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Human rights stuck between relativism and denial

In April 2004 the United Nations Commission on Human Rights reaffirmed that "States must ensure that any measure taken to combat terrorism complies with their obligations under international law, in particular international human rights, refugee and humanitarian law"¹.

Many governments who see a convenient opportunity in the fight against terrorism for strengthening their power take no notice of this recommendation. The fundamental rights enshrined in the United Nations International Bill of Human Rights, and in particular those whose inviolability is proclaimed in the text itself, are regularly trampled, including in long-standing democracies.

Such violations have always existed but the trend today is to justify them in the name of defending other values, which are also part of the rule of law, such as freedom and democracy. In this regard, the announcement of the appointment of Mr. Alberto Gonzales, a former counsel to President George W. Bush, to the position of Attorney General in November 2004, is symptomatic. As a counsel to the President, Mr. Alberto Gonzales stated in a memorandum that the war against terrorism is "a new kind of war" and "this new paradigm renders obsolete Geneva's strict limitations on questioning of enemy prisoners and renders quaint some of its provisions". In the United Kingdom, a court ruled in August 2004 that evidence obtained under torture was "admissible", thus running counter to the obligations that this State has always endorsed.

¹ See UN document E/2004/23-E/CN.4/2004/127.

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Other States assert even more blatantly disregard of human rights obligations laid down in international instruments, when they hinder the fight against terrorism. For instance, at an informal meeting held on the occasion of the July 2004 Summit of the Commonwealth of Independent States (CIS), nine member States severely criticised the Organisation for Security and Co-operation in Europe (OSCE) for granting too much importance to democracy and human rights, and for, thereby, "significantly" limiting its capacity to deal with other threats².

In such a context, where human rights are either sacrificed to Realpolitik or disregarded in the name of freedom and other interests, the women and the men who defend them are more than ever on the front line.

Defenders are up against a double difficulty: on the one hand, their task increases in importance with the rise of arbitrariness, social inequalities and violations concomitant with the "security first" principle; on the other hand, the values they defend are undergoing constant erosion, their freedom of expression is considerably curtailed and their message is ever more difficult to transmit. Whereas their action is all the more necessary, they could well suffer the same fate as the rights they defend.

Repression against human rights defenders continued in 2004, and even gained in intensity in certain parts of the world, notably in Asia and some Latin American countries. This repression is sometimes directly linked to a spurious use of the fight against terrorism. In certain countries, particularly in conflict-ridden areas (Colombia, Nepal), defenders are considered as rebels or terrorists, and/or are subjected to a restrictive security legislation, like the Mapuche leaders in Chile. More generally, in many countries, like Uzbekistan or Tunisia, defenders are treated like ordinary criminals.

Human rights defenders in situations of conflict

In 2004, wars and internal conflicts have continued to take a heavy toll of human rights defenders.

From Chechnya to Sudan, from Iraq to the Philippines, human rights defenders have been targeted for denouncing exactions commit-

² See Regional Analysis on Europe and the CIS, below.

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ted by parties to the conflict, and paradoxically for advocating peaceful solutions that are respectful of human rights.

In most cases they are accused of being in favour of one side or the other, and find themselves in a seemingly inextricable situation of extreme danger. In some countries they are cut off from the outside world (Chechnya), or seriously restricted in their freedom of movement (Occupied Palestinian Territories).

Furthermore, in 2004 international humanitarian personnel were subjected to numerous acts of reprisal owing to support given to the civilian population in Iraq, Afghanistan or Sudan.

Defenders of economic, social and cultural rights

Many defenders have been assassinated or threatened for being an obstacle to certain economic interests. Many trade union activists, for instance, have paid with their own lives for defending workers in their negotiations with employers. In China, where the justification invoked for a productive system based on absolute discipline on the part of underpaid workers has been the need to attain growth targets, union leaders are subjected to systematic repression. Representatives of indigenous communities (Ecuador) have suffered the same fate for protesting against the establishment of firms and businesses on their territory, as well as defenders who have denounced grave harm to the environment exposing local populations to serious risks (Thailand).

In certain countries, large landowners continue to subject representatives of the landless populations (Brazil) or of the indigenous population (Bolivia) to severe reprisals.

Although the government is not always directly implicated in such violations, its implicit support, at national or local level, to those who hold economic power places human rights defenders in an extremely precarious situation: not only do they lack adequate protection, but most crimes committed against them remain unpunished.

Fight against impunity

Impunity, which unfortunately remains the rule in many authoritarian regimes, as in those eroded by paramilitarism, more than ever calls for courageous efforts on the part of human rights defenders for the victims to obtain judicial redress.

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The possibility of initiating legal proceedings or of participating to judicial or quasi-judicial actions as plaintiffs, at national and international level, opens up new perspectives for defenders.

The International Criminal Court (ICC), which has now started to function, enables victims and their supporting NGOs to refer any situation implying war crimes, crimes against humanity or genocide to the Prosecutor. Under the Rome Statute, they can also participate and be represented in the framework of the Court proceedings.

Unfortunately, these historical breakthroughs might not be put into operation as long as victims and supporting NGOs are not guaranteed any protection against persecution and intimidation, as was the case in 2004 in the affairs of the "Disappeared of the Beach" in Congo-Brazzaville and the Relizane militia in Algeria.

Women defenders³

In many countries, the fundamental rights of women - reproductive health, the fight against female genital mutilation, polygamy and conjugal violence, etc. - are denied. Unfortunately, women often find themselves very much alone when it comes to fighting for the respect of these rights. In doing so they run considerable risks (assassination, disappearance, arbitrary detention, threats, harassment) and are often subject to discrimination and stigmatisation, like in China, where they are fighting drastic family planning policies, or in Pakistan and Iran where Islamic religious groups consider their struggle to be contrary to religion.

Beyond speech-making, women's rights are not really a priority for governments, who too often consider their claims to be too specific to be an element of general policy.

In addition, women defenders, i.e. women who defend fundamental women's rights and fight against gender violence, but also the ones who more generally defend human rights, also meet resistance within human rights movements themselves.

Ten years after the Beijing conference, the "women's rights are fundamental human rights" slogan still needs to be hammered out in order

³ On 25 November 2004, an international campaign on women defenders was launched on the initiative of 15 national and international NGOs.

to overcome inter-association barriers and to give renewed vigour to the fight for women's rights.

Regional and international protection

Undeniable progress has been made in the regional and international protection of human rights defenders. In 2004, the Observatory welcomed the appointment of Mrs. Jainaba Johm as Special Rapporteur on human rights defenders of the African Commission on Human and Peoples' Rights, as well as the adoption of the European Union (EU) Guidelines on Human Rights Defenders.

The question remains, however, of the effectiveness of some mechanisms and instruments. In the case of the European Union for instance, although the question of human rights defenders is raised in most intergovernmental meetings (Commission on Human Rights, UN General Assembly), it should be much more addressed at the bilateral level, in coherence with the recent adoption of the Guidelines and in order to complete in effect the "discreet diplomacy" the EU is engaged in. In 2004 for instance, the situation of human rights defenders was mentioned in none of the final declarations of the association and co-operation councils (Kyrgyzstan, Uzbekistan), or of the EU-China, EU-Russia and ASEM (Asia-Europe meetings) Summits.

Furthermore, the impact of the "Defenders" Unit of the Inter-American Commission on Human Rights (IACHR), set up in 2001, appears to be somewhat limited, in that States often neglect to implement the protective measures (medidas cautelares) laid down by the IACHR, while the IACHR is lacking the necessary funds for the Unit to engage in effective action.

The strategies applied by States for exercising national control over independent civil society are frequently extended to international or regional bodies.

At the level of the African Union (AU), a first "Draft Code of Ethics and Conduct for African civil society organisations" was presented in June 2003. This Draft Code specifies a number of obligations imposed on civil society organisations seeking accreditation with the AU. Furthermore, the Statutes of ECOSOCC, the standing consultative body composed of representatives of civil society organisations in AU member States, which were adopted in 2004, have been revised and

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made more restrictive, in particular regarding the eligibility requirements for ECOSOCC membership.

At the level of the United Nations, an increasing number of initiatives aim at restricting the reactions of the protection mechanisms to allegations of violations transmitted by independent NGOs.

2004 is characterised by the evident lack of political will to respect human rights, and by the same token, those who defend them. As the last bastion against the multiform increase in arbitrary power, defenders continued to pay a heavy price for their commitment to the defence of our universal rights. Our solidarity with these exemplary men and women, to quote Lida Yusupova in Grozny, "is of immediate importance, and gives [them] the strength to persevere in [their] action". It is up to all of us to be worthy of their trust.

Repression against human rights defenders

The Observatory's 2004 Annual Report addresses the cases of 1,154 defenders and nearly 200 human rights organisations (NGOs, trade unions, institutions, etc.) targeted by acts of repression in about 90 countries⁴.

Although this report does not pretend to be fully exhaustive, the doubling of the number of cases handled by the Observatory in 2004 compared to the 2003 Annual Report is revealing of the deteriorating situation of human rights defenders - and thus, of the erosion of human rights in the world.

In 2004, the Americas, where the number of assassinations and death threats was the highest (Argentina, Bolivia, Brazil, Colombia, Ecuador, Guatemala, Haiti, Honduras, Mexico and Peru), remained the most dangerous region for human rights defenders. Moreover, the intensified criminalisation of social protest, notably through numerous infringements to freedoms of demonstration and assembly, as well as

⁴ The Observatory's 2004 Annual Report entails analyses of the situation of human rights defenders in each region of the world. They are followed by regional compilations of the cases handled by the Observatory in 2004, as well as updates and follow-ups of the cases presented in the 2003 Annual Report.

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arbitrary judicial proceedings, particularly targeted defenders of economic, social and cultural rights (Chile, Colombia, Guatemala and Mexico).

In Asia, an increasing number of defenders were assassinated in 2004 (Afghanistan, Cambodia, India, Indonesia, Nepal, Pakistan, Philippines and Thailand), whereas the record of arbitrary detentions remained high (in particular in China and Vietnam). Further, defenders' security seriously deteriorated in Nepal.

In Africa, defenders carried on their activities under high pressure and hostility: they were subjected to threats, defamation and intimidation (Cameroon, Democratic Republic of Congo, Guinea-Bissau, and Mauritania), as well as to serious acts of violence (Gambia, Zimbabwe). The adoption of restrictive pieces of legislation became also more systematic as part of methods to neutralise civil society, whose role is still far from being accepted (Ethiopia, Rwanda, and Zimbabwe).

In Europe and the Commonwealth of Independent States (CIS), the crackdown against independent NGOs mainly consisted in hindering defenders' freedoms (Belarus, Russian Federation, Uzbekistan), thus confirming the governments' will to control civil society in the region, where violence and impunity were still the rule in 2004 (Azerbaijan, Russian Federation, Kyrgyzstan and Serbia-Montenegro).

Lastly, certain countries in Maghreb and the Middle East continued to deny the right to freely operating in favour of democratic reforms and the rule of law (Gulf States, Libya and Syria). The rights to create associations and to receive foreign funding were almost systematically retaliated, while freedom of expression remained blatantly violated.

