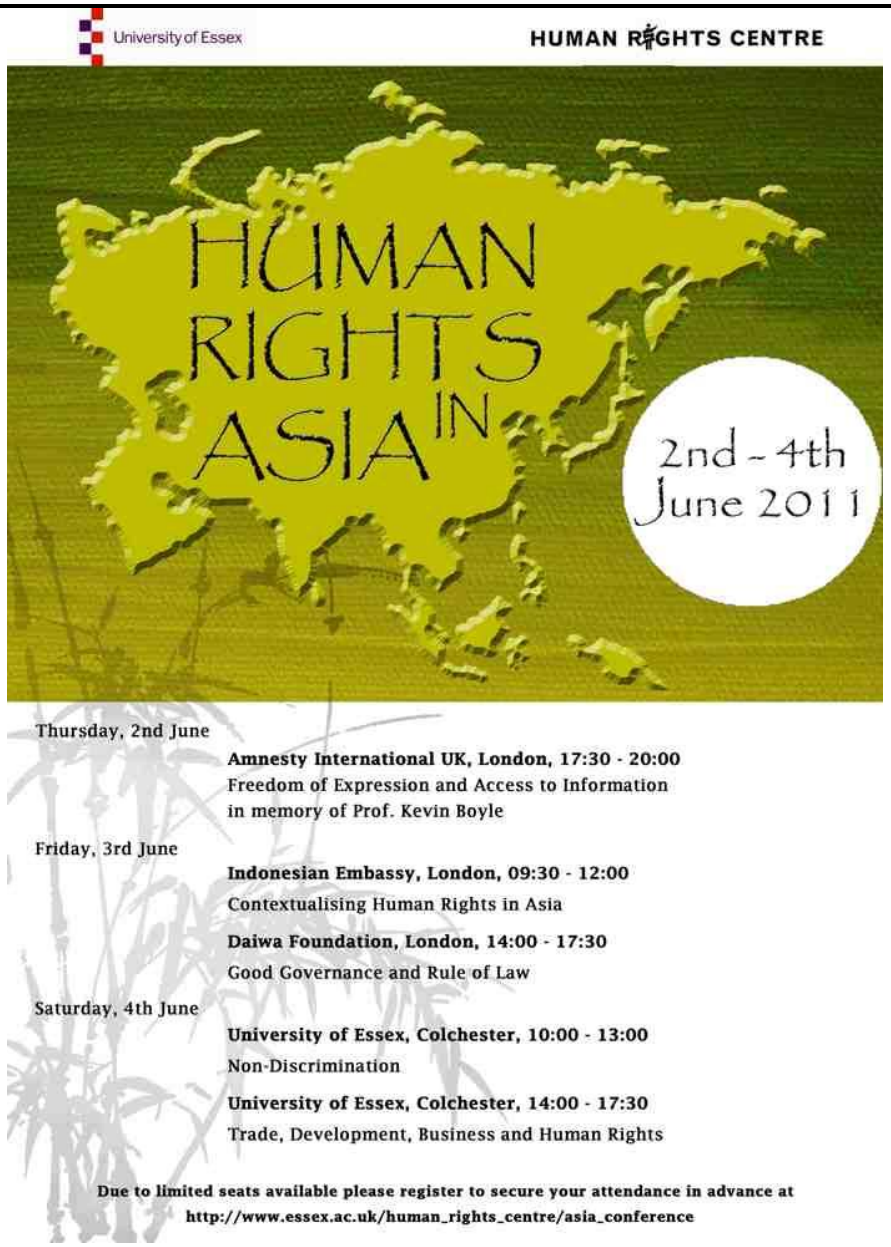
University of Essex

HUMAN RIGHTS CENTRE

3RD HUMAN RIGHTS IN ASIA CONFERENCE

2-4 June 2011
London and Colchester

CONFERENCE REPORT



Summary of Proceedings

THURSDAY, 2ND JUNE 2011

Freedom of Expression and Access to Information

Opening panel discussion in memory of Professor Kevin Boyle

The discussion panel on freedom of expression and access to information, held at the Amnesty International Action Centre in London, marked the first event of the 3rd Human Rights in Asia Conference. In his opening remarks, the Chair of the Organising Committee, **Mr Taisuke Komatsu** (MA '12), noted that the purpose of the conference is 'to provide a forum for focused human rights discussion that will bring together human rights advocates, academics and students interested or engaged in human rights work on Asia.' The speakers on the panel included the Senior Legal Officer of Article 19, **Ms Sejal Parmar**, **Professor Lorna Woods** from City University London, and **Ms Jennifer Robinson**, Solicitor at Finers Stephens Innocent LLP.

Before the panel discussion started, **Ms Isabelle Arradon** from Amnesty International provided a general overview of violations of freedom of expression (FOE) which are widespread in Asia. She quoted the famous examples of Aung San Suu Kyi from Burma, attacks against journalists in The Philippines as well as in Pakistan, Afghanistan and Sri Lanka, the killing of Indonesian prominent human rights activist Munir bin Thalib, and the arbitrary detention of Chinese artist Ai Weiwei. She quoted Ai Weiwei who has stated that freedom of expression is one of life's basic rights. Modernity cannot exist without freedom of speech. In her remarks, Arradon highlighted how there are still many duties to fulfil as 50 years after the establishment of Amnesty International people are still imprisoned, disappeared or killed merely because of what they believe or say.

The panel discussion was chaired by **Mr Iain Byrne** (MA '95) from Interights, who briefly explained the significance of freedom of expression as well as the tremendous work of the late Professor Kevin Boyle, in memory of whom the panel was held. Quoting from one of Professor Boyle's 2007 articles, Iain Byrne emphasised how freedom of expression is not only vital for the development of individuals but is also indispensable for democracy. It is at the core of the human rights discourse. Indeed, no freedom is absolute, but the problem is that the restrictions imposed on the FOE are often misused.

Sejal Parmar began her presentation with an introduction to the work of Article 19, to which Professor Boyle contributed significantly as its founding Director. The work of Article 19, Parmar explained, is focused on FOE and access to information. The organisation has a particular programme on Asia which mainly focuses on laws and legislation related to FOE in various Asian

countries, such as Japan, Indonesia, China, and Malaysia. Article 19 have observed some improvements on the FOE in some Asian countries such as the decriminalisation of defamation laws in Sri Lanka, Timor Leste, and in the Maldives, and there have been good signs from the ASEAN governments in terms of protection of FOE. Even though the ASEAN Charter does not specifically mention anything about FOE, the road map does encourage member States to craft the framework of FOE in Asia.

Despite these improvements, Parmar noted that many problems of FOE remain, sometimes overshadowing positive developments. Formally speaking, in Asia there are still countries which have not ratified the International Covenant on Civil and Political Rights (ICCPR) such as China and Bhutan. The practice on Internet censorship is no longer merely taking place in China, but also in Vietnam, Burma, Laos, and Pakistan that has 'copied' China's policy. Parmar stated that it is important to address China in particular and its rejection of free speech, due to its crackdown on human rights defenders (i.e. numerous arrests since January). Internet users remain under fear as a consequence. According to Parmar, the violation of the FOE in Asia is also manifested in the practice of religious intolerance. She noted the example of Indonesia, where the Muslim minority group, the Ahmadiyya, has always been a target of attack from mainstream religious groups. A similar religious intolerance problem is also taking place in Pakistan with its problematic blasphemy law. In relation to Indonesia, Parmar mentioned the problems of FOE restrictions imposed by the Indonesian Government through legislation, including the Pornography Law, the Electronic Information and Transaction Law, as well as the proposed Multimedia Content Law. According to her, the proposal and enactment of these laws are predominantly influenced by religious conservatism in Indonesia.

Sejal Parmar ended her presentation with some recommendations including the need for international technical guidelines on FOE. She also suggested that Asian governments and others should look to the jurisprudence of the European and American systems.

Lorna Woods shared her perspective as a scholar, noting that she is involved in a project running at City University in connection with Sheffield – a project which she had discussed with Kevin. It concerns the targeting of journalists, and the lack of rule of law, i.e. impunity. There is no authoritative text that indicates how many journalists have been shot or otherwise harmed, but the project released a report attempting to shed light on this in 2010. For example, in Burma numerous journalists were detained for political speech, and for expressing unpopular views. In China numbers are going up. In Nepal media owners were killed. Pakistan topped the 2010 blacklist of the Committee to Protect Journalists. Woods emphasised that journalists are targeted specifically, besides the dangers already presented by a conflict situation. Local journalists are the ones who cannot leave the place after the conflict, in fact putting them at greater risk. The problem is deepened by impunity; there is usually a complete failure to investigate. There are States with chronic problems relating to investigation, notably the Russian Federation (particularly with reporting on Chechnya) and Azerbaijan. Regional human rights mechanisms – such as the Inter-American and African Commissions – have both referred to decisions from the European Court of Human Rights, and the African Court has cited the American system. However, general mechanisms do not seem necessary to produce effective results. One question raised is whether a specific mechanism should be established for the protection of journalists, since their jobs make them more likely to be targeted. The Council of Europe and the UN have tried to define journalists so that we can identify them. Recommendation 4 of the Council of Europe covers all representatives of media, even drivers and interpreters, meaning that the boundaries are difficult to be delineated. If one looks at bloggers, one might say they have journalistic aspiration, but this cannot be said for gossip and rumours. As a conclusion, it is probably not practical to have a special mechanism of protection; it is difficult to define the nature or work of a journalist. The challenge is to improve the existing mechanisms, to monitor State responses and the failure to investigate.

While Sejal Parmar provided the view from an NGO and Lorna Woods from the academy, **Jennifer Robinson** provided a legal practitioner's perspective. As a solicitor at Finer Stephens Innocent LLP, Robinson has been involved in the legal defence team for Julian Assange of WikiLeaks as well as several superinjunction cases. Her presentation, therefore, mainly talked about the role of WikiLeaks in the enhancement of the FOE. 'WikiLeaks is good for its role in protecting journalists and exposing human rights abuses,' she claimed. 'The feature of WikiLeaks which is significant to the protection of freedom of expression is that the site does not mention the name of the resources which provide it with information.' In relation to the role of WikiLeaks in Asia, Robinson highlighted some US diplomatic cables related to Indonesia which have been revealed on WikiLeaks, including United States knowledge of the interference by Indonesian President Susilo Bambang Yudhoyono in the judicial processes of some major corruption cases.

Apart from her experience of WikiLeaks, Robinson also shared some of her specific experiences which were dominated by her work on Indonesia, a country of which she has particular interest. Jennifer Robinson was involved in the case of *Soeharto v. Time Magazine* and also in the case of *Playboy Indonesia*. In the latter, Erwin Arnanda, the Editor-in-Chief of the magazine, was sentenced to two years imprisonment due to his involvement in the publication of *Playboy* magazine in Indonesia, which is believed to be pornographic material under Indonesian law. Playboy Indonesia, however, is not like Playboy as it is commonly known since it does not expose any nudity raising issues of whether it fell into the category of pornography in the first place. Robinson also highlighted the problems of the *Makar* provision (the article on subversive acts) under the Indonesian penal code, which has been used in particular to arrest, detain, and try human rights and democracy activists in West Papua. Beyond Indonesia, Robinson is also involved in campaigning and advocacy for the release of Chinese artist Ai Weiwei. She mentioned that globally, artists have had their exhibitions shuts down, from Zimbabwe to China and are looking for legal assistance. She pointed out finally that these problems are not just in Asia, therefore it is important to work together to champion FOE.

Discussion on the state of FOE in Asia continued in the question & answer session. Amongst the questions that cropped up was some concern over how States should balance the rights of others and FOE. It was replied that FOE is not absolute, and journalists should take some responsibility. Other questions were raised, including a UCL student who asked about how to incorporate human rights values into Asian society, considering that in Asia human rights are not considered as natural rights. 'How can we transplant human rights in Asia, for it is not something inherent in the Asian legal, social and political culture?' Sharmaine, a lawyer from Sri Lanka who attended the conference, also had a similar concern. It was asserted that the Asian notion of human rights differs from the Europeans and Americans. In tackling this question, Sejal Parmar emphasised why human rights education has a very significant role while admitting that it is a big challenge, which all of us need to think about. In response to a question on Wikileaks, Jennifer Robinson commented that the question of redaction of the Wikileaks cables comes up a lot. People do not

understand the redaction process. Media partners also make redactions; the media organisation sends the cables out redacted. Assange has complained about how the *NY Times* has redacted them and *The Guardian* also redacted them in a different way. With respect to Afghanistan and Iraq there were complaints about the fact that the cables were not so redacted. Robinson said that only 10% of cables were redacted. Another question in the debate was whether States should have secrets at all. Robinson responded, 'I don't like the word secrecy; I prefer confidentiality' due to the idea that confidentiality is thought to be limited in time. Additionally, in her opinion, WikiLeaks challenges how we seek information from governments. The amount of information hidden, particularly on grounds of national security, is massive. We should challenge this process, if the State has nothing to hide, she concluded.

At the end of the session, the speakers and participants were invited to join a cock-tail reception.

FRIDAY, 3RD JUNE 2011

MORNING SESSION, INDONESIAN EMBASSY

CONTEXTUALISING HUMAN RIGHTS IN ASIA

Welcome and Keynote Address: Human Rights in Asia – Status Quo

The Friday morning session began with opening remarks from the Ambassador of the Republic of Indonesia to the United Kingdom, **HE Yuri Thamrin**. He stated that 'human rights' as stipulated in many international instruments are important, including for Indonesia: the State is to promote and protect citizens' human rights and well-being. In his view, Indonesia is not a perfect country, but its policies reflect the living value of society which is to promote democracy, and so Indonesia welcomes NGO cooperation, not only their criticism towards Governmental policies, but also their help in human rights empowerment, because the more human rights defenders, the better the country. Ambassador Thamrin concluded that with the robust involvement of civil society, Indonesia need no longer be a place for human rights violations.

The opening remarks from the Indonesian Ambassador were followed by a keynote address delivered by the Director for the Asia-Pacific Region within the Office of the UN High Commissioner for Human Rights, **Mr Rory Mungoven**. He said that Asia's transformation during the 1980s–1990s is relevant to other parts of the world. Asia is in an interesting period because it consists of countries in various situations. There are conflict countries such as Afghanistan, newly democratic countries such as Indonesia and the Maldives, and closed regime countries such as North Korea. Mungoven also emphasised the importance of the Universal Periodic Review as a

scientific basis and non-selective process for analysing the different challenges towards the promotion of human rights.

The traditional focus of analysing Asia is usually based on economic growth. But growth has side effects such as displacement and eviction which can cause it to be a source of conflict. Democratisation in the region such as is happening in Indonesia and Mongolia has led the way for Asia's own transformation. The rise of democracy is good because it enables checks and balances, supporting human rights issues in the region. Moreover, a democratic engine in the region can influence others. Indonesia is the most progressive county in the region because of its advancement in democracy.

The establishment of regional institutions is important and it must be supported by regional interest groups. ASEAN has tried to address human rights issues by establishing a human rights mechanism. Hopefully the new body will evolve into a more progressive and ambitious institution. There are several issues faced by Asian countries with regard to human rights such as a strong debate on the implementation of the death penalty, impunity in the region in tackling corruption as well as accountability. Freedom of expression is also a critical issue as are freedom of religion, the situation of asylum seekers, refugees and human trafficking. Asylum seekers, refugees and trafficking victims are also vulnerable in terms of economic crisis and political upheaval.

Panel: Doing It Our Way; In Our Own Time: The Evolving Landscape of Human Rights Protection in Asian Countries

The panel session included **Mr Rafendi Djamin**, Chairman of the ASEAN Intergovernmental Commission on Human Rights, **Dr Suzannah Linton** (LLM '98), Professor of International Law at the University of Bangor, and **Ms Mervat Rishmawi** (LLM '95), HRC Fellow and an independent expert formerly with Amnesty International.

Rafendi Djamin focused on the emerging human rights mechanism in Asia, i.e. within ASEAN. He started by explaining the history of the creation of a human rights mechanism in Asia, which is a long process because it took more than one decade to organise the dialogue to create the human rights mechanism. There are several regional human rights mechanisms in Asia such as the Asia Pacific Forum and ASEAN which includes the ASEAN Inter-governmental Commission on Human Rights (AICHR) and ASEAN Commission for the Promotion and Protection of the Rights of Women and Children. In addition, there is also the Arab Charter on Human Rights, and several developments in the Pacific Islands and in the South Asian Association for Regional Cooperation (SAARC). The Asia-Pacific Forum (APF), founded in 1996, is an open and independent forum which provides support, through regional cooperation, for the establishment and development of national institutions. It was established due to the lack of an inter-governmental system on human rights. Currently, it has 15 full members and is the only human rights mechanism in the Asia Pacific which does not assume the form of a Commission.

After the world conference on human rights in Vienna in 1993, there were long discussions and discourses amongst member States, with the engagement of NGOs with regard to the establishment of an ASEAN mechanism. AICHR is established as part of the ASEAN Charter mandate which was ratified in 2008, and to become an integral part of the ASEAN structure and acts as a consultative body. Its decision making is based on consensus among representatives from each ASEAN member State and two representatives from civil society organisations. It was

created after ASEAN had been established for 40 years. The challenges currently faced by the AICHR are, *inter alia*: wide gaps among ASEAN member States on the implementation of democracy and human rights; its function as a political negotiation forum; and the rigid implementation of the non-interference principle. In 2010, ASEAN inaugurated the ASEAN Committee on the Promotion and Protection of Women and Children (ACWC), which has a similar structure to the AICHR but specifically deals with women's and children's rights.

Despite efforts to quicken the pace towards a regional human rights mechanism in Southeast Asia, Djamin pointed out that these mechanisms put more emphasis on promotion rather than the protection of human rights. For example, AICHR lacks the function to initiate individual complaints. He concluded that the roles and functions of AICHR must be strengthened and expanded, not only by governments but also by civil societies, including foremost its independence and its accountability to the people of ASEAN member States.

Suzannah Linton began with an evolutionary overview of Asia. One can see the development of human rights in Asian countries by noting the explosion of NGOs, human rights empowerment and the increase of women's rights movements. The desire for a regional human rights mechanism in Asia is part of an evolving process seeking to legalise and mainstream human rights; it would help to push for remedies at the domestic level. But the evolution is slow, due to its political context. On the one hand, the ASEAN human rights mechanism is weak, but on the other hand it is evolving. She also noted the importance of the non-legal social movement comprising NGOs across the continent and also amongst domestic parliaments which have been mainstreaming human rights throughout Asia.

Furthermore, domestic courts in Asia have issued judicial reviews in regard to human rights, including economic and social rights and indigenous rights, and a series of fact-finding commissions have been established across Asia in order to seek accountability for international crimes, find remedies, and reconceptualise the vision of the future.

Despite this progress, there are several challenges faced by human rights mechanisms in Asia. One is that there is no coherent vision like in the European Union, or the European Convention on Human Rights that has a clear vision of how to transform Europe. There is also no common understanding on human rights, despite the rhetoric, due to the varying cultural contexts. However, it is also part of a larger world arguably confused in its understanding of what human rights are. Judicial and military changes are also necessary to promote human rights in Asia, because without those changes the promotion of human rights will be severely constrained.

Mervat Rishmawi focused on the human rights mechanisms available within the League of Arab States through its Arab Charter. First, she explained the existing human rights mechanisms available for Arab States. The Arab League established the Commission on Human Rights, and the (revised) Arab Charter on Human Rights was ratified by ten States in 2004. The Committee of Experts has supervised the implementation of the Arab Charter through State reports and made recommendations since 2007.

Through the Charter, the Commission has established the Committee of Experts with the mandate to look at the drafting of treaties. The drafting of the Arab Charter was a huge achievement after pressure from civil society. But, although at the beginning they had a fantastic draft, it was diluted by the members of the Commission resulting in provisions on torture, fair trial, the rights of immigrants and other provisions falling below universal standards.

There are also many countries in the Arab world that are still implementing the death penalty. But the situation is improving because some countries have either eliminated it or adopted a moratorium. Despite the huge progress in abolishing the death penalty in Arab States, overall protections of human rights in Arab States remain low. Inconsistent reservations to human rights treaties among Arab States based on Sharia Law shows the lack of political will among them. Rishmawi concluded that States need to be actively encouraged to conform to their human rights obligations – that the intended beneficiaries cannot wait for States to get around to making the necessary changes at their own pace. Top this end, she argued that there exist many undisputed standards binding upon these States and unless greater efforts are made, they will remain simply unimplemented.

The morning session was followed by a tasty Indonesian buffet lunch offered by the Embassy of the Republic of Indonesia to all participants. It allowed an opportunity to discuss informally the morning's proceedings and to gain strength for the afternoon session to come.

AFTERNOON SESSION, DAIWA FOUNDATION

GOOD GOVERNANCE AND THE RULE OF LAW

Professor Marie Conte-Helm, Director General of the Daiwa Anglo-Japanese Foundation, opened the afternoon session in welcoming the contributors and participants, introducing briefly the work of the Foundation, and sharing some kind remarks about cooperation with the Human Rights Centre of the University of Essex. The first afternoon panellists then took their places to begin their presentations.

Rule of Law

In a session chaired by **Mr Anil Mohamed** (LLM '12), University of Essex, **Mr Alex Wilks** (LLM '05) from the International Bar Association and **Ms Ai Kihara-Hunt** (LLM '05) a PhD student at the University of Essex, presented their experiences with the rule of law in Asia. Wilks, speaking first, gave a brief introduction to the independence of legal profession and bar association and made linkages to the maintenance of rule of law and administration of justice. Since 2004, he explained, IBA-HRI has been involved in establishing and developing **Afghanistan**'s first ever

national bar association. Wilks looked mainly at Afghanistan and the challenges faced not only by national justice sector organizations/institutions but also at those faced by international organizations and their interaction with national stakeholders and each other. He also briefly summarized the progress of an IBA project which illustrated some of the challenges in rule of law capacity-building work on the ground in conflict countries. He noted how it was telling that the Taliban originally emerged in the chaos of the civil war as a militia force to impose their brand of law and order. It was again a reason for their re-emergence with the Government failing to provide security and access to justice for ordinary Afghans. The Taliban provide an efficient means of delivering justice and security – quick, predictable and for free. The Government alternative is on the other hand slow, unpredictable, expensive and blighted by corruption.

Wilks sought to provide an overview of the context within which rule of law organizations operate on the ground. The capacity of the justice sector is extremely weak and public confidence in the rule of law is low. Between 70-80% of disputes are settled through an informal legal system; many people are not aware of their constitutional rights, and even senior officials and judges are often unaware of the basic role of a lawyer/right to defence. There is a basic lack of understanding of what a lawyer is; lawyers are frequently thrown out of court and/or forced to engage in unethical behaviour simply to access clients. There is also a severe shortage of lawyers; and so the vast majority of defendants go unrepresented through the criminal justice system. Finally, there are security issues faced by lawyers providing legal aid or pursuing a progressive agenda for example, with respect to women's rights. These are not only from armed criminal groups but also other conservative elements within Afghan society.

Amongst the international community, there is a lack of development and capacity on the part of State institutions was seriously underestimated when the international community came to 'rebuild' Afghanistan. Problems started with the policy of the Bush administration, focusing on a counter-terrorism policy and not a coherent post-conflict strategy to reconstruct State institutions and infrastructure as a means to ensure long-term stability. There was also: weak central government; regional warlords; and a strategy of 'nation-building light' was adopted, which gave rise to a lack of coordination amongst international donors, lack of engagement with local counterparts and failure to appreciate the Afghan context. Wilks argued that if there is a lack of engagement and ownership from the local stakeholders then this is going to limit the progress of any capacity-building project. He examined this in some closer detail because he believed this was where the project to establish the Afghan Bar Association had been successful.

Previously, lawyers were registered with the Ministry of Justice and had no meaningful regulation; lawyers faced considerable challenges in their daily work and nobody to protect their interests. One of the main challenges facing the IBA was that no word existed for 'bar association' or 'registered lawyer' in Dari; therefore the first job was to raise awareness amongst the legal profession and the government regarding benefits. In a 2005 Kabul conference, Afghan lawyers, judges and academics were asked whether Afghanistan needed a bar association and if so, what

kind; IBA presented 12 basic principles for a bar association which formed the basis for discussion. It is in IBA's view crucial that the process led by the Afghan legal profession, participation of locals still does not happen enough.

There was overwhelming consensus amongst Afghan lawyers for an independent national bar association to be established by law. A position paper outlining the views on IBA principles was submitted to Ministry of Justice which agreed to draft a law setting out basic rights of lawyers establishing the independent association.

Following this, the IBA technical advisor to the Ministry of Justice and lawyers' groups organized an 8-month consultation process. Not only did this give them ownership of the law, but it ensured that it reflected their needs, and the lawyers made sure that it included mandatory *pro bono* requirements in criminal cases due to a lack of legal representation (at the time there were around 100 lawyers, and a prison population of approximately 10,000). It was one of the only bars in the world to have this. The bill was adopted by Parliament and a General Assembly meeting was held to establish the office. The Bar Association resulted in more students becoming lawyers (doubling each year). This included women, with a Women's Committee implementing trainings etc. , advocacy for Bagram detainees, and a successful boycott of the Counter-Narcotics Tribunal to secure better working conditions for lawyers. However, the Bar Association lacked a physical infrastructure, political stability, and security.

Following the detailed exposé on the rule of law in Afghanistan, the conference was informed by **Ai Kihara-Hunt** about developments in **Timor Leste**. A recent scoping mission to the capital city of Dili had assessed the need for establishment of a national bar association. For a new State in a post-conflict situation, there is a shortage of lawyers and complicating factors such as a lack of indigenous legal vocabulary. Of particular significance was said to be the imminent passage of a new Land Law which would significantly increase the number of people wanting to access the formal justice sector, needing adequate legal representation with the fair and efficient administration of justice to sort out their claims. This kind of situation underlines the fundamental importance of the rule of law and related security – with the necessary public confidence – supporting economic and social development.

The panel concluded with a general agreement that partnerships with local organisations – reflecting their needs and enjoying their 'ownership' as stakeholders – is vital for the effective development of the necessary governance infrastructure on which basis human rights can be enjoyed. In particular, the fair, effective and efficient administration of justice is crucial in order for people to have confidence in the justice system; in its absence or uncertainty, especially where impunity reigns, people are more likely to take the law into their own hands to the detriment of themselves and of society as a whole.

Corruption and Human Rights

The main address on corruption and human rights was delivered via video-link by **Mr Rukshana Nanayakarra**, Senior Programme Coordinator for the Asia Pacific Department at Transparency International. He began by explaining how corruption adversely impacts the enjoyment of

human rights. He then underlined that corruption is endemic across Asia… only more so in some places.

Transparency International's definition of corruption is a broad one which includes the use of public authority for any type of gain (personal, public, civil society etc.). Corruption can negatively affect all human rights. In this respect, the freedoms of expression, information, association and assembly are particularly important as their absence provides space and shelter for corrupt practices. Political parties and parliament are viewed as the most corrupt State institutions, often manipulated by corrupt interests/actors and used to silence opposition.

There is also a strong link between corruption and the right to equality and non-discrimination. Corruption perpetuates the marginalization of disadvantaged communities and promotes exclusion and discrimination. Transparency International's Global Corruption Barometer shows that the poor are disproportionately affected by corruption, such that they might even be compelled to turn to corruption to fulfil their basic needs (access to education, health etc.). Corruption also has negative impacts on the enjoyment of people's economic, social and cultural rights, as it obstructs access to public services. Research conducted by Transparency International in 2006 showed how corruption makes health care unavailable to multiple groups of society, a fact that applies also to access to education and water.

In the second part of his presentation, Nanayakarra explained the current situation of corruption in Asia through the statistics of Transparency International. He identified that corruption in the Asia Pacific region is overall worse than in any other region. In the Corruption Perception Index 2010, Asia Pacific States ranked between 101st and 176th. Undoubtedly, public confidence is in decline: according to the Global Corruption Barometer, 7% fewer people in the region perceived that their government was effectively fighting corruption in 2010 compared with 2007. Other research found that people in the region are less willing to join in the fight against corruption than in other regions.

After reemphasising the strong link between human rights and corruption, Nanayaharra concluded by saying that it is crucial to address corruption within the context of human rights, because human rights mechanisms provide a forum for civil society and other organisations to talk about corruption and how to tackle it effectively.

Access to Justice

Ms Isabelle Arradon of Amnesty International spoke about her experience with the Asia-Pacific region and began by querying whether there is an 'Asian' or a 'Western' way of human rights, since in contemporary international law all human rights proceed from the UN Charter as further articulated in the Universal Declaration of Human Rights.

Her main focus was on **Indonesia**. As a researcher (2005-2010), she received many testimonies that gave her a human perspective of access to justice, sharing some stories with the audience. One was of a 14 year-old domestic worker, who had been working since she was 11. She had been physically ill-treated but had no marks on her body for evidence. That allows space for reflection: what kind of access to criminal justice is available? Can such a person get out of the house and file a complaint? Does she need to ask permission from her

employer? In Indonesia there is no law protecting domestic workers. In spite of the fact she was just a child, it was highly complicated to claim her rights.

Another story shared was the case of pro-independence activists, who are still in jail for raising the Maluku flag. Arradon queried about what kind of mechanisms exist to ensure access to justice and how to define justice. She referred to the concept of transitional justice: achieving justice through the criminal justice process and reparations. But there is the question of what can be deemed 'just'. For the purpose of the presentation she referred to human rights law. When looking at the Indonesian legal framework, one can observe the ratification of most international human rights treaties, and the Indonesian Constitution has a full chapter on human rights. If one looks at the national laws, there are gaps. The Criminal Code, for example, does not effectively prohibit torture. The victims also confront a procedural problem with the domestic law; they encounter difficulties in claiming their rights. It is equally important to ensure adequate reparation; economic, social and cultural rights are sometimes neglected. Arradon also referred to police abuse in Indonesia and the particular challenges for such victims to access justice when the police are the direct source of the injustice to be complained about.

It is assumed that people know the complaint procedures, but in Arradon's experience this is simply not true. A particular issue exists in Papua where those who suffer abuse at the hands of the police are reluctant to file complaints. Witness protection is essential, but not yet effective. The main violations are conducted by the criminal investigations department; one can submit a complaint, but in her experience the complaint will not get anywhere. In the case of ongoing violations by State actors, trust in those institutions has been badly eroded. The hesitancy of people to act through formal mechanisms is understandable in the context of prevailing impunity for past violations of human rights. As part of the transition, judges have been trained in human rights. But this is not enough. Arradon suggested that some kind of truth and reconciliation commission should be put in place – for which, of course, there is need for political will and courage from the top. As a positive note to end her presentation, Arradon mentioned that Ifdhal Kasim, Chairman of the National Commission of Human Rights in Indonesia, has said that the President has shown political commitment to resolve political conflicts. She hopes it proves so.

During the question and answer session, a number of points were raised. Replying to the question "How corruption relates to access to justice?", the speakers all agreed that corruption is endemic and a major issue in Asian countries obstructing access to justice and undermining accountable and effective democratic governance.

To the question 'How is it possible to look at corruption when dealing with human rights? What are the challenges?', Arradon answered that inside an organisation like Amnesty International they look at human rights violations that derive from corruption in a broad way. In Indonesia they created a guide called 'How to Understand the Police' which was shared also with police officials. The police need to be aware of their general responsibilities and duties, and it is important to support mutual engagement.

Wilks mentioned the example of **Pakistan** where the Chief Justice was removed illegally; he was apparently not a very popular person, for various reasons, and so this made it difficult to generate popular support to follow the rule of law. Kihara-Hunt highlighted the need to look at all elements regarding the rule of law, and to be realistic in demands and expectations.

SATURDAY, 4TH JUNE 2011

Non-Discrimination

The first session at the University of Essex was chaired by **Ms Ishbel Matheson** (LLM '07), Director of Communications at Save the Children (UK). Before the panellists addressed the conference, **Ms Rachel Chhoa-Howard** (LLM '12) of the conference Organising Committee shared some opening remarks.

Multiple Discrimination: Caste and Human Rights in Asia

Ms Catherine Bevilacqua (LLM '12) of the University of Essex provided an introduction to the problem of caste in South Asia, remarking that when one hears 'Asia' one automatically thinks of countries with booming economies which are challenging the 'Old World'. In her eyes, it is precisely because of these economic successes that the first of the Millennium Development Goals – to eradicate extreme poverty and hunger – is the only goal effectively on track. However, there are some historical patterns of discrimination against minorities, women and other groups that need to be taken into account through concrete political and activist measures in order to ensure that no one is left behind in the new world order driven by the recent economic boom in Asia.

The issue of caste discrimination is under-discussed, which is partly due to the fact that discrimination is complicated, because of the various layers that are intertwined and overlap, including but not limited to: caste, gender, class, race, and sexuality. In India 167-200 million people are affected by the stark discrimination engendered by the longstanding caste system, as almost 20% of the population is considered to be Dalit. The caste system is part of the social fabric in countries such as Pakistan, Bangladesh, Nepal, Sri Lanka, and Japan, but also in Africa and the Middle East amongst diaspora communities.

How do we define the caste system in India and what are its effects? It is a system of social stratification, which divides the society into four main so-called 'varnas' or castes: the Brahmins (scholars, priests), the Kashtriyas (warriors, law enforcers), the Vaishyas (merchants, bankers), and the Shudras (servants, service providers). The Dalits or 'Harijans', previously referred to as *Untouchables*, are left outside of this system. Although the caste system is mainly based on the division of labour and occupation, in the present day a culmination of factors have resulted in changing those traditionally held occupations as many Dalits no longer exclusively perform their traditional roles in society. One of the prominent characteristics of the caste system is that it absolutely forbids intermarriages between castes.

The term Dalit (which is synonymous with the term 'Untouchables') derives from the work Dalits traditionally carried out involving dirt and pollution. However, it is not possible to identify Dalits just by their outer appearance, as this social division is not based on ethnicity or any physical appearances. Instead, people tend to ask for the last name of the person they meet, as a way of identifying the relevant caste to which the person may belong. It is astonishing how often acts of violence are directed towards Dalits: every hour a crime is committed against a Dalit, every day two Dalits die and every day four Dalit women are raped. The very word Dalit means 'broken'. Despite the legal ban of the caste system since India's independence from Britain, the violence and discrimination against these groups have persisted.

According to Bevilacqua, the triple discrimination – based on the three factors of class, gender and caste – has been powerfully expressed by the Dalit women's movement which denounces the ways in which the general Dalit emancipation movement has adopted a patriarchal structure. Dalit women are considered to be the 'Dalits of Dalits'.

Ms Jayshree Manghubhai, University of Utrecht, went on to discuss the Dalit Women's movement of the last 10-15 years. This movement has seen a lack of attention and lack of leadership within the higher castes women's and Dalit's movements.

In her view, any human rights strategy must be sensitive to the intersections between caste, class and gender, as the Feminist Dalit movement has often pointed out. The way these three factors interconnect, re-enforce and strengthen each other must be understood and then effectively tackled. The function of the discrimination is to control areas of production and reproduction at the same time, which in turn results in control over knowledge and labour.

Dalits have a fundamental and foundational role in the production system of India, despite them being the target of systematic physical and psychological violence. However, various developments are altering the link between caste and occupation, such as economic growth and evolving socio-political networks including with regard to land ownership.

Dalit women suffer discrimination not only from non-Dalits, but also from Dalit men. Not only are women expected to take care of the home, they also are required to work in the agricultural labour market, while men move to the cities in search of work. In fact, in rural areas, the labour market is composed 57% of women. But despite their fundamental role in the economic growth of India, the literacy rate is stark: only 42% of Dalit women are literate, while 58% of non-Dalit women and 67% of Dalit men are literate.

Violence has been used as a form of punishment when caste barriers are transgressed. This is done through the destruction of women's honour (and so thereby also her family's honour) as a result of inhuman treatment and often sexual assaults. A culture of violence has developed and persisted towards this particular group. The Indian Government has tried to develop robust ways to tackle atrocities and provide redress for them through legal investigation. However, only 13% of the crimes are duly investigated, with less than 1% ending with a conviction. One of the main reasons for the collapse of cases is due to victim intimidation, which leads to the withdrawal of allegations.

Other issues of the Dalit struggle surround their limited political participation; with Dalit women largely denied political participation, they are disenfranchised and powerless. They are chosen as proxy candidates in order to fulfill quota obligations as a way of ensuring political representation amongst the group. Moreover, Dalit women's voices are not heard by other dominant classes of women and many benefits fail to reach Dalit women at local level. Manghubhai identified three levels of injustice: intersectional discrimination; denial of citizenship rights; and a lack of legal safeguards against discrimination.

Despite facing multiple discrimination, the power relations between Dalit women and others is going through a process of change. Dalit women's livelihood entitlements are not connected to local politics and, therefore, they have remained independent actors exercising agency characterized by their active resistance. Legal remedies alone cannot empower these women;

they also require legitimate political participation through a decision-making process which ensures greater inclusiveness amongst the Dalit community.

Panel: Non-discrimination in Asia: Migrant Worker, Minority & LGBT Rights

Broad forms of discrimination are common in many Asian countries, such as the discrimination against minorities in Sri Lanka, migrant workers in Malaysia, and LGBT people in Kyrgyzstan. In this session, three speakers gave their views on these various kinds of discrimination, and offered their thoughts for the future.

Discrimination against minorities in South Asia

The first speaker, **Ms Farah Milhar** of Minority Rights Group International, addressed the issue of minority discrimination in the South Asian context, specifically in India, Sri Lanka and Nepal. Discrimination has regional specificities along ethnic and religious lines. Milhar read out working definitions of 'minority' and 'discrimination' to clarify her framework of analysis and for purposes of discussion. 'Minority' was understood as a non-dominant group that seeks to retain its distinct identity, while Milhar referred to CEDAW for a definition of 'discrimination'.

In **Sri Lanka** the ethnic Tamils and the Tamil-speaking Muslims are widely discriminated against by the majority who speak Sinhalese. Although the Constitution of Sri Lanka has declared Tamil as an official language of the State, Sinhala is a more widely spoken and popular language of communication. In fact, Tamil has been granted a poor status in the country's educational system and the Tamil-speaking population are subjected to various kinds of discrimination (not to mention recent atrocities associated with the violent conflict).

In **India**, discrimination mainly follows religious and ethnic lines. Within the existing social stereotypes, discrimination against Muslims is common at various levels. For example, Muslims were said to be denied participation in the mainstream education, and are frequently denied access to bank loans or equal opportunities to sit the Indian Civil Service Exam. Some other ethnic groups (like Nagas in the North-eastern part of India) also face similar experiences. They face racial abuse and experience discrimination in employment and education.

Countries like **Nepal**, which is mainly a Hindu State, were also said to practice discrimination against Muslims at every level. For example, Muslims are prohibited from engaging in religious practices, prohibited from political participation and access to educational opportunities, and they face discrimination in ownership of local land and resources.

Discrimination was said to be exacerbated in times of conflict. For example, during conflicts in Sri Lanka and North-eastern India, minorities like Muslims and Tamils have faced targeted attacks, atrocities and both general and specific discrimination. The wide-spread atrocities committed with impunity against Muslims under the Armed Forces Special Powers Act in India are some of the starkest examples. Moreover, fundamentalist groups effect multi-layered discrimination along the lines of caste, gender and religion. Various parts of India have witnessed atrocities against Dalit Christian women and communal riots have triggered atrocities against Muslim women.

From the above examples, Milhar emphasised that discrimination is a wide-spread practice in the countries of South Asia, despite Constitutional safeguards (such as Articles 15, 16, 29 and 30 of the Indian Constitution, Articles 11, 18 and 19 of the Constitution of Nepal, and Articles 10 and 12 of the Sri Lankan Constitution). She argued that discrimination is primarily due to the following reasons:

- Weak implementation of legal frameworks, lack of political will, commitment and personal bias of the law enforcers;
- The powers of many of the enforcement bodies are recommendatory, without much power to monitor or implement;
- Emergency regulations supersede normal and peace-time regulations due to an emphasis on often unspecified 'national security';
- Historically, the practice has been that the government is primarily formed by the majority community without adequate representation from the minorities;
- Minorities at the grassroots lack sufficient awareness of their scope of participation;
- In the absence of adequate mainstreaming, often the minorities experience linguistic barriers while trying to access justice or equal opportunities.

In light of the above challenges, Milhar concluded with a set of suggestions for progress:

- There is a need to draft country-specific Anti-Discrimination Acts, drawing upon best practice examples from other countries;
- Promotion of adequate minority representation within the government;
- Strengthening of a regional human rights mechanism to eradicate discrimination; ASEAN has come up with a weak mechanism and SAARC has not been promising in this regard; better examples can be drawn from the regional experiences of Africa, the Americas and Europe.

Discrimination against Migrant Workers in Malaysia

The second speaker, **Mr Lance Lattig** of Amnesty International, concentrated on how discrimination against migrant workers in **Malaysia** is connected with the practice of minority discrimination; for example, in the case of migrants from Sri Lanka coming to Malaysia.

Lattig began with an anecdote on historic practices of migration in Malaysia. Malays were not mainstreamed and were widely discriminated in the labour market. Indian migrants were also exploited and discriminated in rubber plantations. At independence, the Malays were minorities and efforts to claim Malay as an official language failed during the course of the race riots. However, the New Economic Policy resulted in some positive discrimination for Malay Bumiputra, indigenous peoples from Central Malaysia were not mainstreamed. The definition of the 'Malays', as introduced, were those who speak the language, follow the customs and are Muslims. Hence, an

ethnic category was defined as a particular religious group, which left the Chinese and Indian migrants deprived.

Discrimination continued widely on this ground. For example, Malaysians of Indian origin were more prone to the death sentence, custodial torture and deaths. Economic discrimination was practised widely against minorities and migrant workers. In plantations, the Tamil migrants had no birth registration, children were not allowed to go to primary school; and discrimination was also common in higher education for which children of Chinese and Indian origin had to go elsewhere. Migrants were deprived of a right to family life and right to marry. No birth certificates were issued and non-registration of the birth certificate to non-Malays was a deliberate government policy. Even the right to freedom of religion was grossly affected since Malays were not allowed to marry outside their religion. This was mainly grounded on the Sharia law which prohibits change of religion. Atrocities are rampant for behaviours outside the rigours of religion. The internal security act allows the government the blanket power to arrest even the foreign Muslims on the grounds of national security and deport them back to the countries where they face torture and atrocities. There is no scope of judicial review of such decisions.

Only one-third of the population which has migrated to Malaysia are registered in the UNHCR. Owing to non-ratification of the 1951 Refugee Convention by Malaysia, refugees crossing Myanmar were ranked as illegal migrants and suffered further exploitation in Malaysia. Migrants had no right to nationality, for example, Rohingyas were rendered stateless persons and deprived of work and education. They had no right to family life. Domestic workers are legally prohibited to marry and in cases of pregnancy they are deported back. Most of them are also deprived of the right to education.

In the context of the above, Lattig concluded the discussion by highlighting some of the existing challenges and suggesting remedies. Some of the existing challenges are that the local courts do not incorporate the provisions of the International Human Rights treaties to which the country is a party. Specific laws prohibiting discrimination are distinctly absent. Even a possible regional treaty on the migrant workers in ASEAN might involve friction. Lattig suggested there was a need to name and shame the government of the sending countries of the migrant workers by raising the issue bilaterally.

LGBT in Kyrgyzstan: Struggle for Visibility

The third speaker, **Ms Syinat Sultanalieva** of the NGO 'Labrys' from Kyrgyzstan, concentrated on the discriminatory experiences faced by LGBT in Kyrgyzstan. She described a lamentable state of affairs, absent many basic human rights not to mention minority rights, amid the prevalence of gender stereotypes and social bias and myths surrounding such minorities. Muslims are often not integrated, and the predominant Russian influence is decidedly heterosexual with a strong bias against LGBT. Indeed, homosexuality and other sexual preferences are mainly viewed as an effect of Western influence. In the older Criminal Code there were punitive provisions for practising sodomy. Though repealed, still there exist provisions on forced sodomy and 'forced homosexuals'.

Being LGBT in Krygyzstan involves mental and physical torture and sometimes forced kidnapping. Statistics on violence include: 'curative rape', physical violence on families for change of sexual orientation; forced admissions to psychiatry and asylum. The media plays a distinctly negative role in the propaganda of the dominant culture. It promotes a negative view against LGBT by highlighting the social stigma and associated nomenclatures like 'Gay mafia'. Situations are further

worsened with the studied silence of the media on the atrocities committed against them. The existing legal framework, despite referring to 'equality', does not make explicit reference to sexual orientation. Law enforcers themselves hold strong bias against LGBT. The Civil Rights Code also contains distinct provisions which empower the officials to deal with and advocate the traditional views of the society. This often leaves sufficient scope to promote discrimination against LGBT.

Sultanalieva also commented briefly on the hate crimes against LGBT. The existing social stereotypes and negative influence incite social reactions towards them. Initiatives of policy and law against such hate crimes are conspicuously absent. Law enforcers refuse to register such cases. Discriminatory status and stigma are often associated with such particular sexual orientation. Difficulties are further exacerbated by poor legislation which is typically vague and prone to misuse.

The speaker ended with a brief note on the wide-spread advocacy and work pioneered by the NGO 'Labrys' over the years in Central Asia. Their work and impact achieved underlines the need for dialogue and collaborative efforts with various partners towards achieving the common objective to effect positive change in social approach and conditions of life – equally just and secure.

TRADE, BUSINESS, DEVELOPMENT & HUMAN RIGHTS

The second session of the day was Chaired by **Professor Sheldon Leader**, Professor of Law at the University of Essex, long-time member of the Human Rights Centre, and founder of the Essex Business and Human Rights Project. Professor Leader introduced the speakers and commented briefly on the topics while moderating lively discussions with the packed audience.

Trade and Human Rights

The economic crisis has demonstrated the interdependencies between economics and human rights, and triggered renewed interest in gaining a better understanding of the relationship between human rights and economic policy-making. This challenging topic was eloquently addressed by **Mr Vijay Kumar Nagaraj,** Executive Director of the International Council on Human Rights Policy located in Geneva, who emphasized the importance of human rights and economic policy-making for purposes of economic and social development in a manner consistent with human rights. Noting that the fields of human rights and economics are distinct and generally self-contained fields with their own internal disagreements and tensions, an understanding of the internal disagreements within economics offers human rights advocates some opportunities to affect economic policy-making. This can be usefully pursued through strategic alliances with heterodox economists.

Mr Nagaraj suggested areas of possible convergence such as the concept of the duty to respect which is found in international human rights law and could be applied to trade-offs in economic policy-making. Human rights principles – such as non-discrimination, accountability, indivisibility, etc. – could signpost the way policies are negotiated and applied. The duty to protect (which requires the State to protect individuals from interference by third parties) can also feed into this model of integration. For example, regulation of markets (especially financial) is one way in which human rights can express public interests which are to be reflected in the regulations and be protected. The

financial crisis highlighted and reinvigorated this debate with the potential to shift the power balance of financial innovation. Further, the duty to fulfil requires States to realise economic, social and cultural rights to the maximum of their available resources. A similar idea exists in economic theory, that of redistribution. In this sense, the State has the task to intervene through taxation, social transfers and to then redistribute the wealth to ensure social equality, prevent poverty, and generate opportunity.

Nagaraj pointed out three imbalances constraining economic governance that cannot be removed from discussions on this broad issue. First, there is an imbalance between the real and financial economies, meaning the productive and speculative economies. Second, imbalances prevail between macro-economies of different regions of the world. Third, there are ecological imbalances which represent a material limitation on economic expansion.

Considering these interconnections and imbalances, the question arises to which extent less powerful States can determine or pursue all their economic objectives through domestic policy, i.e. to which degree (or any sense) can they 'self-determine'. While many are increasingly subject to international norms and constraints, which may restrict or prevent their ability to meet their human rights obligations, some heterodox economists support global standard-setting. The central questions therefore concern the instrumental value of policy space and ethical criteria applied thereto. Human rights can contribute in determining this.

One of the greatest challenges for public policy is the issue of coherence or lack thereof. Nagaraj observed that international law is increasingly fragmented, resulting in rules of trade, investment, finance, environment, and human rights undermining rather than complementing each other. In his view, legal arguments will not suffice to reconcile these, for the tensions and argument are finally political. What needs to be determined is the fundamental normative basis for coherence.

Another main issue is the (lack of) legitimacy and accountability of institutions. Nagaraj asserted that new approaches may be needed, building on concepts of shared responsibility, solidarity, and effective public advocacy strategies to address shared concerns. Developments in Asia could challenge old ways and stimulate the search for new ones. Self-reflection amongst human rights advocates, coupled with greater engagement in economic policy-making, could yield interesting results with better outcomes.

Development and Human Rights

Ms Sarah Nancollas, Executive Director of the NGO LEPRA Health in Action, commented upon the issue of development and human rights while discussing the subject of leprosy in the context of human rights. She introduced the work of LEPRA in India, where it has been engaged since 1924. Overall, three million people are living in the world with leprosy-related disability, but that is just the tip of the iceberg since the majority of the cases go unreported. Recounting other basic facts concerning leprosy – and dispelling some persistent myths, she emphasized that Leprosy is curable if patients receive the required treatment quickly – treatment which is simple and for which the medicines are freely available.

Leprosy, which is rampant in India, is associated with abuses like stigma and marginalization owing to widely held myths and the stereotypes associated with it, such as social myths like

leprosy is incurable and contagious. This affects the development and treatment of the victims, since it results in arbitrary discrimination, marginalization, deprivation and exclusion.

Despite a wider recognition at the international level, with the adoption of UN General Assembly Resolution on 21 December 2010 on Elimination of Discrimination against Persons affected by Leprosy and Family Members, the picture at the ground level continues to be grim due to the persistent social stereotypes. Consequently, discrimination and marginalization from society and family life are the constant experience of the affected population. Cases include arbitrary deprivation from resource ownership or entry restrictions in countries like the UK – even though the UK supported the resolution. Reports and evidence show that the majority of people suffering hesitate to talk, are subject to social boycott, divorce, or decline to marry, are disenfranchised politically (neither vote nor stand for elected office), and cannot adopt children. Suffering children are forbidden from getting admission in school. Owing to the associated stigma patients hesitate to go to a hospital because they are afraid of the "shame". Even people who had leprosy before still face the discrimination, and they often hide their background such as by changing their name. For example, a man cannot tell to his employer who is in the Ministry of Health that he had leprosy before. This means that despite wide-spread recognition at the international platform, the attitude at the ground level remains unchanged. Even though leprosy is more rampant among the poor and impoverished, the stigma and social myths are overarching and transmit way beyond the benchmark of affluence. In the context of the overall above discussion, Nancollas queried 'How can we translate the resolution down to practical communities?'

Notwithstanding activism and various efforts at awareness-raising, the social resistance amongst the mainstream against people suffering from leprosy is unbending. It seems a merely legal framework of human rights cannot suffice to bring about real change. Rather, efforts are needed to effect measurable change in societal behaviour at every level as a bottom-up approach to complement legislative efforts. A multi-pronged approach comprising strong advocacy to dispel myths among health workers, a community-based approach to address the needs by granting special privileges to the sufferers, and naming and shaming of the government can bring about the much sought-after changes. The empowerment of people who have/had leprosy can also contribute to the change of the situation such as by delivering their voice to the government. In this context she mentioned how LEPRA is trying to influence the attitude at every level of the society in India. LEPRA always brings somebody who had leprosy to the meetings with the Indian Government in an effort to mainstream them into the society.

Before concluding her presentation, Nancollas asked the audience two questions: 'How do you take human rights legislation from the universal to the particular level?'; and, 'Can special laws/resolutions to protect people affected by leprosy actually indulge discrimination by granting special privileges?'

Panel: Business and Human Rights

The first speaker of the panel was **Ms Evie Francq** (LLM '10) of the International Peace Information Service located in Brussels. She set out a basic framework to analyse this topic – noting that while governments are obliged to respect, protect and fulfil human rights, there is an argument that a government on its own cannot achieve full respect for human rights insofar as many of the forces are global, in particular driven by transnational corporations. For example, a minimum wage can hardly be considered in isolation within one country, because it affects competition with others. So unless a country cooperates globally, it will be very difficult for it to meet its human rights obligations (among others). Companies are thus being encouraged to respect human rights. The OECD suggests companies should integrate a mechanism of due diligence to be respected. However, this is voluntary and can be a costly, uncompetitive procedure compared with other companies not adhering to the same principles.

This potential disadvantage for companies trying to respect human rights leads one to consider the role of third actors, such as the European Union, and to consider whether they possess obligations to protect extraterritorially human rights. Although this is very much contested, it is an issue dealt with in various forums. In September 2011, the Principles on Extraterritorial Obligations in the Area of Economic, Social and Cultural Rights will be adopted. Developed by the International Commission of Jurists, they attempt to codify customary international law. In addition, Principle 3 of the UN's Guiding Principles on Business and Human Rights (the so-called Ruggie Principles) recognizes the duty (of States) to protect and suggests that in order to do so States must provide an enabling environment through their laws and regulations to create a level playing field, so companies are not disadvantaged when they voluntarily respect human rights.

Ms Tara Van Ho (LLM '10), a doctoral candidate in Law at the University of Essex, then shared some reflections on business and investment challenges in Western Asia in light of the Arab Spring. She focused on how States are using businesses to contribute to oppression and to suppress human rights, but she also showed how they could engage instead to protect and promote human rights. In her view, the core problem is that the contemporary system of human rights operates so far ineffectively in the sphere of business or other private actors – which is increasingly important as the role of the State changes – and so new solutions must be found. At the moment, there seems too much reliance on the 'host State' which may simply not be able to address matters for which powerful private actors are more directly engaged and better placed to act. This is especially so for so-called 'transitional States' which typically have limited capacities resulting in greater vulnerability of their populations to abuses by private actors including businesses. One way to address this problem is for 'home States' (i.e. where a corporation may have its headquarters registered) to have greater involvement in the regulation of their companies operating abroad.

The final substantive address to the conference was given by **Ms Amy Man** of the private firm Maplecroft UK. Exposing the various current challenges facing labour in **China**, she emphasized that the manufacturing sector drives China's economy and within this sector issues range from health and safety standards to workers' rights.

In her view, China is still wary of human rights and basically sees them as a one form of imperialism imposed from the West. It is even more difficult for human rights to gain hold in the business sector, as many enterprises are State-owned or the State is the main investor. In such cases, the companies do not have the same reputational risk as other companies when human rights abuses occur, which means they might not regard public condemnation or similar scrutiny as any pressure or risk at all.

Man noted too that China has so far only ratified a small number of ILO conventions, and despite this there remains the practice of 're-education' through labour and forced prison labour. These practices are culturally embedded and will be difficult to change in as much as they are 'profitable'.

There is a general need for more awareness about concepts such as business and human rights, but first of all the workers need to know their rights. The Internet is one important means to this end, and as their awareness has risen, so have incidents of wildcat strikes and other actions. This has had positive outcomes in some cases where wages were increased. But the subject is complex, and becomes more so when examining transparency with regard to supply chains, due to the principle of separate legal entities. Tracking of responsibility and holding to account is difficult.

CLOSING REMARKS

As a full day came to an end in Colchester, following one and a half days in London, **Professor John Packer** (LLM '87), Director of the University of Essex Human Rights Centre, addressed the conference participants with some reflections, observations and suggestions. Without summarising the rich content of the conference, he noted that there had been some two dozen presentations including ten this day. Each was substantive, thoughtful and stimulating.

Equally importantly, Packer asserted, was the manner in which the conference had been organised, and delivered, which should be acknowledged and also reflected upon. First, the

conference is student-initiated and led, which reflects their interest and drive, but also offers the opportunity to learn and to shape. In itself, the conference organisation is a learning experience, important for professional development; in this respect, Professor Packer drew attention to the Organising Committee and its many active members ably led by its Chairperson. This constituted the third annual such conference – larger and better than those before. And so it sets a solid foundation for the continuation of this evolving tradition at Essex. Accordingly, Professor Packer thanked all the contributors, participants and supporters, noting that these included current students together with several alumni, current and former faculty members, NGO representatives and diplomats. This reflects the broad and deep good-will which is available for such serious initiatives, and shows the value of such cooperative endeavours.

Turning to some possible lessons, Professor Packer noted that the notion of 'Asia' is in fact a European invention attributed to Marco Polo and that its enormous range and diversity presents a real challenge to a coherent conference of limited duration and size. In this regard, he suggested reflection about future selection of one or more themes and the possible greater use of technology to connect speakers from Asia and perhaps to facilitate pod-casts and other means of dissemination of the valuable content. The greater participation of alumni could also be a driver of the conference ahead, as Essex's alumni grow in number and geographic representation – and as the community of practice evolves of which they are part.

Finally, Professor Packer encouraged everyone to take from the conference every idea and suggestion to try to make some greater difference in the practical enjoyment of human rights in Asia and elsewhere. To this end, he expressed the hope that the conference will be followed by more in future and extend both its reach and effects.

A final word was shared by the Conference Organising Committee Chairperson, Mr Taisuke Komatsu, who thanked his colleagues and all participants, and wished everyone safe travels and a pleasant remainder of the weekend.

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