

Human rights and civil society: the last frontier

Public Lecture by

Irene Khan

Secretary General, Amnesty International

London School of Economics, 19 January 2005

Last September, I was in Darfur in western Sudan. In Camp Riyad, which looks like the worst kind of urban slum, with blue plastic sheeting on sticks providing shelter from the hot desert sun, piles of garbage everywhere, I sat on the sand with a group of women to listen to their stories of displacement. Zainab told me her village had been attacked on the ground by men in uniforms and bombed from the air. So many men had been killed that there were no men left to bury the dead. She herself, together with her friend, sitting next to her, had buried seven men. When the women had no strength to dig any more, they put the bodies under a shelter until the next day, but the Janjaweed came that night and burnt the shelter. Zainab kept repeating two words, "hunger and thirst, hunger and thirst," - that is all she could think as she and the other survivors walked for 60 days until they reached the camp. Zainab has lost everyone and everything except her grandchildren, and she is too scared to return home or even to step out of the camp.

These were simple, rural folk - they did not understand human rights, they had never heard of the human rights movement, they had no expectations of me as a human rights activist. They were just happy to unburden their sadness - even to a stranger who did not understand their language.

But I was burdened by my own guilt, angered by my own impotence. Earlier that week I had seen the site of the destroyed African villages where grass is now sprouting and camel are being grazed by Arab nomadic tribes. I had seen village after village abandoned, a few broken pots lying here, a child's shoe lying there on the ground as a poignant reminder of blind panic as people fled.

What could Amnesty International do? Name and shame the government? We have been vociferous in our denunciation, and vigorous in our demands with the government in Khartoum since early 2003, long before the conflict hit the headlines, but the killings and displacement have continued with impunity and audacity. AI has been barred from returning to Darfur.

Lobby the international community? From Khartoum, I travelled to New York to meet with Kofi Annan and pressed upon him the urgency of deploying the African Union monitors. He fully agreed but we both knew that their effectiveness and impact will be questionable in the absence of political will on the part of Khartoum.

From New York I travelled to Washington D.C. to testify before the Human Rights Committee of the US Congress. The congressmen and women listened to me attentively. For them, the answer is simple: they see it as genocide - but they could not tell me what action should follow that labelling - when I asked that if they believe it is genocide, should the UNSC not refer the case to the ICC, they remained silent - how could they say anything given US Administration's blind opposition to the ICC? The word "genocide" seemed as meaningless to me as human rights did to Zainab.

Darfur exposed the limits of the international human rights movement as surely as 9/11 and the War on Terror revealed its vulnerability. In each case, human rights advocates have done much to expose the hypocrisy, selectivity and double standards of governments - but the real question remains: why have we failed to correct the situation? What more can we do? How can we galvanise world public opinion, mobilize mass support which can move governments to action?

Those questions become even more critical as Iraq prepares for elections in the midst of bloodshed, as the US moves into a second term of the Bush Administration amidst more belligerent rumblings, as the human rights crisis of Indonesia and Sri Lanka are submerged by the humanitarian disaster of tsunami, and as the march of economic globalisation creates in its wake ever-greater disparities.

What has been achieved

Ironically, human rights have never been more prominent in political and social discourse. What began in 1948 as an endeavour of states rapidly became an initiative of peoples everywhere. Over the past six decades there has been an explosion of human rights NGOs, at the international, national and local levels, from small local community groups to large international organisations like Amnesty International with some 1.7 million members over 100 countries who fund AI and campaign for change.

Using investigative research, the techniques of naming and shaming, the power of astute lobbying and media work, we have challenged the absolute power of the sovereign state. We have insisted that governments must be accountable not only to their people but also open to international scrutiny.

Thanks to lobbying by human rights groups, there is now a plethora of treaties and laws that, for instance, outlaw torture, abolish death penalty, recognize the equality of women, the rights of children. Thanks to the work of human rights groups, treaty monitoring bodies, the Office of the UN High Commissioner for Human Rights and the International Criminal Court have been established.

At the domestic level, human rights groups - international and national - have played a major role in the disbanding of apartheid in South Africa, in developing democratic governments in Latin America, Eastern Europe and parts of Africa and Asia, and in turning the tide against impunity in some parts of the world.

From Brazil to Bulgaria, governments have adopted laws, set up national human rights institutions, introduced constitutional provisions incorporating fundamental principles of human rights, and made human rights education a part of the curriculum.

For better or worse, human rights are increasingly becoming the vocabulary of other movements. Women's groups captured the human rights agenda at the Vienna World Conference. Development organizations have begun to speak of a rights-based approach to development. Indigenous peoples, landless peasants, the disabled, are all plotting their own place in the landscape of human rights.

A promise betrayed

Yet, despite these successes, there remains a wide gap between rhetoric and reality. The promise of human rights is still a promise unfulfilled, and increasingly it is becoming a promise betrayed.

Human rights embody common values of human decency and dignity, equality and justice. As such they are the basis of our common security, but in the name of security, these values are being attacked and eroded today.

Human rights are based on universal standards and legally binding treaties, but these instruments are being flouted with impunity and audacity today.

Last year the AI Report spoke of the most sustained attack on the human rights framework since the adoption of the UDHR. We were immediately criticised for exaggerating. We were reminded: what about Pol Pot, the gulags of the Soviet Union, the dictatorships in Latin America, apartheid in South Africa? But our critics missed the point. We are not speaking of atrocities committed by individual dictators - we had them, we still have them, sadly. What we are talking about is a sustained, world-wide attack on the very framework - the body of values, principles and basic standards - of human rights - on the Convention against Torture, the Geneva Conventions, the International Criminal Court, the UN Charter itself.

The tough counter-terrorism laws that many governments have adopted in the aftermath of 9/11 which go to the heart of such fundamental principles as the right to fair trial, and the right not to be arbitrarily detained.

The way in which legitimate dissent is being labelled as sedition, or opponents and minorities are being repressed in the name of counter-terrorism.

Even the absolute prohibition against torture is no longer absolute as pictures from Abu Ghraib and memos from the Pentagon show.

The blatant disregard by the US Administration of international human rights and humanitarian law in Guantanamo, in the military commissions being set up there, the detentions and renditions of prisoners in a grey zone outside the rule of law - domestic or international - zones of extra-territorial illegality.

Although President Bush said that "this new paradigm ... requires new thinking", what we see emerging are old abuses historically nurtured by autocratic regimes: denial of habeas corpus, detention without charge or trial, official commentary on the presumed guilt of detainees, unfair trial use of incommunicado and secret detention, sanctioning of torture and ill-treatment - and we see US policies and practices seeping through to others, including the UK.

In 1973 AI published its first report on torture in which found that: "Torture thrives on secrecy and impunity.

Torture rears its head when the legal barriers against it are barred. Torture feeds on discrimination and fear. Torture gains ground when official condemnation of it is less than absolute." The pictures from Abu Ghraib show that what was true thirty years remains true today.

AI wrote in 1973: "Those who consciously justify torture ... rely essentially on the philosophic argument of a lesser evil for a greater good. They reinforce this with an appeal to the doctrine of necessity..." In January 2004 the US authorities cited military necessity to refuse access to ICRC to eight detainees in Abu Ghraib, who were later alleged to have been tortured.

Thirty years ago, AI wrote: "History shows that torture is never limited to "just once"... As soon as its use is permitted once, as for example in one of the extreme circumstances like a bomb, it is logical to use it on people who might plant bombs, or on people who might think of planting bombs, or on people who defend the kind of people who might think of planting bombs....".

What is new however about the war on terror is the way in which the age old debate on security and human rights has been translated into the language of war. By using the language of war, human rights has been sidelined, but at the same time, by bringing in the reference to terror, the constraints international humanitarian law are set aside. By combining the two into the "war on terror", an effort is being made to create a grey zone of illegality and impunity.

Thankfully, both the US Supreme Court and the House of Lords have rejected these arguments. Many human rights NGOs, including AI, contributed amicus briefs to those cases. But despite these decisions, the trend is bucking human rights in almost every country in the world, from Australia to Zimbabwe, in an infectious downward spiral.

The collateral damage is high. Look at Darfur - the US Administration had no credibility with its African counterpart when it sought to press for action. Set your own record straight in Iraq, they said.

Crisis of governance

The crisis in the faith of values of human rights is accompanied by a crisis of governance in the systems that are supposed to uphold human rights.

Human rights are protected and promoted by the international community of states through the United Nations, but that system seems unable to hold states to account for blatant disregard of the Geneva Conventions in Guantanamo, Iraq or Afghanistan. The UN Human Rights Commission, the only UN organ devoted to human rights, has never discussed the situation of the Guantanamo Bay detainees, it did not even propose a resolution on Iraq, couldn't even agree a chairperson's statement on Sudan last year and barely touched on Chechnya.

While it is true that today the UN Security Council rarely adopts a resolution on a country without making some reference to human rights - whether it is Haiti, Sudan or the Democratic Republic of Congo, the Council is conspicuously vague on action to enforce its words. The Council is paralysed when it comes to violations by its own permanent members.

More broadly, while the plethora of treaties and treaty bodies to oversee them are an important achievement of the human rights movement, ratification of a treaty by member states often do not lead to implementation. The Convention on the Elimination of Discrimination Against Women is a prime example - ratified by 177 member states it is also the Convention with the most reservations. And all of this when UN statistics show that in one in three women in the world is victim to serious violence. The same gap between ratification, implementation and impact could be applied to a host of UN treaties with elaborate reporting mechanisms.

The crisis of governance is felt even more acutely because of the weakening of state sovereignty. Sovereignty is shifting upwards to international organisations like the WTO or to supranational entities like the EU, informally to corporations or IFIs, or, sometimes insidiously to armed groups, or terrorists.

In many countries governance is being undermined by corruption, mismanagement, abuse of power or political violence. Democracy has led to deep disappointments in parts of Latin America, Africa and Asia where elected kleptocracy has entrenched itself. It is apparent that democracy by itself cannot deliver human rights without respect for human rights, the rule of rule and an independent judiciary.

The power of the state is being threatened by new economic and corporate actors in a globalised economy.

International trade agreements and international financial institutions dictate terms and conditions of economic policy; large MNCs set the terms of investment and divestment. There is no proper understanding or accountability here of human rights.

In that vacuum of sovereignty in some countries traditional authorities are stepping in or emerging as powerful actors - whether clan leaders in Somalia, Moctada Sadr types in Iraq, or warlords in Afghanistan, creating a state within a state. In some cases, religious powers are riding the backlash of fundamentalism. To them human rights are an anathema, human rights defenders are a threat because we promote global values rather than parochial interests. Among those most affected are women's rights.

Facing the facts

Not surprisingly, Michael Ignatieff asks, "Is the human rights era over?" David Kennedy sees "The International Human Rights Movement: (as) Part of the Problem?" Makau Mutua scorns human rights activists as self-appointed "saviours" who feel good but do not necessarily do good.

There is a growing gap between the perceived influence of human rights activists and our actual impact as human lives. This in turn is leading to scepticism at two ends of the spectrum - among the poor and the privileged - for different reasons that human rights have little relevance for them.

Public passivity to the "war on terror" is the single most powerful indictment of the failure of human rights movement today in my view. This is particularly bad when you look at public opinion in western countries from which large NGOs like AI and HRW normally draw most of their support. This is why we need to ask: where have we gone wrong and how do we put it right?

As my colleagues and I struggle to make Amnesty International more externally focussed and impact oriented, I am acutely aware that our credibility as human rights advocates depends on our ability to effect change.

In my view, our success will be determined by how well we tackle the following five issues:

- We can win the battle of values
- We can fight for economic and social rights

- We can build new approaches to tackle new actors
- We can engage in new alliances
- We can open ourselves to greater accountability and impact assessment.

Battle of values

First and foremost, if we are to resist the erosion of human rights, we must win the battle of values. It is ironic that those who seek to restrict human rights the most speak most loudly about freedom and democracy. It is unfortunate that the values debate has been captured by the least progressive, most fundamentalist groups.

Our challenge is to recapture the language of human rights, to reframe the debate on human rights, not simply in terms of law but in terms of what is right and what is wrong, in other words as a moral argument based on fundamental values of humanity and justice.

Human rights is about values, not only laws and systems, it is about voice, not only text. It is about the lived experience, it is about galvanising public imagination and energy. It is about putting morals over law.

Let us not forget that AI began its campaign to abolish the DP despite the fact that capital punishment was lawful, because we believed it was morally wrong for the state to take life. Let us it is about values over systems.

In the end, the absolute prohibition of torture and cruel, inhumane and degrading treatment rests on moral grounds. Torture is not wrong because it violates CAT - it is wrong, like terrorism, because like terrorism it destroys the perpetrator as well as the victim, and debases humanity. Torture is the ultimate corruption of humanity.

Fight for economic and social rights

Secondly, we cannot expect to speak legitimately of morality and justice, without speaking of social justice as much as legal justice. The challenge for the human rights activists must be to confront the battle against poverty and growing inequity.

More than a billion people out of a global population of six billion live on less than \$1 a day. More than 3,000 African children die of malaria every day, over 3 times

the number of people killed as a direct result of armed conflict. Over half the population of Africa do not have access to life-saving drugs, and only 50,000 of the 26 million people infected with HIV/AIDS in Africa have access to the health care and medicines they need. Over half the population of Africa do not have access to life-saving drugs, while the five largest pharmaceutical companies in the world have twice the GDP of sub-Saharan Africa.

Although the UDHR integrates all human rights without hierarchy, during the Cold War, the ideological differences meant that western governments championed civil and political rights and the socialist bloc promoted ESCR. Rooted in the west or under western influence, most NGOs picked up that same bias, neglecting, marginalising, sometimes even contesting ESCR, and that remains true to this day.

For forty years, AI worked on a limited range of civil and political rights. It was only in 2001, that AI took the plunge and expanded its work to ESCR.

Within the human rights movement, more and more groups are working on ESCR, attacking discrimination, contributing to the elaboration of the rights, taking cases to court to test their justiciability, and working to promote greater accountability of governments and corporate actors.

But ESCR continue to be contested and restricted by:

- Neo-liberals who dispute the very existence of economic rights.

- Some human rights NGOs that choose to work only narrowly on ESCR to the extent that violations are discriminatory or arbitrary, and the state can be held to account, and the traditional tools of naming or shaming can be used

- Some scholars like Prof. David Kennedy who believe that the human rights movement is structurally ill-suited to this task because it is not in the business of distributive justice, while the fulfilment of ESCR rights require an approach based on distributive justice. The human rights movement looks at abuse, and not the causes.

- Others who feel ESCR work requires resources and skills that human rights NGOs know nothing about and should stay out of. I believe that is really a red

herring. One of the biggest resource- draining rights - as Navi pointed out this morning - is the right to a fair trial. Has that stopped us ever from making recommendations to improve to criminal justice system?

I would say that the denial of ESCR as much as CPR is at the root of most of the human suffering in the world today. If we turn our back on that suffering, or say that a human rights response has no place in alleviating that suffering, then the human rights movement will have no meaning for the vast majority of the world's population. We will remain truly what Makau says we are: an elitist bunch working for the rights of the elite - those who cannot read the newspaper of their choice, rather than those who cannot read.

Additionally, I feel that if we fail in our work on ESCR, we will also fail in our work on terrorism and human rights. And let us remember Kofi Annan's words: "We now see with chilling clarity that a world where many millions of people endure brutal oppression and extreme misery will never be fully secure even for its most privileged inhabitants."

But working on ESCR will require a whole new approach for human rights NGOs. We must redefine equality not simply as the absence of discrimination but more substantively, as Amartya Sen has done, of equalizing capabilities. (the unequal distribution of public goods to benefit the weakest members of society). We must review the notion of responsibility for human rights abuses beyond the national state to multinational corporate and financial actors and in some cases, to third states.

Engaging with new actors

This brings me to the third challenge: can we build more effective systems of accountability, nationally and internationally?

State accountability is inextricably linked to the UN multilateral system of human rights. It is absolutely essential that we resist the attacks on the United Nations, and engage constructively in the reform efforts. We must work with governments and the UN to define what Robert Archer has called a "human rights vision of the state", in other words, identify what only the state can do to deliver human rights, and lobby for its fulfilment.

We need to draw private actors into the net of accountability, either directly or through the state. The state's accountability cannot be limited to the public sector and as women's rights have shown, must also move into the private domain.

In a globalised economy, there is need for stronger and clearer legal accountability for corporate actors. Here again there are initiatives in the UN, which are under attack by governments and business alike, that we should nurture and promote. The UN Norms for Business provide an opportunity to gradually build a framework of human rights standards for companies.

Globalisation affects human rights transnationally and may need to be addressed through transnational responsibilities. Otherwise how do we handle the denial of ESCR arising from external debt, or structural adjustment or international trade agreements?

Fourthly, are we willing to develop new approaches that the new actors and issues demand? For instance, naming and shaming is not particularly helpful in the context of ESR, or against some armed groups. For ESR we may need to engage in policy debates and budget analysis. For armed groups, we may need to investigate and expose who funds the terrorist groups and bring pressure to bear on them.

The limits of our traditional approach was evident to me when I visited Afghanistan two years ago. Jamila – not a POC! Rescuing individuals is not enough – we are talking about changing systems. Women's right bringing a new dimension – not just private and public but also economic and political arrangements cannot be left unchallenged – a real issue with women's rights – question of power.

Another aspect of new approaches of work is that as more and more governments and societies buy into the concept of human rights, naming and shaming becomes less useful. The approach towards the Turkish government which keen to deliver human rights in anticipation of its admission to the EU must be quite different to the approach to the Sudanese government which is in denial over its human rights violations. As human rights NGOs we must be flexible and astute enough to use a range of approaches and tools, from human rights education to targeted lobbying to mass mobilisation, sometimes working within the system, sometimes outside. (e.g. of Thailand).

Looking inwards

Alliances.

NGOs are themselves changing - with the growth of different layers - those that work for their own community, e.g. women's human rights NGOs, those that are local, those that are global, and those that are international but not necessarily global. What is the role of global solidarity when most human rights abuses are local? How do we promote the notion that human rights abuses anywhere is the concern of people everywhere without creating an neo-imperialist approach to advocacy?

The key is to build capacity of local NGOs and exploit the synergy, based on partnerships and coalitions, between the local and global. The future of NGOs increasing lies, not in institutions but networks.

E.g., AI's VAW campaign: genuinely global, north and south, working on own country and others, working with women's NGOs - my trip to Canada. Changing AI internally as well.

On accountability

With power comes responsibility and accountability. we must apply the same scrutiny to ourselves as we would expect from others. For AI, a democratic movement - internal accountability is strong though there are always tensions between staff and volunteers. However, for us the challenge is external accountability.

Two theories of accountability: performance accountability - we will be judged by our results - but how good are advocacy NGOs at evaluation? Not the same as other activities.

Voice accountability: whom do we represent? The middle class human rights elite (POC)? A broader constituency?

This is why our SVAW campaign is also accompanied by an internal GAP. Our "growth strategy" – relating to WOOC and local constituencies. Our work with HRDs. External experts.

Layers of accountability: to members and supporters, to donors, to those who suffer HRVs and to other human rights organisations. It is an evolving area and one which will grow, given NGO.watch and the neo-right pressure on NGOs.

To end, human rights movement is about people – the people who care, who are ready to be passionate, to be angry, to be optimistic. To many governments, we are trouble makers, even subversives – and in a sense we are – because we want to challenge and change authority, but to the people who are struggling to win their human rights, we are "hope mongers". The eternal optimist.

We believe in a vision of a world in which the powerful and the powerless have equal rights and equal protection, a world that is safe and fair not only for the privileged but also for the poor.

I am convinced that our optimism, our creativity and our resilience will prevail, that human rights movement will recapture their subversive spirit – their spirit of challenge and change – redefine ourselves and rejuvenate the struggle for human rights.

We make our choice – we cannot remain neutral, we are on the side of those whose rights are threatened. It is a tough choice as one Israeli man told me. His sixteen year old daughter was killed in a suicide bomb. He said to me, I could have made my grief a tool for revenge, but I decided to make it a platform for change – and he founded the forum for bereaved families. "It is better to light a candle than curse the darkness."