

BULLETIN

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The Solicitors' International Human Rights Group

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

OCTOBER 2008

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Chair

Michael Ellman

Vice Chair

Lionel Blackman

Secretary

Tessa Gregory

Administrator

Naoimh Hughes

Email:

admin@sihr.org

Bulletin Editor

Trudy Morgan

Email

bulletin@sihr.org

Marking sixty years of the UNDCHR

The United Nations Declaration on Human Rights and fundamental freedoms was signed in 1948. In April this year, SIHRG invited Vanessa Redgrave and Souheyr Belhassen to discuss the road travelled and the challenges ahead in the struggle to establish human rights around the world. Report by George Zachary

In celebration of the 60th anniversary of the United Nations Declaration on Human Rights (the Declaration), Solicitors International Human Rights Group had the honour of hosting an engaging, informative and emotive meeting with guest speakers Vanessa Redgrave and Souheyr Belhassen, President of the International Federation for Human Rights (FIDH), at London's South Bank University.

Belhassen highlighted the work of various human rights defenders around the world. She congratulated the people in the Democratic Republic of Congo who are lobbying for rape, which occurs on a mass scale in the DRC, to be classified as a war crime. Belhassen went on to praise the courage of Iranian women who have been arrested, whipped and beaten for petitioning for the recognition of women's rights. She also denounced the detention of Hu Jia in China, who was sentenced to 3 ½ years imprisonment for writing an article demanding the Chinese authorities to change its policy towards HIV/Aids sufferers.

Belhassen stressed the need for further recognition of Economic,

Social and Cultural and Rights. FIDH are one of the many organisations pressuring the international community to give these rights equal recognition under the law so that they can be fully enforced and protected. She pointed out the poor treatment of immigrants and asylum-seekers in the UK and throughout the EU, and the restriction of established rights on the pretext of anti-terrorism measures.

Vanessa Redgrave captured the audience's attention with her impassioned reflection on the raison d'être of the Declaration and its meaning, 60 years on. Redgrave highlighted the importance of learning from history so as to avoid atrocities of the past happening again. She revered the principles set out in the Preamble of the Declaration: the universality of human rights and the role of the rule of law as the guardian of humanity. Redgrave stated that the principles echoed 'the shrieks and groans of the people destroyed by the barbarities of Fascism' for they remind us of what can happen when human rights are forgotten.

Amongst other things Redgrave

lamented the troubling news that President Bush had vetoed a Congressional resolution banning torture. She condemned the veto as flying in the face not only of the Convention against Torture (of which the USA is a signatory) but also the US Constitution. Redgrave stated that this reiterated the contempt the current US administration has for human rights.

Redgrave also questioned the New Security Strategy announced by Gordon Brown in March this year which, she pointed out, only makes one passing reference to the UN. She concluded that this is hardly restoring the founding organisation of the Declaration or respect for human rights to the heart of global decision making and sets a worrying precedent for the century ahead.

A lively discussion ensued in which SIHRG members questioned the speakers about the prospects for the UN Declaration in the light of the negative factors of recent years. Much interest was expressed in SIHRG's work on economic and social rights.

Law and Politics in Ethiopia

After a controversial election in 2005, Africa's oldest independent nation was rocked by confrontation and riots. Large numbers of opposition supporters were arrested. SIHRG Chairman Michael Ellman observed the subsequent trials for the European Union; here, writing in a personal capacity, he discusses the legal and political context of the trials.

Ethiopia is the oldest independent nation in Africa, never having been colonised (apart from a brief invasion and conquest in the 1930s by the Italians, who were chased out 5 years later). It was ruled by a series of Emperors until 1974 when the last Emperor, Haile Selassie, was deposed by a revolution, and replaced by a Marxist dictatorship known as the DERG. This was finally ousted in 1991 by the Ethiopian Popular Revolutionary Democratic Front (EPRDF) which installed a reasonably democratic system, under which it ruled until 2005.

A number of ethnic groups make up the Ethiopian population. The Tigrayans, based in the North East, have traditionally held much of the power. A high proportion of the leaders of EPRDF are Tigrayan, which attracts some resentment.

Elections were held in 1991, 1996 and 2001 at which the EPRDF were elected by substantial majorities, and Prime Minister Meles was much favoured by Western leaders (including Tony Blair) as a model democratic leader. However, before the 2005 elections, opposition groups joined together to form the C.U.D. There were relatively few differences in policy

between the Government and Opposition: the Government introduced substantial devolution to the regions, favouring satellite parties of the EPRDF. Some Opposition leaders felt this went too far, and if anything the C.U.D. was even more intransigent over the disputed Eritrea boundary than the Government.

In the run-up to the May 2005 elections, everything seemed to be going smoothly until the election day, when the EPDRF appears to have become worried that it might lose. The E.U. Observation Mission, while congratulating the Ethiopian people on many aspects of the election, reported intimidation and detention of opposition officials, unfair use of the media – and finally an announcement that the governing party had won although the counting and tabulation of votes was still going on.

In the end the Electoral Commission declared a substantial majority for the EPRDF, which the Opposition refused to accept. Huge demonstrations took place in Addis and a number of other cities in June, at which there was confrontation with the police, and a number of people were killed. Large numbers of people were

arrested, and although most were released shortly afterwards, negotiations between the Government and the Opposition failed to resolve the situation: both sides appeared equally intransigent, the Opposition refusing to take those seats which it had won according to the official results, unless they were given a majority of seats – which they claimed they had won. They even refused to take on the running of Addis Ababa City Council, which the Election Commission had confirmed had been won by the C.U.D. with a majority of over 90%.

Another large demonstration took place in November 2005 in Addis, again with large loss of life (latest estimates count over 200 dead, including some policemen). Shortly after the November riots, some 130 people and organisations were charged with a variety of offences, which may be summarised as follows:

1. Outrage to the Constitution, using the Coalition (CUD) for illegal purposes, with the intention of dismantling the Constitution, threatening to illegally alter the results of the election and illegally seize power, mobilising their members and supporters for rioting, mobilising the public for violence etc.;

2. Obstructing [the Government and the Electoral Board] in the exercise of their powers;

3. Inciting, organising and leading armed rebellion against the Government;

4. Criminal Conspiracy with the intention of destroying the unity of the country by engaging in racist campaigns and riotous calls to the public;

5. Impairment of the defensive power of the State, openly instigating and inciting the defence forces to refuse to serve;

6. High Treason;

7. Genocide, intent to destroy sections of the society they claim to have come from one ethnic group.

Some of these charges were ridiculous: the evidence for the charge of genocide involved actual or threatened violence against three people of Tigrayan origin – and was later reduced to “attempted genocide”; “outrage to the constitution” was not defined anywhere in the Penal Code; charge 4 was eventually withdrawn – but the other charges went ahead.

The people charged included some political firebrands, but also a number of respected academics, Human Rights activists, trade unionists, journalists and others, and in particular three representing civil society who had never been involved with the C.U.D., including two local representatives of Action Aid.

The trial began with considerable publicity and a number of foreign

in January 2006. Some of the defendants were abroad, but all those in the country were detained and refused bail. All except the three civil society defendants refused to plead (not recognising the jurisdiction of the Court) or to appoint lawyers; nevertheless they did intervene (and were allowed to do so) at various stages in the trial. Remarkably, simultaneous translation from Amharic into English (of tolerable quality) was provided for the foreign observers, who were accorded considerable courtesy (though searched on entry to the Court) and seats in the front row. Observers attended from the European Union, the U.S.A., the local and international press, in considerable numbers at the beginning though dwindling to a handful in later stages, but undoubtedly having an effect on the Court.

After several adjournments, the trial really got going in May in a theatre rented for the purpose outside the city, and the court of three judges announced that it would be a speedy trial. Though early estimates by the judges and the prosecution had suggested a decision would be reached by July, in fact the case went on for nearly 18 months (and even longer for the civil society defendants, who refused all negotiations with the prosecution).

The evidence at first consisted largely of tapes and video recordings of meetings of the C.U.D. and Opposition leaders, and only after some months were documents produced to support any of the charges – resulting in considerable contests over their admissibility.

In the end all except the civil society defendants accepted a compromise under which they were convicted, then signed a mild letter of apology. They were then pardoned and released. The civil society defendants refused this compromise, and fought it out to the end; they were also convicted and then finally released some months later.

On the face of it, the Court appeared a normally constituted court, operating under the Ethiopian system (a combination of the accusatory and interrogatory systems), but there were a number of defects pointed out by the observers. The judges were cordial and prepared to talk to the observers, and there was a dissenting judgment by one of the judges on at least one occasion, and they appeared anxious to follow the rule of law. However the final outcome was clearly not in accordance with the rule of law.

The Government is still in office, though clearly unpopular, and it remains to be seen what will happen at the next elections, due next year.

Pakistan: the need for action

Following the resignation of President Musharraf, SIHRG South Asia Working Group member Shanela Haque reports on the human rights situation facing Pakistan

The South Asia working group has been working hard to raise awareness of the increasingly dire state of Pakistan's legal system and the human rights abuses being committed in Pakistan.

The removal of Chief Justice Iftikhar Muhammad Chaudhry highlighted the serious situation in the country where there is clearly very little separation of power or accountability. Ex-President Musharraf was able to remove him on a whim when it became clear that the Chief Justice was not willing to support Musharraf's suspension of Pakistan's constitution and acts of corruption by the government.

The Human Rights Commission of Pakistan has attempted to raise awareness of the government's lack of transparency which, it says, leads to a lack of respect of human rights by the government.

During the 'State of Emergency' declared in 2007 hundreds of lawyers and human rights activists were arrested under provisions allowing detention without charge or trial. Courts were expressly prohibited against issuing any order against the President, Prime Minister or any person

exercising powers under their authority. Peaceful demonstrations were met with violence. All private local and international news broadcasts were suspended and new laws imposed heavy restrictions on all forms of media.

According to Amnesty International, lawyers opposing these measures were arrested en masse and a number of Supreme Court and Provincial High Court justices were suspended and placed under house arrest for refusing to take an oath to uphold the new Provisional Constitution Order.

There have been longstanding concerns about human rights in Pakistan, including torture in custody, patterns of arbitrary detention and disappearances such as that of Dr Aafia Siddiqui, and abuses committed during the course of the "War on Terror", which have continued and, in some instances, worsened after recent events.

The record of the new President, Asif Ali Zardari, doesn't bode well for a country in need of a strong and moral leadership that will reform Pakistan in a way that will ensure protection of people's fundamental rights, including the right to liberty and freedom from torture. Mr Zardari was cleared of five

corruption charges in March this year and only because the courts abolished the cases against all public office holders.

I was in Pakistan this summer and it seemed as though the general feeling amongst ordinary people was a mixture of despair and cynicism about the country's future prospects. Although Pakistan's human rights record under Musharraf was far from positive, people seemed to fear the impact of Zardari's presidency.

The Chief Justice spoke out for many of the issues that the South Asia group is working hard to achieve: anti-corruption, rule of law, independent judiciary – all practices that, if established, would go a long way to achieving a firm structure ensuring the protection of basic human rights in the country. With little evidence that things will improve under President Zardari, the need for raising awareness and lobbying to achieve a more just and independent system that will improve the state of human rights protection in Pakistan is still as great as ever before. There is still a lot to be done and the South Asia working group hope that you can join us and give your support.

Human Rights in Afghanistan

Saifuddin Bahram summarises the latest research on the human rights situation in Afghanistan

The South Asia Group has conducted research on the human rights situation in Afghanistan. The findings paint a bleak picture faced by Afghan nationals who are being denied their basic rights including those of education, gender equality, and security.

Amnesty International's *Report on Afghanistan* commented that the insecurity undermined the rule of law and created a climate of impunity. Governors in some provinces acted independently of central government and were responsible for human rights violations. Despite the appointment of Supreme Court judges and other high-ranking officials, reform and rebuilding of the judicial sector remained sluggish. The Afghan security forces, particularly the police and representatives of the National Security Directorate (NSD), were accused of illegal detentions and torture and other ill treatment.

The *Amnesty's Report on Afghanistan* further highlighted that in July 2007, the government reportedly announced plans to re-establish the Department for the Promotion of Virtue and Prevention of Vice, a government body that committed numerous human rights violations, notably against women, during the rule of the Taliban. Assurances were given that the department would not be given the same duties as before. However, re-establishing such a notorious department will

clearly do little to convince Afghans that there is real change.

The Afghanistan Independent Human Rights Commission's Summary Report on the Economic and Social Rights in Afghanistan of May 2006 states that the foundation of these rights is the International Covenant on Economic, Social and Cultural Rights (ICESCR). As the summary report states, the ICESCR was ratified by Afghanistan in 1983. The government's obligations are to take steps towards the progressive realisation of the rights in the ICESCR.

The report concludes that its findings exhibit that the Government of Afghanistan is in violation of its legal obligations under international human rights law, in particular of its immediate obligations under the International Covenant on Economic, Social and Cultural Rights to which it is a State party.

The Summary Report concludes that the UN Committee on Economic, Social and Cultural Rights emphasises that poverty itself constitutes a denial of human rights. Their findings show the close relationship between poverty and the denial of, or lack of access to economic and social rights, including the right to an effective remedy.

Crucially, the Summary Report highlighted that poverty is related to primary school attendance.

14.5% of their interviewees had primary school-age children in their family who are not attending school regularly. The interviewees said that this is because the family cannot afford it. It is apparent that if this is not resolved, then this circle of poverty looks set to increase and plague any real lasting progress that the Government of Afghanistan intends to make.

Human Rights Watch commented that Afghan women and girls continue to suffer extremely low social, economic, and political status. They rank among the world's worst off by most indicators, such as life expectancy (46 years), maternal mortality (1,600 deaths per 100,000 births), and literacy (12.6 percent of females 15 and older). Women and girls confront barriers to working outside the home and restrictions on their mobility; for example many still cannot travel without an accompanying male relative and a burqa. While the number of girls in school increased quickly after the fall of the Taliban in 2001, only 35 percent of school-age girls were in school in 2006. The violence directed at schools has especially targeted girls' schools particularly.

The alarming report of atrocities on women is demonstrative of the lack of security provided to Afghans, especially women. It further indicates that despite the

Afghanistan

fact that these abuses are now being documented, and that 91 of the 361 members of parliament are women, there is a seemingly immovable barrier in the form of the ultra-conservative Afghan society. Again, this is reflected in the lack of support that women and human rights defenders receive from the central government.

Access to education is a core problem, resulting from the central government's failure to place due importance on education. The BBC reported that 226 schools have been burnt down in the proceeding 13 months, 80% of teachers are untrained and that neighbouring countries such as Tajikistan spend three times more on teaching its children. A little over 6% of the Afghan government's non-defence budget is spent on education.

This report draws a gloomy picture for Afghanistan and it is clear that if nothing substantial is done then the future could be bleaker as weak governance and revival of insurgents prolongs the country's lack of security, and the loss and further abuse of human rights.

Social Justice and Access to Justice

In June this year, June Venters QC addressed SIHRG on the subject of the challenges facing legal aid practitioners in the UK, drawing an instructive comparison with the situation in European countries and round the world. In this abridged version of her speech, she discusses how the changes in access to justice are having an impact on our society

I am passionate about our English Legal System and its standing in the world. But, along with many others in my profession I have become very concerned to see the many changes which are taking place within our legal system with the effect that there is a continuing erosion of our basic Human Rights.

One of the ways it seems to me that freedoms are becoming compromised is the inequality which now exists in relation to the funding of legal proceedings. The difficulty is simply that legal aid is perceived by this Government to cost too much and hence radical steps have had to be taken to reduce the overall increase which has been happening in recent years.

It isn't rocket science to work out that if new legislation is introduced which results in many new offences, [3,000 since 1997] that this will have a "knock on effect." *More* people will be arrested, *more* people will be charged, *more* people will require representation and *more* prison space will be required. BUT all of this comes at a price.

This country spends more on legal aid than other countries both inside and outside Europe. For example in 2006-2007 the average legal aid expenditure per head of population in England and Wales was £37 whereas in France it was £3 per head and in Germany it was £4 per head, in Ireland it was £7 and in Sweden it was £1 per head. Equally for the same period approximately £10 per head was spent on legal aid related services in New Zealand,

If we simply stopped there, the Government would be absolutely right to say that we are doing rather well in this country and that we should have no complaints when it comes to legal aid. They might even have a case for justifying a reduction in the legal aid budget.

However, I say what we need is a "reality check." This is not the full picture and to leave it at that is utterly unacceptable.

If this Government is going to judge the rise of legal aid in this country by comparing legal aid expenditure with other countries around the world, we need to truly understand the comparison.

To look at our own country in isolation is to fail to carry out a full and proper investigation. You can't have it both ways. Don't rely on the statistics of other countries without understanding and most importantly acknowledging how they operate.

In France, for example, a party does not have to pay court fees to start a civil or administrative law court case.

Another significant difference is that civil law in France is based on Roman Law which means that legislation occupies a paramount position while court decisions play a lesser role. Legislation is applied as written, whereas in this country we have statute law, case law and legal precedent. In other words we have a more complex system which lends itself to interpretation and hence is likely to incur greater costs.

Both France and Germany have an inquisitorial system, whereas we have an adversarial system. This too has an impact on cost because with an inquisitorial system the Judge conducts most of the questioning.

Comparing the cost of legal aid in this country with others around the world will be inevitably different because there are many factors which influence that and to try to bring our costs in line with theirs will not work, unless we intend to change our whole system.

Another issue which is currently close to my heart and which I believe adversely impacts on Human Rights is the recent increase that has been made by the increase in court fees which Local Authorities now have to pay to issue care proceedings in this country.

In April 2008 fees for care proceedings leapt from £150 to £4,000 per case — a jump of 2,500 per cent — as the courts are made to pay for themselves.

Prior to the increase, Judges, as well as the Law Society and the National Society for the Prevention of Cruelty to Children, said that the fees would deter local authorities from seeking care orders promptly, or at all.

I can tell you that I have experienced first hand a local authority delaying in bringing proceedings in cases involving near fatal non accidental injuries. On one occasion I wrote to the local authority and effectively forced their hand by advising that my client would remove the baby from voluntary care unless proceedings were issued within 7 days.

This is another example of the erosion of Human Rights. There is a breach of a parent's human rights, the right to private family life because by failing to issue proceedings the parent is denied the right to be represented by a lawyer, to know what the case against them is and the right to challenge it. Even more importantly, the child is denied the right to have the case fully investigated and to know the truth about what happened to him or her to cause, what in some cases are life long disabilities.

Once again and when comparing this country and the way we conduct care proceedings as compared with other countries, for example, Germany, where there is a vast difference. Unlike in this country a Children's Guardian is appointed to represent the child's best interests and plays a key role in

the proceedings, in Germany where a child does not have available an individual to act in the capacity of a Guardian, guardianship is frequently administered by the local youth office. Research in Germany shows that personal contact between the child and the guardian is rare, though the guardian may have full parental responsibility.

Accordingly, if we are going to compare the cost of other countries we have to recognise they operate an entirely different system.

The message I am trying to convey tonight is that the English Legal System has been the envy of the world. I have been and remain proud to be a part of it. Every system is capable of change, but it also needs checks and balances. I fear that unless we continue to speak out about some of the changes which are being made there will be no checks and balances and this will lead to serious injustice.

Ladies and Gentleman, we have a responsibility to ensure that in seeking to uphold the Rule of Law that we continue to protect the innocent and for those who are not innocent that they are dealt with in a way that is just and fair — because that is what this country has always prided itself on and this is why I am so proud to be a lawyer.

Indigenous rights and prisoners rights in the Americas:

SIHRG working group launches research projects.

Working group member Rowan Ryrie sets out the project and calls for volunteers

SIHRG's working group on the Americas has launched research projects on indigenous rights and prisoner's rights and are seeking volunteers

Through contact with NGOs and groups working on rights issues in the Americas, SIHRG's working group on the Americas has identified a need for research to produce detailed and accessible information on the protection of rights relating to a number of key issues.

The working group plans to carry out a series of research projects over the coming years and has launched the first two projects this autumn with the aim of publishing the research and recommendations in summer 2009. The first two projects are on the use of environmental law to protect indigenous rights and the protection of prisoner's rights throughout the Americas. Details of the projects are below.

We are currently seeking volunteers to help carry out the research. Contact details for the project's co-ordinators are provided at the end of the article; please get in touch if

you are interested in further information on the projects.

Indigenous rights in the Americas

The indigenous rights project grew out of meetings between SIHRG and ASALI, the Association of Friends of Lake Izabal, an indigenous rights group working in Guatemala who have been campaigning against the grant of mining concessions over indigenous lands. In 2002 ASALI succeeded in blocking licenses granted to Shell Oil to drill in Lake Izabal and they have now turned their attention to fighting the nickel mines that are threatening the ecosystem of the lake and with it the livelihood of the indigenous communities who depend on fish from the lake for food. In addition to the environmental degradation, the expansion of mining in the area has been directly linked to the forced eviction of indigenous people from their homes and their ancestral lands. Thousands of indigenous people depend on the resources of the lake and thousands more have been involved in protests against the mines. Locals have not been consulted on the mining

projects in the area and are not likely to see the benefits of the huge wealth the mines will generate.

One of the problems ASALI have faced has been proving the ownership of land and the land rights of indigenous people, a problem many indigenous rights groups face. ASALI have recognized that environmental law could provide a powerful tool in the fight to protect their lake and countless other areas of indigenous land facing environmental threats and that's where SIHRG come in.

The Americas group research project aims at producing a single source of information on the case law and legislation on the related issues of indigenous rights and environmental law in the Americas with the hope that this will help activists like ASALI as well as lawyers, students and academics to understand the interaction between environmental law and indigenous rights. Analysis of the types of indigenous rights abuses reported will lead to the formulation of recommendations on the development of a framework

for indigenous rights protection. SIHRG will also create a forum for discussion of how these issues should be addressed via the website.

Environmentally friendly projects involving eco-tourism and solar energy have a great deal of local support in the Lake Izabal area and we hope that providing ASALI and other groups like them with information on national and international environmental law will help them to protect both the environment and the rights of indigenous people.

Prisoners' Rights Under the Inter-American System

A number of cases coming to the notice of NGOs and the Inter-American Commission of Human Rights (IACHR) have indicated that human rights violations against people detained in police and prison custody in the Americas is a serious problem and that not enough is being done to address the issue.

NGOS and UN experts have stated that these violations include killings, deaths in custody, torture, inhumane and degrading treatment, the detention of minors, juveniles detained with adults, lack of a route to justice, lack of judicial protection, detention without a sentence, overcrowding, poor conditions of detention and a lack of medical care.

The severity of the human rights violations suffered by

people in detention in the Americas and the lack of attention this issue has received have led the Americas working group to initiate this research project.

The aim is to look at each country throughout the region and assess the conditions of detention, whether torture or inhuman or degrading treatment has been reported in the country and whether rights to a fair trial and to judicial protection are being recognised. The research will focus on prisoner's rights cases brought before the IACHR and the Inter-American Court of Human Rights and will seek to identify patterns of rights violations.

It is hoped that this research will lead to a database of relevant jurisprudence, and to

specific recommendations regarding how these violations can be reduced and the climate of impunity tackled.

Copies of the findings from both projects will be sent to the IACHR the Inter-American Court of Human Rights, National Human Rights Commissions and local NGOs. They will also be published on the SIHRG Internet site.

If you can assist with these projects please contact Rowan Ryrie (indigenous rights) or David Palmer (prisoner's rights) at rowan.ryrie@sihr.org or david.palmer@sihr.org or for further information on work within the Americas group contact the group co-ordinator, Ana Paula de Souza at americas@sihr.org □

UPCOMING SIHRG SPEAKER MEETING

Mark Stephens

Human Rights and Media Law

Weds 26 November

6.30pm

BPP Law School

68-70 Red Lion Street, Holborn