

# BULLETIN

# SIHRG

**Patrons:**

**Clive Stafford Smith**

**Geoffrey Bindman**

**Phil Shiner**

## **The Solicitors' International Human Rights Group**

**Uniting Lawyers Around the World for Human  
Rights**

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**Americas Working Group research: p 2**  
**Protecting Freedom of Expression under**  
**The ECHR and ACHR: a comparative**  
**study** Dirghayu Patel and Colin Tinto

**Paraguay Campaign: p 5**  
**Indigenous Communities' Rights**  
Joanna Bernie

**SIHRG Project Report: p 8**  
**Brazil's Popular Legal Promoters**  
Rowan Ryrie

**New SIHRG project: p 9**  
**India and Pakistan's forgotten prisoners**  
Usman Sheikh

**Mission report: p 10**  
**Slavery in Mali**  
Michael Ellman

**SIHRG Events p 12**

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**Administrator**

Naoimh Hughes

**Email:**

admin@sihr.org

**Bulletin**

**Email**

bulletin@sihr.org

SIHRG Americas Working Group research

# Freedom of Expression:

## A comparative study of European and American approaches to protection

**Dirghayu Patel** and **Colin Tinto** analyse the similarities and differences between the jurisprudence of the institutions of the European Convention on Human Rights (ECHR) and the American Convention on Human Rights (ACHR), assessing the guarantees each system offers to free expression and how these guarantees have been interpreted in case law.

The notion of free expression in the ACHR is closely associated with the right to reply in Article 14 in relation to “inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication.” Freedom of assembly and association are separately protected at Articles 15 and 16.

The framework of the guarantees is similar. Both state the right in universal terms which are later qualified in certain circumstances. Both are transnational as both refer to the right being applicable “regardless of frontiers”.

The differences begin with the ACHR being more prescriptive in terms of (a) what constitutes free expression, (b) when it can be restricted and (c) when it cannot be restricted. The notion of expression set out in Article 13(1) is not intended to be exhaustive and is broad enough to allow expression through new media (Davidson, P261). In contrast, Article 10 does not provide a definition of free expression. Moreover, the ECHR bodies have been reluctant to define it.

Although both systems qualify the right in certain circumstances, the ACHR is far more prescriptive in terms of when an interference with the right is permitted. Moreover, the ACHR states when an infringement of the right cannot be permitted. For example, Article 13(3) states that the right cannot be impeded by indirect methods or means such as the abuse of government or private controls over newsprint, radio broadcasting frequencies or equipment used in the dissemination of information or by any other means tending to impede the communication or circulation of ideas and opinions”. The ACHR also specifically excludes hate speech from the definition.

Another important difference between the two systems is that contracting states of the ACHR have broad duties under articles 1 and 2 to respect the rights and freedoms under the ACHR and to adopt legislative measures to ensure that rights are given domestic legal effect. Thus the notion of positive obligations is a vital part of the ACHR. Although the ECtHR has recognised that positive obligations can arise

under Article 10, this depends upon the facts of the case and judicial willingness to infer obligations.

Both systems recognise the pivotal position of free expression. The ECtHR has remarked that freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and each individuals self-fulfilment: para 49 *Handyside v UK*.

This has been echoed by the Inter-American Court of Human Rights (IACHR) in the Advisory Opinion No 5 Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism:

“Freedom of expression is a cornerstone upon which the very existence of a democratic society rests”

The ECtHR has always had a hierarchy of speech with political speech being at the top of the hierarchy, followed by artistic speech and lastly commercial speech. It is not clear whether a

**EUROPEAN CONVENTION ON HUMAN RIGHTS ARTICLE 10:**

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

**AMERICAN CONVENTION ON HUMAN RIGHTS ARTICLE 13:**

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

- a. respect for the rights or reputations of others; or
- b. the protection of national security, public order, or public health or morals.

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by any other means tending to impede the communication and circulation of ideas and opinions.

4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.

5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, colour, religion, language, or national origin shall be considered as offences punishable by law.

hierarchy is present in the IACHR.

The absence of a definition of expression either in the substantive guarantee or the jurisprudence has not prevented the ECtHR from adopting a fairly broad definition of the concept. For example, free expression includes photos, medical secrets, the search for historical truth, factual statements in interviews, television commercials, and advertisements in newspapers. Expression does include

commercial speech and is not restricted to speech that is not of public interest (van Rijn, P779). The guarantee in Article 10 covers the substance of the ideas and information as well as the form.

A vital difference between the two systems arises in relation to the State's role in imparting information. The convention bodies under the ECHR have been reluctant to infer an obligation on the part of the state to impart information. Examples

of this reluctance are *Leander v UK* which concerned the refusal to provide information to an unsuccessful job applicant concerning why he had not been engaged and *Gaskin v UK* regarding the failure to provide the applicant access to his file relating to his time in care. In contrast the IACHR is more robust. This is partly due to the wording of the guarantee which refers to the freedom to seek, receive and impart information. An example is *Marcel Claude Reyes & Others v Chile* where

the failure to provide information to the applicants regarding the Condor River logging project was a violation of Article 13. This difference also highlights the difference in approach in relation to positive obligations. The state's obligation under the ACHR is potentially greater due to specific requirement on states to respect individual's rights and give it effect domestically.

Although the wording of the guarantee is intended to apply to everyone, there appears to be a difference in the jurisprudence. The ECtHR has recognised a specific exclusion from Article 10 in relation to regulations restricting the access to certain professions. The ECtHR has decided in two cases, *Kosiek* and *Glassnapp* that there was no infringement of the Article 10 right where the state refused applicants access to the civil service on account of their political opinions. Academic commentators have criticised the failure of the ECtHR to extend protection to applicants who have been denied entry to professions due to their political opinions (*van Rijn*, P778).

Further, the position of the ECtHR should be contrasted to the IACHR in *Stephen Schmidt*. The case concerned the conviction of an American journalist practising in Costa Rica without belonging to the Association of Journalists. The matter was referred to the Court for an advisory opinion on the issue of whether the requirement to belong to the Association of Journalists in order to practise as a journalist violated Article 13. The Court determined that the requirement restricting access to the profession could not be

justified under Article 13. The difference between the two systems is that where the issue concerns access to professions, the IACHR appears more willing to hold the requirement to be a violation and then consider whether it could be justified.

The framework of both is relatively similar. The starting point is whether there has been an act interfering with the right of free expression. Once this has been established, the contracting party has to show that the restriction is consistent with law, fulfils a legitimate aim and is proportionate.

Both systems emphasise that restrictions must be construed narrowly. The difference is that the ECtHR is more willing to give states leeway in some matters by reference to the margin of appreciation. The margin is greater where there is a lack of European consensus on some issue, for example, interfering with speech to protect morals.

In contrast, the margin of appreciation doctrine is rarely used in the IACHR. A good example is the *Schmidt* case mentioned above, where there was no mention of the issue of margin of appreciation (*Davidson*, P264).

The ACHR is far more prescriptive compared to the ECHR in relation to the restriction of rights. An example is *The Last Temptation of Christ*. In this case, the Court noted that giving full effect to Article 13 involved both the individual right to disseminate ideas by any medium and a collective right to receive such ideas. The case

turned on the fact that the prohibition and restrictions placed on the film amounted to "prior censorship" which is specifically prohibited by Article 13. This can be contrasted with the approach taken by the ECtHR in *Handyside v UK*. This case concerned the publication of a manual intended for young people. Some of the themes were considered obscene by the state. The Court considered whether the restriction was necessary in a democratic society in order to protect public morals. Necessary in this context did not mean indispensable and this could vary from society to society. As a consequence, the measures adopted which included seizing books were not disproportionate. Therefore, the ECtHR does not specifically prohibit preventative restraint but it can supervise the effects of the measure to determine compliance with Article 10.

In conclusion, whilst the wording of the respective guarantees follows the same framework, the IACHR goes much further in outlining the ambit of free expression and when the right can be justifiably infringed. The jurisprudence of both systems emphasise the importance of free speech to the maintenance of a democratic society and emphasise the need to interpret restrictions narrowly. However the IACHR goes much further than the ECtHR in relation to the state's positive obligations and the extent to which an infringement of the right is permitted.

## PARAGUAY CAMPAIGN

# “We only want what is ours”

The Inter-American Court of Human Rights ruled that land should be returned to the Yakye Axa and Sawhoyamaxa indigenous peoples of Paraguay. Three years later with the deadlines passed, they are still waiting.

SIHRG, together with the Law Society and the International Bar Association, are backing Amnesty International's campaign to persuade the Paraguayan Government to honour the Court's judgment. **Joanna Bernie** of Amnesty reports.

**“For 20 years we have been struggling to recover our ancestral land. That's why we're living on the side of the road and our living conditions are so precarious. We would like you to show your solidarity with us, to help us internationally...we need you.”**

José González, Sawhoyamaxa, November 2008

The Yakye Axa and Sawhoyamaxa Indigenous Peoples in Paraguay have led a determined campaign for the return of their traditional lands for many years. Both Indigenous communities have been living at the side of a highway in the Paraguayan Chaco region for more than 10 years. In the past, community members working on private estates that had taken over their lands suffered widespread exploitation. Today, unable to access their traditional lands, the communities are living at the side of the Pozo Colorado-Concepción highway in deplorable and degrading conditions with severely limited access to education, health, water, sanitation and other services.

For them, as for other Indigenous Peoples, their ancestral land is crucial to their

world view, religious beliefs and cultural identity, as well as providing their main means of subsistence. Separated from these lands, the Yakya Axa and Sawhoyamaxa have seen the erosion of their unique cultures.

In two separate rulings, in 2005 and 2006, the Inter-American Court of Human Rights concluded that the rights of the Yakye Axa and Sawhoyamaxa to judicial protection, to property, and to life had been violated. The Indigenous communities' claims to their traditional land – which they had lodged with the relevant Paraguayan authorities in 1993 and 1991 respectively - were vindicated under international law. It ordered the Paraguayan state to return their traditional land, now in private hands, and take a series of interim measures to ensure the communities were able to maintain themselves until this was achieved, including the provision of adequate healthcare, clean drinking water, sanitation, food and education.

Despite the clear obligations on the Paraguayan state to address these violations from the past and prevent their repetition, between December 2008 and January 2009 alone,

six members of the Sawhoyamaxa died from preventable diseases, among them four children under the age of two. Compliance with the judgements is long overdue. The Court established three-year deadlines for the state to return the lands of each community: for the Yakye Axa, the deadline for the return of their lands passed on 13 July 2008; for the Sawhoyamaxa the deadline passed on 19 May 2009.

### Return of traditional lands

In the proceedings brought before the Court, the Paraguayan state said that under its domestic legislation there were two possible ways of returning the traditional lands to the Yakye Axa and Sawhoyamaxa – by negotiating directly with those who hold the property title over such land and buying it from them, or expropriating the land on grounds of public use and paying fair compensation to whoever holds the property title.

Since March 2009, a bill to expropriate Yakye Axa lands from the current owner has been before Congress. Approving the bill would allow the Paraguayan state to fulfil – albeit tardily - the main point



## Yakye Axa and Sawhoyamaya people demonstrate against the failure to implement the Court ruling

ordered by the Court regarding the return of the traditional lands: ‘...the State must identify said traditional territory and give it to the Yakye Axa Community free of cost, within a maximum period of three years from the date of notification of the instant Judgment’.

The bill was tabled for discussion at four commissions within the Senate – Agrarian Reform and Rural Welfare Commission; Treasury, Budgets and Accounts Commission; Human Rights Commission; and Energy and Natural Resources. Significantly, members of the Commissions visited the community to hear their concerns. However, recent and unconfirmed information suggests that a majority decision (5:1) of the members of the Agrarian Reform Commission have agreed an unfavourable opinion on the bill. Furthermore, it seems unlikely that the other Commissions will formulate any opinion before the end of the current parliamentary

session, which ends at the end of June, after which their composition will change. This will severely delay its passage through Congress. When the bill eventually reaches the plenary of the Senate, strong opposition is expected. What is clear is that the discussions around the bill have been delayed and drawn out and its prompt approval appears to be an unlikely outcome. Amnesty International believes that the return of land in both cases is seen within Paraguay as a frontal attack on the interests of private landowners and, as such, provokes considerable concern from politically and economically powerful sectors.

In the case of the Sawhoyamaya, despite the recently expired three-year deadline for the return of the land, negotiations with the individual who currently holds title have thus far failed to yield any results.

### Executive action – some steps but limited results

While lack of political will to comply with these judgements may have been a feature of the previous government, the current President, Fernando Lugo, was elected to office in 2008 on a platform that prioritised issues relating to Indigenous Peoples and land. In his inaugural speech he said, “These [Indigenous] lands from now on will be sacred not only for their culture...but also sacred in the application of the law...No white person who negotiates indigenous lands...will enjoy the same impunity that they have in the past.” However, while there have been some positive steps during President Lugo’s first months in government, these have been limited in terms of concrete results. In February 2009 the President signed a decree formalizing the creation of the Ministerial-level ‘Inter-Institutional Commission for the Compliance with International Judgements’ (*Comisión Interinstitucional para el Cumplimiento de las Sentencias Internacionales, CICSI*), a year after the Paraguayan state had committed to create such a commission in a hearing before the Court. According to the decree, the CICSI will coordinate compliance of cases and recommendations from the Inter-American System. At the time of writing, the Procurator General’s office – which is coordinating the new Commission – had recently convened its first meeting with Commission members on the Sawhoyamaya case and was reportedly aiming to finalise a proposal to both Congress and judicial authorities suggesting that they too participate in the work of CICSI. The work of this

new Commission will be crucial in enabling the state to comply with their obligations.

### **Forthcoming hearing on the Sawhoyamaxa**

Concerned about the situation of the Sawhoyamaxa community following the recent deaths, and the expiry of its deadline to return the land, the Inter-American Court has called for a public hearing to take place regarding the implementation of the Sawhoyamaxa judgement, due to take place in La Paz, Bolivia, on 15 July 2009. It is of note that the Court held a similar hearing less than 18 months ago, on 4 February 2008.

### **Amnesty International invites SIHRG to take action**

On 31 March 2009 Amnesty International joined the two communities in calling for compliance with the two judgements, mobilizing its movement worldwide. It has contacted SIHRG, the Law Society and the International Bar Association for their support in calling on the Paraguayan state to comply with the legally binding judgements. Interventions from members of the legal profession around the world will add huge support to the communities' demands for compliance with the Inter-American Court's judgements.

### **ACT NOW!**

Please write to the Paraguayan authorities – the Paraguayan Congress, the Inter-institutional Commission for the Compliance with International Judgements and President Fernando Lugo - calling on them to comply fully with the two Inter-American

Court judgements, in particular by immediately returning traditional lands to the Yakye Axa and Sawhoyamaxa and by setting aside adequate resources to ensure the communities' survival until their land is returned. This should include the regular provision of food, adequate medical care and clean drinking water, and access to education. **Please ask Ana Paula de Souza, the SIHRG Americas Working Group Coordinator for a copy of the legal action: [brazil@sihr.org](mailto:brazil@sihr.org)**

Please also consider other actions, such as writing or contributing to debates on blogs or writing a letter to the editor of a newspaper or legal journal in your country (especially in countries that have influence over or close relations with Paraguay).

More information on Amnesty International's campaign '*We're only asking for what is ours*' *Indigenous Peoples in Paraguay – Yakye Axa and Sawhoyamaxa* can be found on the organization's website at: [http:// <http://www.amnesty.org/en/region/paraguay>](http://http://www.amnesty.org/en/region/paraguay)

and on the website of the Inter-American Court of Human Rights, here:

See Case of the Yakye Axa Indigenous Community v. Paraguay, Judgment of June 17, 2005 (*Merits, Reparations and Costs*) [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_125\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_125_ing.pdf) and Case of the Sawhoyamaxa Indigenous Community v. Paraguay, Judgment of March 29, 2006 (*Merits, Reparations and Costs*), [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_146\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_146_ing.pdf)



**Sawhoyamaxa and Yakye Axa representatives march on the Paraguayan Congress**

## SIHRG Project Report

# Brazil's Popular Legal

## Promoters Report by Rowan Ryrie

Since the beginning of 2009 SIHRG's Americas Group have been supporting the "Popular Legal Promoters" project who work in Campinas, in the state of São Paulo, Brazil.

The "Popular Legal Promoters" project works to empower women from disadvantaged sectors of society through educational courses which teach basic legal principles and citizenship rights.

The project works with issues such as domestic violence, children and young people's rights and the rights of the elderly. The Brazilian legal system and protection mechanisms in place are discussed and the project aims to empower women living in poor suburban areas to be able to deal with problems commonly arising in their communities.

The project aims to help individuals to take action within their communities by identifying existing issues and offering support which will lead to effective solutions. It is hoped that enabling individuals to take action in this way will help them to gain effective access to justice.

The project is currently working with 60 women who will become "Popular Legal Promoters" within their own communities. The current program consists of weekly lectures which began in early 2009 and will last until



### Thiago Cremasco gives a lecture on human rights to prospective 'Promotoras'

September when the women will receive the title of "Popular Legal Promoter."

SIHRG have become involved in the project through Thiago Cremasco, the Americas Group Co-ordinator for Brazil, who is offering technical support to improve the content of the course provided to the women the project works with. Thiago's involvement reflects the commitment of SIHRG's Americas Group to work that will further knowledge of human rights.

Thiago gave the project's inaugural lecture entitled "What are Human Rights? And an International Approach on Human Rights" on 23<sup>rd</sup> April this

year and in that lecture he addressed the recent history of human rights, current international human rights standards and protection mechanisms and the role of the Inter-American Human Rights System.

The lecture focused on the case of "Maria da Penha", a case against Brazil which was presented to the Inter-American Commission on Human Rights in 1998. Maria da Penha was a victim of extreme domestic violence by her husband for many years but he remained unpunished due to an omission on the part of the Brazilian State. This was the first case in which the Inter-American Human Rights System recognized that a

State had violated the Convention to Prevent, Punish and Eradicate Violence against Women (Convention of Belém do Para) of the Organization of American States (OAS).

The Maria da Penha case is widely known among Brazilian women who belong to the poorest levels of the society, many of whom identify with her history. She has become a symbol of determination and courage for many women and the findings in her case by the Inter-American Commission on Human Rights resulted in a law being passed which forbids domestic violence against women and creates an extensive system of protection in similar cases. This act is popularly known as the “Maria da Penha Act”.

Despite this high profile case, many women were unaware that the national legislation and protection system now in place and which supports them in their fight against domestic violence was the result of a long process that began with an international accusation being made to the Inter-American Commission on Human Rights. Understanding the role of the international accusation process in human rights protection and the part played by organizations such as SIHRG is important in helping to empower these women and allowing them to develop a sense of their place within the system of international human rights protection.

If you would like to learn more about the “Popular Legal Promoters” project, please contact Thiago Cremasco at [brazil@sihrg.org](mailto:brazil@sihrg.org)

## New SIHRG Project: South Asia Group

# The plight of border prisoners in India and Pakistan

By Usman Sheikh

The South Asia group is launching a new project on prisoners in India and Pakistan. In particular we will be focusing on people who have been imprisoned after going across the border into the other country.

This particularly affects farmers and fishermen who in the pursuit of their livelihood unwittingly stray across land or maritime borders into the territory of the other country. Once caught by the authorities they are often suspected of being spies. They are then often imprisoned and left to languish in jails indefinitely.

The prisoners are then to a large extent hostages to fortune. They are sometimes released as gestures of good-will when relations between the two countries are good. However, Indo-Pakistani relations are notoriously unstable and can very quickly be plunged into disaster. The atrocity in Mumbai in 2008 raised fears of an armed conflict between the two countries. The plight of the prisoners was pushed into the background and the reciprocal exchange of prisoners was halted.

We can help by focusing attention on this issue and giving it greater prominence on the political agenda. We can do this in particular by drawing attention to the breaches of international law involved.

Firstly, many of the prisoners are not given access to consular services. Indeed, the authorities of their country of origin are often not informed of their arrest until after they have served their prison sentence, according to Sanjay Mathur, first secretary at the Indian High Commission in Islamabad.

Secondly, many prisoners are imprisoned without a trial. Where they are tried, they frequently do not have access to legal representation. Moreover, once in prison, they are often forgotten about and left in prison even after they have served their term of imprisonment. For example, Mehboob Ilahi crossed the border into Pakistan from India looking for work and after being arrested was sentenced to 14 years’ imprisonment. However, even after serving this term, he was held for an additional five years before being freed.

Thirdly, the conditions in jail are often very bad. To some extent this is a general problem for prisoners in Indian and Pakistani prisons and not just for foreign prisoners. However, foreign prisoners are treated particularly badly, partly because they are suspected of espionage and partly perhaps because they are seen as especially defenceless. Ilahi claimed that while imprisoned in Pakistan, Pakistanis had taunted him that while Hindus burn their bodies after death (a reference to the Hindu tradition of cremation) they would burn him while he was alive. He suffered burns over a quarter of his body and was at one point told by doctors that it was unlikely that he would survive.

More generally, we can point to areas in which there is scope for more co-operation between India and Pakistan. One is the visa system. For example, Pakistanis travelling to India are subject to strict limitations on the length of their visa, the places they may visit and the mode of transport to be used. Many people in both India and Pakistan have family living on the other side of the border. Those that fail to comply with the stringent visa restrictions are often arrested and detained in the other country placing an unnecessary burden on prison systems that already suffer from overcrowding.

In addition, both India and Pakistan could clearly do more to clarify the location of their borders. Many of the Indian fishermen who have been imprisoned have commented that they had no idea where Pakistan's maritime border lay. If

the Indian and Pakistani authorities are as suspicious of people crossing their borders as they claim, they could pre-empt the problem by making it clearer where their borders are.

Even once they are freed, prisoners' problems often continue. Sometimes their families have moved and they are not able to locate them, leaving them to fend for themselves. Where they have been subject to torture prisoners are often unable to recover psychologically, such that their experience in prison never leaves them. The scars caused by imprisonment are deep and long-lasting.

We are still at the initial stage of the project so any help would be appreciated, whether suggestions of action that we could take, providing contacts with relevant expertise or simply turning up to our events. Please watch this space for further information and please contact us if you have any questions at [southasia@sihrg.org](mailto:southasia@sihrg.org)

## Mission Report Slavery in Mali:

### A real problem, but capable of solution

Report by  
**Michael Ellman**

Mali is one of the largest countries in West Africa, with the River Niger snaking through it and providing a fertile plain around its "inland delta." It has an ancient history, dating from the Ghana Empire in the 10<sup>th</sup>-11<sup>th</sup> centuries and the Mali Empire in the 12<sup>th</sup>-13<sup>th</sup> centuries, and a remarkable code of ethics, the Mandé Code, from this time.

The population is only around 12 million, of whom up to 500,000 are slaves, mainly by descent (if your mother is a slave, you are a slave), many from the Tuareg tribe, but also Peuls, Moors, Songhay and others. The masters are usually from the same tribe, but of lighter skin colour (known as "white Tuaregs" etc.), or "Arabs" – as they are often of Arab origin. They all (masters and slaves alike) wear turbans and long brightly coloured robes.

The slaves are forced to live with their masters, work for them without pay, to marry or have sex with the master or whoever the master appoints; they cannot have property or inheritance rights - and are generally treated as chattels.



Their children are the property of the master, and he disposes of them as he thinks fit – and many masters impregnate their female slaves to produce more slaves in the next generation. They are mainly among the nomadic groups, and apart from domestic duties, they look after animals or do other agricultural work.

The Constitution provides that all Malians are born free and equal, and there are laws against forced labour, kidnapping, forced marriage etc., but no general law against slavery. Mali is party to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the Slavery Convention – but of course these are not directly enforceable in the domestic courts.

Under French colonisation, slavery was forbidden, and a good number of slaves were freed in the early years – but numbers built up again. On independence, the first President Modibo Keita successfully campaigned against slavery, and a further large number were freed, but then gradually the numbers increased again, and

there is still no law. Until recently the authorities insisted that there was no slavery in Mali, but now they have to admit that it persists, mainly in the North and East of the country.

A number of slaves have been freed or have escaped in recent times, but there is considerable discrimination against ex-slaves (known derogatively as Bella). Some of them have set up an anti-slavery campaign, Temedt, with some 30 000 members, which is having some success. With increased communication,

**Above, Michael attends a meeting on slavery with members of Temedt. Below, the River Niger.**



and following the successful outcome of the case of Hadijatou Mani against Niger in the ECOWAS court last year (where an ex-slave sued her government for wrongful imprisonment and failure to protect her), the authorities are beginning to realise something has to be done.

I worked with Temedt and a number of other NGOs in Mali, including the National Commission for Human Rights. We drafted a new bill, and met a large number of members of parliament, ministers and activists. It was clear that they are at last beginning to recognise that there is a problem, and most were supportive of our efforts. Lawyers and judges and prosecutors were particularly supportive, and urged us to let them have the draft bill as soon as possible.

However there is still a great deal of prejudice, and a lot of training and preparation has to be done. Many slaves remain with their masters because they are provided with food and lodging, or because they believe that

slaver is the lot which God intended for them. Indeed, some masters have been forced to emancipate their slave because they could not afford to keep them. If slavery is to be eradicated, it will be necessary to provide means of subsistence for former slaves.

I toured the country with members of Temedt, and we were able to arrange the release of one slave – which resulted in her master begging us to settle the claim she had brought against him in the courts, and agreeing to pay damages for the years she had worked for him without pay. Many slave-masters in the area became very concerned lest we free their slaves! In Timbuktu we met another escaped slave who had been beaten by his master, and we prepared a claim for him for assault, forced labour, and the recovery of his children.

Cases are beginning to be brought under the existing laws, but magistrates tend to give damages for assault, without looking at the underlying causes. There is a great need for publicity, and training of activists, lawyers and judges, and a need to change the public culture. Temedt is very keen to have a French-speaking European lawyer sit in on the cases for them.

Niger and Mauritania have passed laws outlawing slavery in recent years, and there is reason to hope that one will be adopted in Mali, which will help to bring about the necessary change of culture.

# SIHRG Events Overview

**SIHRG holds regular speaker meetings, inviting leading practitioners in the field of human rights from lawyers to charity and NGO representatives to share their experiences and views from the front line of international rights protection.**

In November, leading media lawyer Mark Stephens addressed the subject of the development of an English privacy law following several high profile Strasbourg and UK cases where Article 10, freedom of expression, and Article 8, right to private and family life, have come into conflict. However, the development of a privacy law will have a much wider impact than protecting the personal life of the rich and famous. Mark Stephens reflected on the broader implications, including the extent of privacy to be afforded in criminal cases. NGOs such as Amnesty International and Greenpeace could also face problems from these developments as an extension of privacy laws would make it harder for them to publicise the activities of companies and organisations, as Mark highlighted in his thought-provoking talk.

In January, the former ITN and BBC Panorama correspondent Alan Hart gave an address to SIHRG at the Law Society Hall on the Israeli and Palestinian conflict. Describing the Palestinian problem as 'the cancer at the heart of international affairs' Alan Hart argued that the key to understanding lies in knowledge of the difference between Judaism and the Zionism. "When you know the difference", he said, "you can understand why it is perfectly possible to be passionately anti-Zionist (opposed to Zionism's colonial enterprise) without being in any way, shape or form anti-Semitic; and why it is wrong to blame all Jews everywhere for the crimes of the hardcore Zionist few in Israel." Following Alan Hart's address, SIHRG resolved to devote proceeds of its UN training event held in February to support Palestinian and Israeli human rights lawyers. The training event was an introductory course on the United Nations Human Rights Machinery, held by SIHRG in collaboration with the Law Society. Dr Nazila Ghanea, of Oxford University, and Smita Shah, barrister at Garden Court Chambers, conducted the course focussing on how the machinery operates, promotes and protects human rights. Dr Ghanea discussed the various organs of UN human rights machinery before considering the Charter based bodies including the Human Rights Council. The event closed with an assessment of the effectiveness of the UN machinery and proposals for reform. Following the success of this training event, it is hoped an advanced course can be held later in the year. For details of forthcoming SIHRG speaker events, email [admin@sihrg.org](mailto:admin@sihrg.org). Event details will also be posted on our website, [www.sihrg.org](http://www.sihrg.org).