of how to assess the extent to which governments are restricted in their policy choices, and to what extent governments are limited today in their capacity to adequately regulate private actors.

Obviously the primary responsibility for ensuring all human rights must remain with national governments, and a government has to protect the rights of the people living in its territory against foreign threats. Nevertheless, an important task is to analyse the extent of new challenges and to discuss adequate answers or ways of dealing with these challenges in the human rights system. Civil society actors and legal scholars use the concept extraterritorial obligations to apply human rights obligations to the effects of government policy abroad. National trade policy, as it has been shown with effects of the EU's agricultural export subsidies on local markets in developing countries is one example of such effects abroad. Governments have to make sure that their foreign trade and economic policies, as well as their development policies, do not harm human rights in other countries. Additionally, governments can support the implementation of human rights in other countries through aid and other positive interventions.

In times of globalisation, the role of multilateral (intergovernmental) institutions is becoming increasingly important and relevant for the enjoyment of human rights. This importance is attributed to the full realisation of all human rights, civil and political (CP rights), as well as economic, social and cultural rights (ESC rights). Nevertheless, a special focus has to be given to ESC rights due to the fact that multilateral institutions set the rules for international economic, social and cultural policies, and advise governments of developing countries in the design of national policies related to mining, land management, forest and fishery policy, etc. Therefore, multilateral institutions have an effect on international and national framework conditions that influence the full realisation of these rights. Intergovernmental institutions exert an influence in at least three different areas:

- Multilateral institutions are important with respect to standard-settings in human rights, be it at the international level, such as the ILO, or at the regional level such as within the African Human Rights System.
- Multilateral institutions design international economic, social and cultural policies and influence the ability of governments to implement these rights.
- Multilateral institutions can use a rights-based framework in all of their activities, and thus can become an important proponent of the better implementation of all human rights.

Elucidation of responsibilities

Concerning the acts of private actors, many initiatives are under way to better control their effects, and to foster existing or create new approaches to hold private actors accountable when they act wrongfully. The first duty to control them remains with the national state where the violation is happening. The national government has an obligation to protect the persons that are negatively affected by economic activities. The second layer of duties belongs to the home country of the investment. It has the extraterritorial obligation to protect and make sure that private actors from that country do not support or engage in human rights violations abroad.

Many initiatives have been taken to use extraterritorial government obligations to hold companies directly responsible for acts and violations they are involved in. Private actors have started to offer voluntary tools such as company codes of conduct, or codes for a whole sector such as the toy industry, as a solution to create corporate responsibility. While some of these tools work, their implementation depends to a large extent on the behaviour of the respective company.

Several initiatives have attempted to develop more legally binding rules for corporations. The latest international attempt, through an initiative in the human rights protection systems, the so-called UN norms for transitional corporations, still lacks the support of governments. The strongest instrument available at the moment is the Organization for Cooperation and Development guidelines on multinational corporations. So far a patchwork of voluntary standards and soft law instruments has been created, which nurtured and even forced a growing debate about corporate social responsibilities.

> ***Universal human rights need universal protection.***

We are far from a system where victims can easily claim their rights and hold private actors accountable through national courts or other legal mechanisms. On the other hand, the debate is gaining momentum and more clarity has been achieved in recent years regarding the extent and standards to which private companies are duty bound. Still, the debate is in its infant stage and the current loopholes in the protection of human rights through private actors need to be closed.

Human rights violations linked to economic activities need to be urgently and adequately tackled in economic policy making, as well vis-à-vis all relevant actors. Victims of violations need to have access to recourse mechanisms in order to hold responsible the actors who have caused harm. The Universal Declaration of Human Rights offers the universal protection of human rights. The existence of several loopholes in the protection of human rights in times of economic globalisation is not acceptable. Human rights should be guaranteed universally. Universal human rights need universal protection.

Christian theology and tradition have something important and specific to contribute to genuine political discourse and dialogue leading to action for justice. Latin American Christians have been among those helping to forge a human rights tradition with foundations in faith. The promotion of human rights in the Andean region is also characterized by its intimate connection to the rights of the poor.

LATIN AMERICA:

Human rights – the rights of the poor

Thomas Bamat

Human rights can be defined as claims of moral and/or legal entitlement rooted in people's historical experiences of deprivation and injustice, and linked to their struggles to overcome such conditions. These struggles can lead to the establishment of new cultural norms, and the adoption of specific legal standards. While the Christian approach that has emerged in Latin America in recent decades does not yet constitute a tradition comparable to the long liberal tradition, this enterprise in social ethics and action provides an approach to human rights with deep historical and religious roots, and a notable record of achievement. It encompasses a full range of claims to justice – civil and political, socio-economic, and cultural rights. It grounds them in Scripture and Christian social teaching. And it prioritizes the plight and the protagonism of the poor and the marginalized.

Theological discourse

One of the earliest scholarly efforts to come to terms with issues of Christianity and human rights in Latin America was an interdisciplinary project launched in 1977 by the Woodstock Theological Center. It resulted in two significant volumes of work (Hennelly and Langan; Crahan). In the first of them, Jesuit theologian David Hollenbach noted the growth of grassroots advocacy by Catholic organizations in Latin America and elsewhere. He noted as well that the Vatican had come to adopt the cause of human rights "as the prime focus of its ethical teaching and pastoral strategy in the domain of international justice and peace" (Hennelly and Langan 9).

In his historical review and commentary, Hollenbach observed that Pope John XXIII's encyclical Pacem in Terris and the documents of the Second Vatican Council had included "both the civil and political rights generally associated with Western democracies and the social and economic rights emphasized in socialist societies" (12). The foundation of this inclusive "Catholic rights theory", he argued, resided in a recognition of human dignity and the belief that all persons are created in the image of God, redeemed by Jesus Christ and called by God to "a destiny beyond history" (17-18). The theologian concluded his essay by recognizing the church's weakness in actually practicing what it was now preaching. In complex and conflicted contexts, he asserted, there is a need for choices. But the fundamental ethical choice is not between freedom (civil and political rights) and bread (social and economic rights), but rather between merely including or clearly favoring the poor and the oppressed. Policies should be oriented around a "preferential concern for the rights of those who have neither bread nor freedom" (21-22).

A more recent, joint theological effort to treat Christianity and human rights in Latin America took a similar position. In Direitos Humanos, Direitos dos Pobres, Chilean theologian José Aldunate, S.J., affirmed that "human rights are concretely the rights of the poor" (Boff et al. 198, my translation). Aldunate argued, moreover, that a conscientious, authentic Christian commitment to human rights should integrate five elements. These include: 1) a prophetic denunciation of injustice (God hears the cry of the poor and calls believers to speak and act), 2) an understanding of work for human rights as within the vision of the coming Reign of God, 3) historical and personal discernment under the inspiration of God's Spirit, 4) a lived solidarity with the oppressed and 5) struggle against the structural injustices (social-economic and legal-political) that derive from sin (Boff et al. 189-196).

Some of Latin America's most prominent theologians have contributed additional approaches and considerations. Leonardo Boff has suggested at least two ways of legitimately presenting a biblical-theological perspective on human rights (Boff et al. 91-107). Gustavo Gutierrez has highlighted the subjectivity of the poor in human history, not merely their victimization. And Jon Sobrino (103-114) has suggested the presence of a mystical dimension, perceiving the struggle for the rights of the poor as an arena of privileged encounter with the Divine.

Theological discourse on human rights in Latin America over the past few decades has not been homogeneous

> ***"To oppose these military dictatorships was to challenge the ruling elite.***

(see Cleary 93-95) or exclusively Roman Catholic of course. Pentecostals, whose numbers grew dramatically for a time, have tended to espouse subservience to government authorities, and at any rate produced relatively little theology in the process. But ecumenical Protestant thought has converged to a considerable degree with that of these Catholic theo-

logians. José Miguez Bonino, for example, has declared that the "meaning and content" of the churches' commitment to human rights is to be found "in the defence of a humane life for the humblest people in society" (Tergel 242-243).

Public awareness of abuses

Numerous church organizations with a practical focus on the defense and promotion of human rights came to the fore in South America especially in the 1970s. Known for their valiant opposition to the repression and abuses of military dictatorships, they emerged in the wake of a series of right-wing coups that began in Brazil in 1964 and continued through 1976. Perhaps the best known of the organizations was the Vicaría de la Solidaridad in Chile.

As Brian Smith has indicated, while the work of these church organizations emerged in reaction to new and extreme conditions in the continent, and did not in itself result in bringing about fundamental social change, the organizations supported victims of repression and their families. They also created greater public awareness of the abuses, helped to de-legitimize the dictatorships and to undermine their ideological foundations, questioned the underlying social structures that the regimes were defending, contributed to the development of critical social consciousness, and promoted grassroots participation in and beyond the churches.

It is important to recall that military repression in Latin America was not unconnected to social and political movements there that challenged traditional patterns of domination, poverty and inequality. Latin America's military regimes of the 1960s and 1970s were imposed in response to movements aimed at changing the status quo, and favoring the rural and urban populations that had been relegated historically to exploitation and oppression. The 1964 coup in Brazil was a reaction to growing social movements and policies perceived as threats to the interests of the dominant classes. The 1971 and 1975 coups in Bolivia and Peru respectively came against reformist military governments, and the 1973 coup in Chile against a leftist government that had been elected with the aim of opening a "democratic road to socialism". To oppose these military dictatorships was, even if indirectly, to challenge the ruling elite that those regimes were defending and the social structures that had historically kept the poor down.

Next, one should note a certain evolution in the work of some of human rights organizations that had initially given almost all of their attention to civil and political rights. As Tergel notes, Chile's Vicaría de la Solidaridad first documented and protested torture, disappearances, and arbitrary arrest, but later turned to economic issues as well. It provided food for the hungry and workshops to teach skills to the unemployed (115). The new perspective was perceptible in justice and peace organizations, Christian base communities, pastoral ministry offices, church-related research and documentation centers, and the Catholic bishops' annual Lenten campaigns (Boff et al. 81-82).

Finally, it should be remembered that the rights of the poor were and have been defended and promoted by many church or faith-based organizations that have focused on social justice but not specialized in human rights per se, nor always used the term itself prominently. Brazil's Pastoral Land Commission and its Children's Pastoral Office (Pastoral do Menor) are good examples. As Daniel Levine (5) has noted:

> ***"The rights of the poor were and have been defended and promoted by many church or faith-based organizations.***

The church as voice of the voiceless has become a familiar metaphor in contemporary Latin America. [...] Across the region, church leaders and activists have taken up the cause of human rights, promoted and empowered grass-roots groups, and helped stake out legitimate new fields for religiously inspired criticism and collective action: housing, land, jobs, unions, to name only a few.

International networks

As the period of military dictatorships ceded in the past two decades to one of limited democratic rule, the promotion of social and economic – and cultural – rights has become somewhat more visible. The rights of blacks and of indigenous peoples have become more prominent, as have those of children and of women. Some major human rights organizations like the Vicaría have ceased to exist. Others are simply not the center of attention that they once were. But the number of human rights organizations, large and small, has actually mushroomed in Latin America. Cleary (62) estimated that there were at least 3,000 in existence in the mid to late 1990s.

Human rights work continues to be sustained and fortified by dense networks of international linkages and solidarity. As illuminated by analysts like

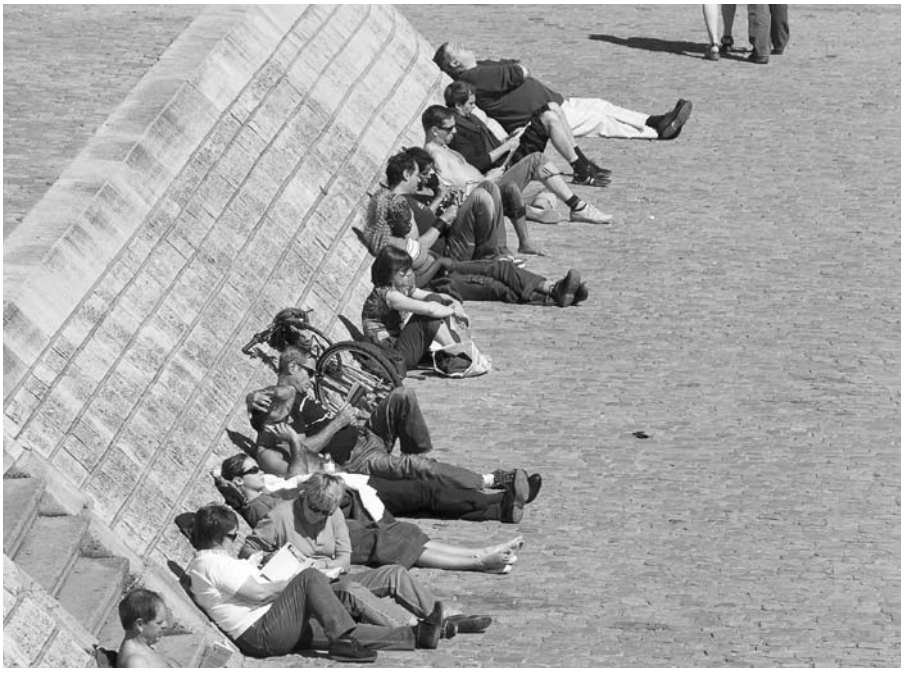
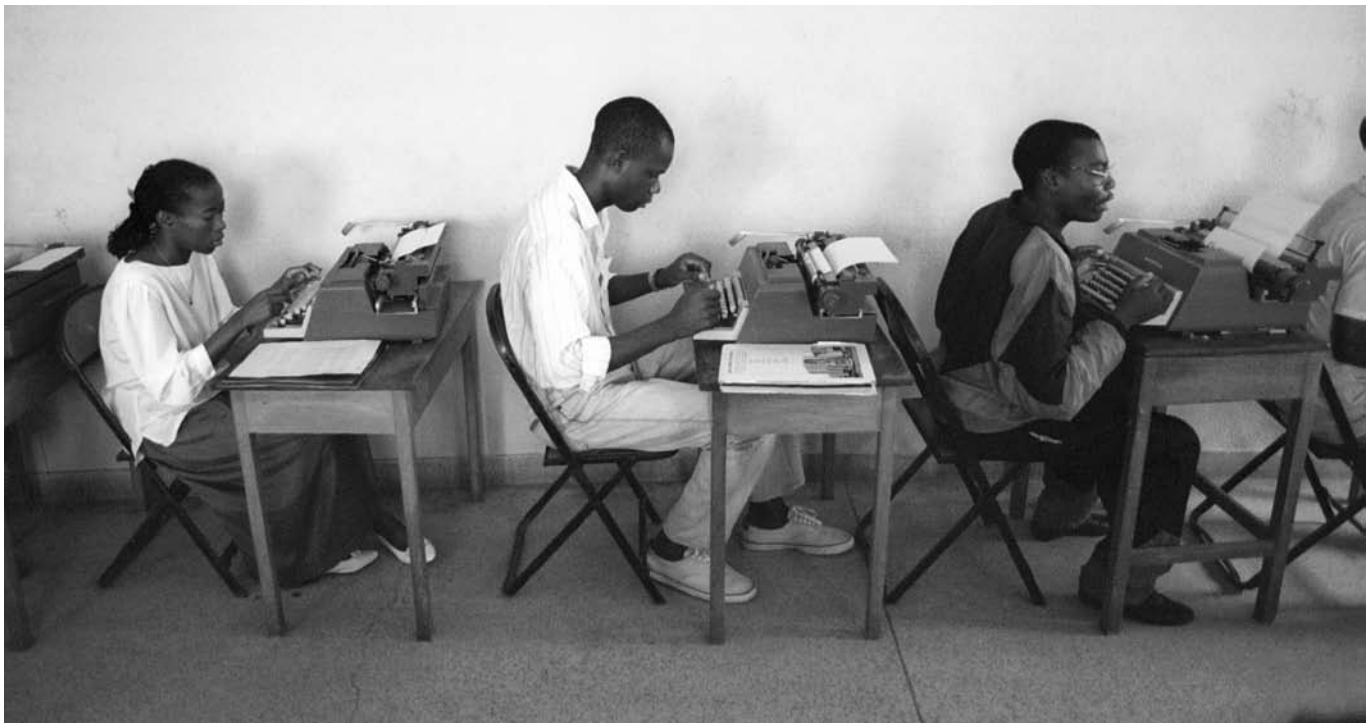


PHOTO: GEORG LULICH

Article 24: Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay. *Bank of the river Seine, Paris, France.*

PHOTO: PETER WILLIAMS



Article 26: Everyone has the right to education. Technical and professional education shall be made generally available.
Typing lesson organised by the Methodist Church in Luanda, Angola.

Brysk, Cleary, and Keck and Sikkind, the influence of external actors has been crucial to the promotion and defense of human rights for decades. New developments in communication have provided the means for more rapid and detailed exchanges of information, as well as more effective efforts to channel resources, mobilize public opinion, and lobby for changes in laws and policies. International NGOs, exile and refugee groups, professional associations, intergovernmental bodies, transnational religious communities and the mass media all play a role in this.

Faith based human rights organizations continue to carry out an important and painstaking labor throughout Latin America, utilizing such networks and giving attention to the full range of human rights. In the final section of this article, I turn my attention to three such organizations that have gained a degree of prominence in the Andean region.

Peru, Ecuador and Colombia

A brief examination of Peru's Episcopal Social Action Committee (CEAS), Ecuador's Ecumenical Commission for Human Rights (CEDHU) and Colombia's Center for Research and Popular Education (CINEP) will help to illustrate the currency of the Latin American approach to human rights I have been describing. Their work encompasses a full range of claims to justice – civil and political, social, economic and cultural rights. It is grounded in Christian faith. And it is concerned in a special way with both the plight and the protagonism of the poor and the marginalized.

CEAS, CEDHU and CINEP are not necessarily representative of Christian human rights organizations in the continent. Throughout Latin America each country and every organization has its own specificity. But as prominent and highly respected non-governmental institutions in the Andes, they provide excellent, concrete examples of the contributions currently being made to the overall defense and promotion of human rights.

> ***Faith based human rights organizations continue to carry out an important and painstaking labor throughout Latin America.***

Peru, Ecuador and Colombia are marked by numerous similarities as well as stark differences in their history, demography, economy, politics, and cultural and religious life. Suffice it to say here that all three have been plagued by widespread and even growing poverty in recent years, especially in rural areas. Ethnic and racial dynamics quite literally color their poverty and inequality. Peru and Ecuador have very large indigenous populations, and Colombia a sizeable population of African descent. All three countries fall into the medium range of "human development" elaborated by the United Nation's Development Programme. Out migration has increased dramatically in recent years, and internal displacement is rampant in Colombia. War in Colombia has induced over two million people to flee their homes in the past two decades (see Secretariado Nacional de Pastoral Social 13 and Livingstone 29).

CEAS, CEDHU and CINEP emerged in somewhat different circumstances, but in all three cases their human rights work as such was initiated in the brief three year period between 1977 and 1980. CEAS had been founded in 1965 as an official arm of the Catholic Bishops' Conference of Peru, to animate and coordinate the social outreach of the church. It was concerned specifically with the poor and their needs, but under the right-wing military regime of Morales Bermúdez in 1977 CEAS felt compelled to open an office for human rights.

CEDHU was formed in Ecuador one year later, in 1978. The country was emerging from a decade of military rule but a strike by sugar workers resulted in a violent police and military assault on the workplace. Striking laborers and family members who had joined them

there were massacred. Through the leadership of Lutheran pastor Washington Padilla and Catholic auxiliary bishop Alberto Luna Tobar in Quito, CEDHU was born as an ecumenical human rights organization.

CINEP, like CEAS, was initially founded to concentrate on poverty and "integral human development". It aimed to transform Colombian society through research, education, and action inspired by a Christian vision of humanity (González 26). A human rights office by that name was not established until 1980. CINEP helped organize Colombia's Association of Family Members of the Disappeared. Then, from the mid 1980s onward it focussed on developing a systematic database of human rights violations and on providing grassroots education around human rights, evolving toward the inclusion of international humanitarian law, and people's social and economic rights (see Pérez 211-231).

Making a difference

In the decades since the founding of these three human rights organizations, much has occurred of course. The numbers of the poor have increased. The external debts of the countries have grown. In Ecuador a popular and indigenous uprising forced out a corrupt civilian government, while the "dollarization" of the economy has fueled impoverishment among those in the lower income strata. Two decades of armed insurgency and rights violations in Peru resulted in the deaths of nearly 70,000 people according to the 2003 report of that country's Commission of Truth and Reconciliation (Klaiber 178). The complex, many-layered conflict in Colombia, fed in part by U.S. military aid and an appetite for illegal drugs, has led to an estimated 60,000 deaths, massive displacements, and unspeakable acts of brutality (see Amnesty International; González; Kirk; Livingstone).

Human rights organizations like CEAS, CEDHU and CINEP face daunting challenges, but they are making a distinctive and significant mark in Latin America's social and political development. So have organizations like the Vicaría de la Solidaridad before them. While socially committed Christians are not the only ones there to seek justice for the poor and the oppressed, or recognition and respect for a full range of human rights, specifically Christian thought and actions have contributed much to the region's overall movement for human rights in recent decades. For a committed sector of Latin American Christians, as Cleary (64) put it, "human rights activity is an expression of their faith, as surely as Mother Teresa expresses her belief through caring for the sick". Despite dangers and difficulties, and with less visibility than in the past, such a witness for justice seems to be enduring.

References

Amnesty International. *Colombia: Seguridad, a qué precio? La falta de volunta del gobierno para hacer frente a la crisis de derechos humanos*. London: Amnesty International, 2002

Boff, Leonardo, and Joaquín Undurraga, Adolfo Pérez Esquivel, Márcia Miranda, Guido Zuleta, Carlos Osio, and José Aldunate. *Direitos Humanos, Direitos dos Pobres*. São Paulo, Brazil: Vozes, 1991

Brysk, Alison. *From Tribal Village to Global Village: Indian Rights and International Relations in Latin America*. Stanford: Stanford UP, 2000

Cleary, Edward L. *The Struggle for Human Rights in Latin America*. Westport, CT: Praeger, 1997

Crahan, Margaret E., ed. *Human Rights and Basic Needs in the Americas*. Washington, D.C.: Georgetown UP, 1982

González, Fernán E. "Conflicto violento en Colombia: una perspectiva de largo plazo." *Controversia* (February 2004): 10-17

González, Fernán E. "La experiencia del CINEP: una escuela de investigadores." *Una Opción y Muchas Búsquedas: CINEP 25 Años*. Ed. Fernán E. González G. Bogota: CINEP, 1998. 23-62

Hennelly, Alfred, ed. *Santo Domingo and Beyond: Documents and Commentaries from the Fourth General Conference of Latin American Bishops*. Maryknoll, NY: Orbis, 1993.

Hennelly, Alfred and John Langan, eds. *Human Rights in the Americas: the Struggle for Consensus*. Washington, D.C.: Georgetown UP, 1982

Hollenbach, David. "Global Human Rights: An Interpretation of the Contemporary Catholic Understanding." *Human Rights in the Americas: the Struggle for Consensus*. Ed. Alfred Hennelly and John Langan. Washington D.C.: Georgetown UP, 1982. 9-24

Keck, Margaret E. and Kathryn Sikkind. *Activists Beyond Borders: Advocacy Networks in International Politics*. Ithica and London: Cornell UP, 1998

Kirk, Robin. *More Terrible than Death: Violence, Drugs and America's War in Colombia*. New York: Public Affairs, 2003

Klaiber, Jeffrey. "Peru's Truth Commission and the Churches." *International Bulletin of Missionary Research* 28, 4 (2004): 178-179

Levine, Daniel. *Popular Voices in Latin American Catholicism*. Princeton, NJ: Princeton UP, 1992

Livingstone, Grace. *Inside Colombia: Drugs, Democracy and War*. New Brunswick, NJ: Rutgers UP, 2004

Pérez, Diego J. "En defensa de los derechos humanos." *Una Opción y Muchas Búsquedas: CINEP 25 Años*. Ed. Fernán E. González G. Bogota: CINEP, 1998. 205-231

Secretariado Nacional de Pastoral Social. *Aportes sobre la crisis humanitaria en Colombia*. Bogota: Conferencia Episcopal de Colombia, 2004

Smith, Brian. "*Churches and Human Rights in Latin America*." Churches and Politics in Latin America. Ed. Daniel Levine. Beverly Hills: Sage, 1979. 155-193

Sobrino, John. "The Divine Element in the Struggle for Human Rights." *Spirituality of Liberation: Toward Political Holiness*. Maryknoll, NY: Orbis, 1988. 103-114

Tergel, Alf. *Human Rights in Cultural and Religious Traditions*. Uppsala, Sweden: Acta Universitatis Upsaliensis, 1998

Interviews

Angulo, S.J., Alejandro. Personal interview, Bogota, Colombia. 4 November 2004.

Monge, M.M., Elsie. Two part email interview. 28 October and 1 November 2004.

Vargas, Laura. Two part email interview. 25 October and 2 November 2004.

This article is adapted from "The Rights of the Poor: Christian Theology and Human Rights Practices in Latin America's Andean Region", a paper presented at the Lilly Fellows Conference on Christianity and Human Rights, Birmingham, Alabama, November 13, 2004.

Sixty years after the proclamation of the Universal Declaration of Human Rights, individuals and groups in numerous countries live under severe constraints connected with non-adherence to, and violations of, these rights. CIVICUS World Alliance movement, with members and partners in over 100 countries, seeks to strengthen citizens' actions and civil society throughout the world.

CIVIL SOCIETY BEHIND BARS:

Courage in the face of repression

Mandeep S. Tiwana and Tanzilya Salimdjanova

The Universal Declaration of Human Rights (UDHR) guarantees the freedom to express their views to all human beings, including the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media, regardless of frontiers. The UDHR also assures everyone the freedom of peaceful assembly and association. These rights are seminal to civil society.

Over the years, the freedoms of expression, association and assembly have been elaborated upon and included in many international human rights documents.

> ***Despite the passage of sixty years, the Universal Declaration is still not a living reality for the peoples of the world.***

Most importantly, they are ingrained in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Together with the UDHR, these two documents make up the International Bill of Rights. There is now consensus amongst most jurists that even if certain countries have not ratified the ICCPR or ICESCR, they are bound to uphold its provisions. The International Bill of Rights has become part of international customary law, which means that no member of the international community can legitimately deny the protection of these rights within its jurisdiction.

Nonetheless, in too many locations around the world members of civil society face persecution because of their professional activities, which is a poignant reminder to the international community that despite the passage of sixty years, the Universal Declaration is still not a living reality for the peoples of the world.

CIVICUS World Alliance for Citizen Participation, an international movement with members and partners in over 100 countries, is dedicated to strengthening citizens' actions and civil society throughout the world. It seeks to mobilise quick, principled and effective responses to situations where the freedoms of expression, association and assembly are threatened. Every year, at the CIVICUS World Assembly, civil society practitioners, researchers, activists, concerned business leaders and representatives from development agencies come together for the purpose of learning, networking and alliance building.

The World Assembly is also an occasion for CIVICUS to focus attention on civil society activists imprisoned because of their work. At the 2008 Assembly in Glasgow, Great Britain, the cases of thirteen prisoners of conscience from China, India, Iran, Syria and Uzbekistan were highlighted as part of the *Civil Society Behind Bars Campaign* (for more information, please see http://www.civicus.org/csw/civilsocietybehindbars). The individual stories of these activists, persecuted by their governments, are a telling testimony to their courage, faith and resilience in the face of adversity. Moreover, there are several examples of systemic repression – through law and practice – of civil society freedoms.

Freedom of expression is vital to civil society, as it enables individuals and organisations to critically evaluate and speak out against government policies and actions, and also to publicly draw attention to human rights concerns. Under the International Bill of Rights, this freedom can only be restricted by law in certain limited circumstances where it is necessary to protect the rights and reputations of others, and to safeguard national security, public order, public health and morals. The margin for imposing limitations is very narrow. States cannot put in jeopardy the existence of the right itself through vague, imprecise and overly broad restrictions.

In China – Olympic promises notwithstanding – the freedom of expression is severely restricted through a variety of randomly applied catch-all criminal provisions that punish "disrupting social order", "inciting subversion" and "leaking state secrets". Furthermore, access to information, which is of extreme importance to civil society to promote good practices, is controlled through the installation of strong filters in China's internet infrastructure. In Syria, like China, the mass media is monopolised by the government and access to the internet is severely restricted.

In India, the Chhattisgarh Special Public Security Act contains an overly broad definition of what constitutes an unlawful activity. Draconian punishment of up to seven years imprisonment is prescribed for uttering words, writing or making visual representations that create "risk or danger for public order, peace or public tranquillity", to clamp down on civil society's freedom to publish fact-finding reports exposing the complicity of state agencies in human rights violations.

PHOTO: PETER WILLIAMS



Article 16: Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. *Vasiliy and Nina Kanyzhnikova from the Yakutian town Lensk, Russia.*

In Iran, vaguely worded security laws are being used to stifle legitimate dissent by construing criticism of official policies as an assault upon the "security of the nation". In February 2008, the license of *Zanan*, Iran's leading women's magazine, was revoked. After 16 years of publication dedicated to highlighting women's issues, problems and achievements, the magazine was accused of "offering a dark picture of the Republic" and "compromising the psyche and mental health" of its readers by providing them with "morally questionable information".

States limit individuals' rights

Individuals must also have the freedom to set up civil society organisations to protect their interests, as well as to operate these organisations and participate in their activities without fear of official retribution. The International Bill of Rights protects the freedom of association and prevents states from interfering with this right except through law, and where it is necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others. Like the freedom of expression, the margin for restriction by the state is very limited. State actions must lean in favour of permitting civil society activities and creating an enabling environment for civil society to thrive.

Nevertheless, the freedom of association remains severely constrained in Syria, with human rights groups having to operate in a legal vacuum. All non-governmental organisations (NGOs) must necessarily go through the process of registration, which is often refused to groups that disagree with the politics of the ruling party. In 2007, over 40 people were arrested by the Syrian government for simply attending a meeting of the unauthorised umbrella group the National Council of Damascus Declaration for Democratic National Change.

China allows only those NGOs that align themselves with the regime or government-organised NGOs to function. Moreover, workers are not allowed to form independent trade unions. The only union permitted is the state-controlled All China Federation of Trade Unions. In Uzbekistan, hundreds of civil society organisations were shut down by the government between 2003 and 2007. In 2007 alone, there were at least 300 confirmed closures of NGOs in the country. The Uzbek government has set up a pro-government National NGO Association to supervise the civil society sector. Only those organisations that are a part of this association are allowed to function. India, despite having a thriving civil society sector, has a bill by which civil society organisations can be denied access to foreign funding on general grounds, including the "national interest", a subjective term that can be interpreted to suit the politics of the government of the day.

States must recognise the freedom of assembly, including the right of civil society to organise and participate in peaceful protests. The International Bill of Rights places the same limitations on preventing the exercise of this right as in the case of the freedom of association. Yet, three years after the Andijan massacre in Uzbekistan when over 500 protestors were gunned down by government forces, the freedom of assembly remains tightly controlled. The Rules of Holding Mass Events avoid any mention of the constitutional freedom to organise street marches, pickets and demonstrations. Instead, the definition of mass events is limited to "theatrical entertainment, concert, sport, advertis-

> ***Far too many states continue to deny their populations access to constitutional rights.***

ing and other entertaining programmes, along with the celebration of national, religious and professional events". Organisers are required to obtain permission from the authorities to hold any event at least one month in advance. The application is then passed through various government departments in a complicated and time-consuming approval process.

In India, the Armed Forces Special Powers Act, operational in areas declared "disturbed" (Manipur, Jammu and Kashmir for instance), gives soldiers the license to shoot to kill anyone breaching a law or official order prohibiting the assembly of five or more persons. Public manifestations of protest in Iran are suppressed by legal provisions that criminalise "disrupting the order and comfort and calm of the general public" and "preventing people from work". Moreover, "gathering or colluding against the domestic or international security of the nation" carries punishment ranging from two to five years. In China, the simple exercise of the freedom to demonstrate against official policies remains fraught with serious negative consequences, including arbitrary arrest and detention.

> ***Civil society organisations can be denied access to foreign funding on general grounds, including the "national interest".***

Denied constitutional rights

Sixty years ago, the Universal Declaration affirmed that disregard and contempt for human rights have resulted in barbaric acts. In the words of the UDHR, it is essential that human rights be protected by the rule of law, if humanity is not to be compelled to have recourse – as a last resort – to rebellion against tyranny and oppression. Civil society space is crucial for ordinary people to engage with the levers of power and to communicate diverse and sometimes competing interests to prevent mass anger and violence from spilling out onto the streets. Yet, far too many states have failed to grasp this reality and continue to deny their populations access to constitutional rights, at the same time imprisoning those who are most vocal.

Moreover, the current climate created by the "war on terror" has led to a further onslaught on civil society space globally. Civil society activists often find themselves being labelled as national security risks and charged under counter-terror legislation. *The Civil Society Behind Bars* campaign represents only the tip of the iceberg. The number of prisoners of conscience around the world is so large that no organisation even attempts to maintain a comprehensive public database. The five countries profiled in this article are not the only offenders, or the worst offenders for that matter. In diverse and disparate locations around the world, civil society activists continue to languish in prison, harassed and persecuted for their work in defending the underlying tenets of the UDHR.

CIVICUS' work in the next four years will be driven by the following priorities: i) protecting the rights of civil society, ii) strengthening good practices within civil society, and iii) strengthening civil society's ability to influence the policies and practices of governments, international institutions and the private sector. The Civil Society Watch (CSW) programme of CIVICUS seeks to address the first priority by raising awareness of threats to civil society, and helps to mitigate these threats through submissions to national governments and regional and international bodies, conducting in-depth analyses, organising campaigns and advocacy actions, and strategically lobbying key stakeholders.

The CSW programme is currently piloting an Early Warning System along with the International Centre for Not-for-Profit Law and partners in seven countries (Vietnam, Philippines, the USA, Ethiopia, the Solomon Islands, Lebanon and Kazakhstan) to predict and counter threats to civil society. Using a series of indicators, this predictive tool aims to identify countries likely to adopt regressive laws and policies, or those likely to use existing law as a means to repress civil society. This way civil society can intervene and engage early on *before* restrictive laws or policies are enacted and governments are already vested in the result. It is hoped that the Early Warning System will gradually expand to all regions of the globe.

Analysis of civil society

The CIVICUS Civil Society Index, which uses an action-research methodology to assess the state of civil society in over 60 countries, feeds into the work of the CSW programme. The Civil Society Index analyses civil society along the following parameters: a) civic engagement – the extent to which individuals engage in social and policy-related initiatives, b) the level of organisation – the degree of institutionalisation that categorises civil society, c) the practice of values – the extent to which civil society practices some of its core values, d) perceived impact – the extent to which civil society is able to impact social and political decision-making, according to internal and external perceptions, and e) the external environment – the conditions (including socio-economic, political and cultural variables) within which civil society operates. CIVICUS is also working to enhance the legitimacy, transparency and accountability of civil society organisations, and to build public trust in them by improving their individual and collective governance. The Participatory Governance programme of CIVICUS seeks to enhance the capacity of civil society to influence and participate in governance processes at the local and national levels through information sharing, knowledge building, skills development and networking.

As is evident from this article, a lot more work needs to be done to fully realise the tenets of the Universal Declaration. Civil society's role is crucial in this endeavour. This is reflected in CIVICUS' vision of a worldwide community of informed, inspired and committed citizens engaged in confronting the challenges facing humanity. Foremost among them is resistance in far too many quarters to fully embracing the UDHR.

In spite of numerous problems like poverty, insecurity and environmental disasters, the last century has seen great improvement concerning political, civil and economic rights in Haiti. NGOs play a vital role in educating the citizens about their rights and responsibilities, as well as the role and limits of the state. The National Human Rights Defence Network is an important actor in this field.

HUMAN RIGHTS IN HAITI:

Growing awareness in a failed state

Pierre Esperance

Haiti is the poorest nation in the western hemisphere and suffers from a fragile, centralised, and corrupt government. While democracy and the rule of law struggle to take root after a history dominated by instability and military rule, there are major challenges for this small Caribbean nation, ranging from distrust between the population and the state institutions that govern it, to neoliberal economic policies that prey on the vulnerability of the country and lead to even greater poverty. In addition, environmental devastation exacerbates these problems. Nevertheless, there are signs of hope that a culture of human rights is possible in Haiti, and efforts are underway to help this come to fruition.

The National Human Rights Defence Network (RNDDH) is a non-governmental organisation engaged in the promotion, protection, and defence of human rights throughout Haiti. The RNDDH has a regionalised structure and today includes nine departmental partner networks. (Haiti has ten geographic departments. The RNDDH covers the West department, where the capital, Port-au-Prince, is located.)

In terms of politics, the accession of Michèle Pierre Louis to the post of Prime Minister could be considered a step towards political stability for Haiti. However, elections to install territorial assemblies and fill vacant seats in the Senate are not always realised, and the living conditions of the population, which endured the riots of April 2008, remain unchanged. The risk of repeating those events is growing.

Every day, people are kidnapped and held for ransom. Some of them are killed even after the ransom has been paid in full. Violence is at its worst in the metropolitan area. The general situation of insecurity has become aggravated in Haiti, despite the presence of United Nations (UN) Stabilization Mission in Haiti (MINUSTAH) agents in fixed posts and on mobile patrols, which are carried out in concert with the Haitian National Police (PNH).

Surveillance of the Haitian-Dominican border is left to the vigilance of Dominican soldiers. The treatment of people at the border today constitutes one of the most crucial problems in Haiti. Haitians die by the hundreds each month while attempting to cross the border. These people generally do not cross the border without the help of individuals who are referred to as *boucon* (pirates), and who are often Dominican citizens.

> ***Around 40 percent of the Haitian population does not possess identification documents.***

Around 40 percent of the Haitian population does not possess identification documents. With an aim to regularise the situation, several successive governments have authorised the distribution of belated birth certificates. However, no measures taken to date have normalised the civil state system, which functions in a state of disorder. This disorder is reinforced by the process of giving belated birth certificates, which opens up the possibility for individuals to receive several certificates under different names. As always, the people targeted by these measures are left untouched.

In 2004-2006, the transitional government took advantage of the occurrence of elections to launch a national identification card. This innovation, carried out in concert with the international community in response to a national identification problem, did not produce the expected results. The service was not accessible to the entire population, particularly people living in remote areas. Efforts to print and distribute these cards in 2007 were also unsuccessful in providing the service to the population at large.

No national disarmament plan has been put in place by the Haitian state. The weapons that have caused so much suffering are still in the hands of those who exploit the fragility of the security situation.

Environmental disasters

The Haitian forest cover is estimated today at 1.5 percent. However, no programme of reforestation or reorganisation of the national territory has been put in motion. The unrestrained tree-cutting, chaotic construction, lack of protection of rivers and valleys, and disrepair of irrigation canals, drains and sewers are the primary destabilising factors for the environment. This situation explains the vulnerability of the country during extreme weather events.

As a case in point, the hurricanes from August to September 2008 caused considerable loss of life and property damage. The Artibonite department was hit the hardest by the hurricanes. Already a victim of tropical storm Jeanne in 2004, the department was hit with a new round of loss and damage, and was left to fend for itself. The UN, through its Secretary General, launched an urgent call to collect $108 million to help the victims of these hurricanes. To date, the reaction of the international community has been unimpressive.

> ***Almost 81 percent of the incarcerated population is waiting for judgement.***

Haiti is now more than ever considered to be a failed state. Unemployment is at its worst and the government is engaged in a neoliberal policy that pays no heed to social problems. 68 percent of the active population is not working. The remaining 32 percent includes many who are underemployed or are working in the informal sector. The employees in the organised sectors of society (public transportation, telecommunications, and the health system) often go on strike.

Impunity versus justice

The Haitian state is not engaged in the fight against impunity. Many criminals have been liberated without any kind of process whatsoever. One example of this is the arsonists who burned the Tête Boeuf public market in 2005, after barring all of the exits in an effort to maximise the death toll, in order to create a climate of instability in the capital. A second example is the Lavalas partisans who instigated the La Scierie massacre of 2004, in which at least 50 anti-Lavalas protesters were killed.

In each of these cases the accused were liberated without any respect for the due process of the justice system. This is a dangerous trend for politically motivated crimes: excusing the culprits and blaming the victims. In addition, the country is still waiting for the outcomes of the criminal investigations into a number of highly publicised murder cases.

The current government has been involved in prosecuting some former officials, most of whom have been imprisoned during open investigations for embezzlement. However, the process has been stopped in its tracks from prosecuting the serious cases of corruption emanating from the public administration, including among others the social security administration, the National Port Authority, the Ministry of Foreign Affairs and the judicial system.

Three laws encouraging justice reform were passed in December 2007. In addition, infrastructure improvements have been made on courts and tribunals in several jurisdictions, notably in Port-au-Prince and Grande Rivière du Nord.

The judicial system is greatly resented by the Haitian population because of its slowness, its exorbitant costs and its festering corruption. The judges are denounced for being implicated in cases of corruption, absenteeism, and incompetence. Those that are fired for one or more of these reasons are reintegrated into the system without any consideration for the reasons that led to their firing. All the same, for more than ten years, different state officials have advocated for judicial reform and vetting of the judiciary. Large sums of money have been spent to organise seminars, colloquiums, trips abroad, etc.

The Haitian prison system, following the example of the judicial system, exhibits the following problems:

Physical state of the prisons

In the course of the last two years, the country's prisons have been rehabilitated. However, they still do not correspond to international norms, to which Haiti is subject, on the matter of incarceration. The cells do not ensure the security of the prisoners. The cells are also overfull, and do not let in enough air or sunlight. In general they do not have beds or mattresses, and the prisoners sleep on the floor. However, even in cases where there are beds, there is still not enough space. The prison space in Haiti has risen to 6,751 m^2, allowing for 0.8 m^2 per detainee, whereas international norms demand a minimum of 4.5 m^2. In addition, the makeshift toilets in these cells put out a nauseating stench.

Generally, people who are being held in preventive detention are not kept separate from those who have been convicted, nor are detainees separated according the seriousness of their alleged crimes.

Conditions of detention of prisoners

Providing potable water is a national problem, and the country's detention centres are not spared. Even if some prisons have access to water, the quality is always questionable. There have been many cases of sickness caused by unclean water in the prisons.

The feeding schedule is not respected throughout the country and the amount of food provided for meals is insufficient.

The detention centres are provided with infirmaries that are dysfunctional due to of a deficiency of material, medicines, and qualified human resources. The very close proximity in which the detainees live puts them in a fragile state of health, giving rise to sicknesses like scabies, tuberculosis, etc.

Working conditions in the prisons

Some detention centres in Haiti have recently been given vehicles. However, the Prison Administration (DAP) agents generally do not have access to basic materials such as handcuffs, tear gas, leg irons, fire extinguishers, water, etc. In addition, they complain that they themselves are victims of human rights violations, of having no recourse, and of being exposed to the vengeance of the detainees.

The efforts of DAP officials to increase the number of prison guards have not been sufficient when compared with international norms, which stipulate that there should be one guard for every four detainees. At present, DAP employs an average of one agent for every eleven prisoners. It must also be noted that the abovementioned number of guards work in shifts, further diminishing the actual number of agents per detainee at any given moment.

> ***The teachers are considered a means of effectively reinforcing human rights education.***

The slowness of the judicial system, the loss and blockage of cases in the courts and prosecutors' offices, the abuse of power, the incompetence, and the corruption of judicial officials are the roots of the epidemic of prolonged pretrial detention in Haiti. In October 2008, the incarcerated population is estimated to be 8,272 detainees, of which only 19 percent has been convicted of any crime.

Almost 81 percent of the incarcerated population is waiting for judgement. The shocking increase in the prison population has had a tendency to disrupt the judicial system, which has been unable to significantly reduce the rate of people in prolonged pre-trial detention despite holding many series of criminal trials both with and without juries.

Human rights education

Since 2007, the International Federation of Human Rights Groups (FIDH) has maintained a presence in Haiti through three Haitian organisations, of which the RNDDH is one. Several activities have been undertaken with the goal of raising the awareness of national and international communities of the human rights situation. In October of this year, the FIDH organised two of its three partners to lobby representatives of the nations that sit on the UN Security Council on the renewal of the mandate of the MINUSTAH peacekeeping force in Haiti.

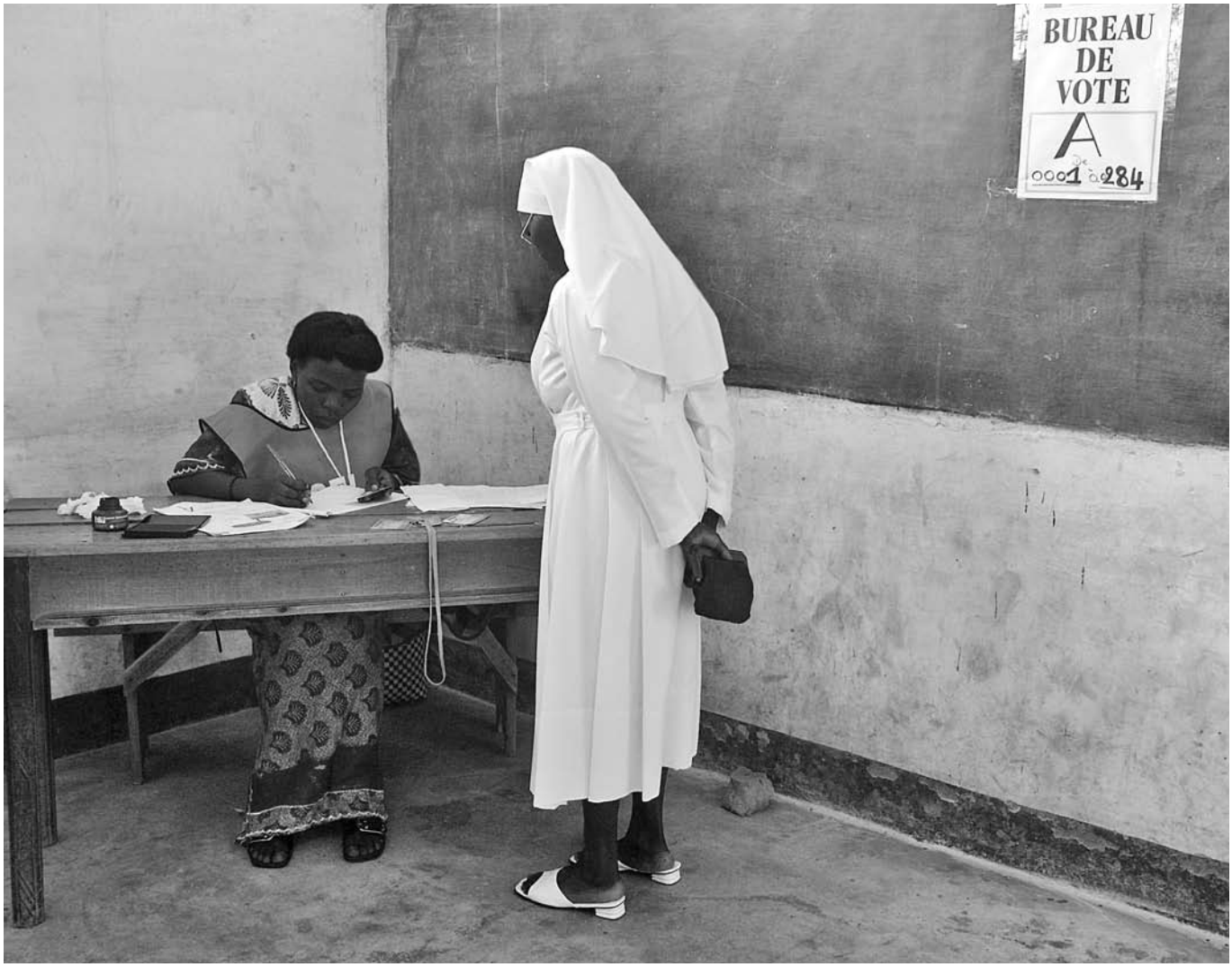
The RNDDH is a member of the Platform of Haitian Human Rights Organisations that is composed of eight institutions. It has two main programmes: monitoring and human rights education.

The RNDDH observes in a systematic manner the work of certain public institutions such as police stations, prisons, hospitals, and courts and tribunals. At the same time, the RNDDH leads investigations, produces reports related to cases of human rights violations, and realises advocacy campaigns around different themes. The RNDDH receives victims every day and accompanies them either at the level of the internal investigations of the PNH, or at the public prosecutors' office, depending on the people involved.

The human rights education programme primarily targets three sectors: grassroots organisations, students, and police officers. This education programme has multiplying effects. It is divided into three levels. The participants are evaluated before and after the seminars. A first evaluation is done before the training, to determine the current understanding of the members of the organisation in regards to human rights issues. Two other forms of evaluation are also carried out: an academic evaluation allowing the RNDDH to certify that the participants have been engaged in the seminar, and an evaluation in the field in order to certify that the participants have effectively shared the information in the seminar with their organisation and community, and have effectively accompanied victims of human rights violations in their community.

> ***There is a growing awareness of the basic human rights that are owed to all Haitians.***

Through its programme called Education Plus, the RNDDH works with



UN PHOTO/MARTINE PERRET

Article 21: The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections. *Voting in Bunia, Ituri, Democratic Republic of Congo, in October 2006.*

teachers and schoolchildren. The teachers are considered a means of effectively reinforcing human rights education. As for the students, the RNDDH seeks to initiate them early into a culture of human rights.

In collaboration with the general administration of the PNH, the RNDDH organises training sessions to raise awareness of human rights issues among police officers. The objectives are to reinforce the officers' theoretical knowledge in terms of human rights and gender equity, to familiarise them with national, regional, and international documents regarding the protection and defence of human rights, and to reconcile the PNH with the Haitian population in order to reduce the number of cases of human rights violations.

The RNDDH also organises special seminars on themes such as social, economic and cultural rights; the Inter-American and UN systems of defending human rights; and gender issues. Through these programmes, the RNDDH and other civil society organisations are slowly growing a culture of human rights in Haiti. Despite these problems, there is a growing awareness of the basic human rights that are owed to all Haitians, whether those rights are political, civil, economic, social, or cultural. In the realm of political and civil rights, Haiti has made great progress indeed since the days of the American military occupation (1915-1934), the years of the Duvalier dictatorships (1957-1986), and the military dictatorships that followed. In terms of economic rights, Haiti is struggling greatly, perhaps more than ever. But by educating Haitians about their rights and responsibilities as citizens, as well as the role and limits of the state, there is hope.

PHOTO: PETER WILLIAMS



Article 18: Everyone has the right to freedom of thought, conscience and religion. *H.E. Mohammad Ali Abtahi, Iran, (left) and Dr Yehuda Stolov, Israel, at an interreligious dialogue conference hosted by the World Council of Churches.*

LPI News



PHOTO: JOHAN ARDEFORS/ONEDAY PHOTOGRAPHY

Communication between military and civilians is an important part of the Viking exercises. From left: Christian Jäderlund, Erik Berg, Christina Båge and Sten Arve.

Viking 2008 - LPI back in Bogaland

The Swedish armed forces are continuing their efforts to develop their capacity in the field of civil-military relations. Very often in military exercises the civilian dimension is grossly under represented, and as such, the Viking exercises are specifically designed to highlight the important civilian element. Life & Peace Institute (LPI) was one of the participants in Viking 08, which took place in a dozen countries from 3 to14 November.

The aim of the exercise was to enhance the capacity of the participating entities, both civilian and military, to improve their performance with respect to peace support operations conducted under a United Nations (UN) mandate, and specifically to train them in the areas of decision-making and communication.

LPI participated in a similar exercise in 2005, simulating a UN mission in the fictitious country of Bogaland. The LPI team at the exercise this year consisted of Darryl Whitehead, Emma Rydberg and Peter Brune.

More information can be found at www.mil.se/viking

Arms trade – fair trade?

In November, the Institute of Contextual Theology/University of Lund, together with the organisations constituting the Gothenburg Process (including Life & Peace Institute (LPI), arranged a symposium with some 40 participants in Lund, Sweden, on the ethical and developmental dimensions of the international arms trade. The former Executive Director of LPI, Peter Brune, lectured on the need for the churches to engage more in concrete disarmament efforts.

The facilitator of the conference was the former Archbishop of Sweden, KG Hammar. He is also the chairperson of the Swedish chapter of the Gothenburg process. One of the conclusions was that there is need for more research on the ethical dimensions on church positions on production and trading of conventional arms.

PeaceNet meeting in Paris

It was a great opportunity for ecumenical agencies working in the fields of peacebuilding and reconciliation to come together at this year's PeaceNet meeting in Paris in October to discuss their work as well as attend a number of panel presentations. The meeting was organised by Comité Catholique Contre la Faim et pour le Développement, Aprodev and Life & Peace Institute.

The panels focused on the relationships between natural resources and conflict, fragile states and peacebuilding, and finally, how current policies on situations of fragility are applied in practice. Speakers came from a number of non-governmental organisations, the Organisation for Economic Cooperation and Development/Development Assistance Committee and the French Ministry of Foreign Affairs.

Workshop on the EU and peacebuilding

In the beginning of September, Life & Peace Institute and the Swedish Fellowship of Reconciliation organised a one-day workshop on the European Union (EU) and peacebuilding for interested non-governmental organisations in Sweden. This event was a capacity-building opportunity ahead of the Swedish EU presidency in the autumn of 2009. The guest speaker was Philippe Bartholmé from the European Peacebuilding Liaison Office, a network where LPI is one of the 25 members.

Göteborg Book Fair

This year's Göteborg Book Fair in Gothenburg, Sweden, took place 25-28 September, and as usual Life & Peace Institute was present with a book table. This year the Institute also organised a seminar together with the Christian Democratic International Centre entitled Do elections in Africa have to be violent?. The guest-speaker at the seminar was George Wachira from the Nairobi Peace Initiative. The seminar received over 280 visitors.



PHOTO: LPI

Rahel Tesfaye presented books and other material from LPI at this year's Göteborg Book Fair.

Reviews

Truth that fails to heal

Rethinking Reconciliation: Concepts, Methods, and an Empirical Study of Truth Telling and Psychological Health in Rwanda, Karen Brounéus. Department of Peace and Conflict Research, Uppsala University, 2008

Discourse on the subject of traditional justice and reconciliation, previously a focus of anthropological studies (largely as customary law), has received renewed attention by disciplines such as conflict and peace studies, particularly in its use for transitional justice processes in societies emerging from civil wars. The above book is one of the latest in the series.

This book is composed of four research papers done between 2003 and 2008. The first two deal with 'conceptual and methodological' matters. The third paper dwells on the 'empirical' aspect, using Rwanda as a case study "to assess whether witnessing in the Gacaca, the Rwanda village tribunals for truth and reconciliation, was beneficial for psychological health, thereby investigating the claim that truth telling is healing". The fourth paper reports on in-depth interviews "with 16 women genocide survivors who had witnessed in the Gacaca".

The overall finding is that "The results of this study challenge the claim that truth telling is healing, suggesting instead that there are risks for the individuals on whom truth telling processes depend."

The book is a well-researched and well-documented piece of work worth reading for all who are interested in the topic. Yet, I am reminded of one thing that does not directly concern the quality of this book as a research output: that the subject of traditional justice and reconciliation, popularised currently as part of transitional justice, is not treated in its entirety. For example, the main finding is based on "challenging the claim that truth telling is healing". And then it makes witnesses the key exponents and beneficiaries of the truth, which is to result in their health or lack of it.

However, studying traditional mechanisms in their natural settings or in a 'legal pluralistic' perspective, where formal and informal systems complement each other, the issue of reconciliation is quite complex, and all its components have to be considered First, the traditional (African) mechanism of conflict settlement encompasses both 'adjudication' and peacemaking at the same time. Secondly, for the process to consummate or for healing to occur, the principles of truth, justice (retributive and restorative), forgiveness, and assurance of peace must work together. Truth telling alone is not expected to bring healing, neither is justice alone. Truth rests on facts about the offence or the contended issue, and it is primarily the interest of the mediators/elders and the belligerents. Witnesses can enlighten others on the truth, but sometimes witnesses can be false and biased individuals. In many traditions the elders strive to ensure that truth, corroborated by evidence, is made convincingly clear to all sides. Justice is both compensatory and restorative, with the primacy of the latter as mending severed relations as the main goal.

The process is sealed by forgiveness, accompanied by solemn rituals. Its value is not only to vindicate the offended, but it also releases the perpetrator from the threat of revenge, as it publicly removes enmity. In fact, it is when one has reached the forgiveness stage that one expects healing, and finally the goals of justice and reconciliation are reached. This is well illustrated in Archbishop Desmond Tutu's book No Future Without Forgiveness. Seeing traditional justice and reconciliation only from a transitional justice perspective fails to paint a complete picture of the subject.

Tarekegn Adebo

Unique African perspectives

Three Policy Advisory Group Seminar Reports from The Centre for Conflict Resolution in South Africa:

- *Peace versus Justice? Truth and Reconciliation Commissions and War Crimes Tribunals in Africa, ed Yazeed Fakier, April 2007*
- *Africa's Evolving Human Rights Architecture, eds Yazeed Fakier and Ken McGillivray, May 2007*
- *Africa's Responsibility to Protect, eds Adekey Adebajo and Yazeed Fakier, June 2007*

The reports are available at *http://ccrweb.ccr.uct.ac.za*

The Centre for Conflict Resolution in South Africa aims to contribute to a just and sustainable peace in Africa by promoting constructive, creative and co-operative approaches to the resolution of conflict through training, policy development, research, and capacity-building. During 2007, the Centre held a number of policy advice seminars. This review examines the reports from three of these seminars

In general it can be said of all the reports that they are good introductions to their specific topics, and also provide a rather unique and much needed African perspective. The layout and language is easily accessible. Rather than giving word by word quotations of what different speakers said, as seminar reports sometimes tend to do, these reports summarise the seminar lectures topic by topic. The result is an easy to read, pleasant and fact-filled introduction to the themes that are covered.

At the same time though, the reports are rather weak when it comes to a more in-depth analysis of the themes they set out to cover. Many times question marks are raised around certain problems, but no thorough or comprehensive analysis of possible solutions is presented. This means that the reports remain somewhat shallow pieces of work that hardly become more than general introductions. Whether this is only a weakness of the reports or of the seminars as well is hard to say for a non-attendant, but whatever the case, the result is somewhat regrettable. It would have been very interesting to see a just as easily accessible, but more detailed, analysis of these problems from the specific African perspective that the Centre for Conflict Resolution and similar organisations can provide.

The possible tensions between African traditional justice mechanisms and transitional justice mechanisms are briefly dealt with in the *Peace versus Justice* report, but

the possible tensions between international human rights standards and traditional justice mechanisms would also have been a very interesting aspect to mention in the report on *Africa's Evolving Human Rights Architecture*.

All three reports highlight the lack of incorporated gender perspectives as a problematic issue within each of the focus areas, but little more is said with regards to solutions and further steps forward. Maybe an idea for a future seminar would be to expand a bit more on these issues?

The *Responsibility to Protect* report is, in my personal opinion, one of the most interesting, as it provides an African perspective on an issue that often tends to be discussed from a western point of view. It provides a brief but good history of the Responsibility to Protect doctrine, highlighting many of the uniquely African contributions and objections. It also touches on the possible risk that both western and African states could use the doctrine to advance more or less hidden political agendas, rather than as tool for the protection of civilians. Its policy recommendations remain realistic, while still aiming for a better functioning mechanism that respects domestic efforts to protect human rights. At the same time, however, the recommendations clearly point out the need for a broader inclusion of civil society and gender in the Responsibility to Protect framework.

Not surprisingly, the report covering *Africa's Human Evolving Human Rights Architecture* points out the lack of political will and resources as two of the major hindrances to further human rights protection on the African continent. It includes a very interesting chapter on gender, describing among other things the unique features of the 2003 Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa. Once again, however, it is clear that this Protocol remains a rather toothless tool without explicit political will and increased popular awareness. The report also deals with the tensions that have appeared in many African states between human rights protection and the war on terror in the aftermath of 9/11.

The *Peace versus Justice* report makes an admirable attempt to cover the Truth and Reconciliation Commissions and war crimes tribunals in Africa in only 39 pages. The result is understandably very brief, and does not provide deeper analysis as to what the problems were and what lessons might be drawn. Consequently, the policy recommendations also end up being rather general and unspecific. The most interesting chapter is that on gender, but this important and often overlooked topic when it comes to transitional justice and reconciliation is only given two pages.

In the same manner, the interplay between various traditional reconciliation mechanisms and Truth and Reconciliation Commissions is briefly dealt with, except for a few case studies. Considering the fact that traditional justice mechanisms are becoming more and more recognised as one of the many tools of transitional justice, it would have been very interesting if this topic had received more space and a deeper analysis on a number of levels.

Overall, however, the reports are valuable and important contributions to the basic literature on the three topics for students of international relations, human rights, public international law, and peacebuilding and reconciliation.

Kristina Lundborg

Setback for human rights in Asia

The State of Human Rights in Eleven Asian Nations – 2007. Asian Human Rights Commission 2007

The year 2007 will be remembered as a year in which historic demand for human rights brought out increasingly aggressive responses from ruling leaders across Asia. Instead of recognizing the need for change, states almost all over Asia continue to choose evident brutality and to impose contraints on fundamental freedoms.

The Asian Human Rights Commission's (AHRC) annual human rights report for 2007 features a collection of reports on the state of human rights in eleven Asian states. AHRC is an independent non-governmental organization that monitors the human rights situations in the region.

The countries in focus are Burma and Pakistan, which witnessed vast popular rebellions against military rule all throughout the year. Bangladesh and Thailand, which reverted to periods of profound military authoritarianism during the year, are also reported on. Furthermore, the book includes Sri Lanka and the Philippines, where conflict and terrible rights abuses continue as a way of life, regardless of the phoney mechanism of elected governments. Finally, sections also deal with Cambodia, India, Indonesia, Nepal and South Korea.

The book opens with a summary of the situation in each of the countries and refers the reader to a country report link on the internet.

The reports then present extensive information about the human rights situation in each of the above-mentioned countries in the form of background facts, statistics, and analysis, intertwined with disheartening descriptions of individual cases of assaults, abuses and torture. Some of the chapters conclude with comments and/or recommendations to the politicians of the respective country, or to the United Nations Human Rights Council.

Many of the small black and white photos are far from technically perfect, but in their straightforward messages provide added documentary value.

It would not be realistic to expect that the appalling human rights conditions in the countries described here will be much improved in the near future. However, it is to be hoped that a report like this will be 'the constant dripping that wears away a stone'. The value in the fact that misdeeds like these do not continue unnoticed should not be underestimated.

Kristina Lundqvist

Monologue

I have been trawling the earth's recycle bins,
Seeking unfettered access to the files
Of dead and distant ages,

Befriending the arrows of sun
Light quivering
Upon the inscrutable windows of recent history.

What have I seen?
Tongues frozen in the grey ice
Of censorship,

Shackled skeletons dreaming in the depths
Of slave ships, awaiting a chance
To forgive & forget;

Pens leaking ink like blood
For speaking the truth to tyrants,
And torture-houses racing skyscrapers into the skies.

What then shall we do?
We shall continue to sing the truth to Power.
And if we cannot sing,

Let us speak.
If we cannot speak,
Let us make signs,

Everything to keep alive
Our monologue of Freedom, timeless
Truth for these truthless times.

Tolu Ogunlesi

In the autumn of 2008 Tolu Ogunlesi from Nigeria was a Guest Writer at the Nordic Africa Institute in Uppsala, Sweden.

PHOTO: GEORG LULICH

LPI PERIODICALS

New Routes, next issue of the quarterly journal will be out in March 2009.

Horn of Africa Bulletin, a monthly online newsletter covering the African countries of the Horn.

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