FUNDAMENTALISMS AND HUMAN RIGHTS

Report of the Meeting

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Droits et Démocratie
Rights & Democracy

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INTRODUCTION

In November 2002, the organization Women Living Under Muslim Laws (WLUML) convened a meeting on the theme of "Warning Signs of Fundamentalisms." It became evident at that meeting that it was both important and urgent for human rights organizations to take stock of this phenomenon. In response to the work that clearly needs to be done on this issue, Rights & Democracy hosted a three-day meeting, in May 2005. The goal of the meeting was to help key actors from several organizations that promote and defend human rights to identify guidelines on the subject (see Appendix II for the list of participants).

It was acknowledged that all participants, whether they are involved in human rights groups, women's rights groups, social justice organizations, are working in the field of human rights and, as such, represent a human rights organization. The use of the term "human rights organizations" in the agenda and during discussions refers specifically to international human rights organizations (IHROs) that have been and continue to be active in constructing the normative framework through which the many dimensions of human rights have been defined (covenants, conventions, declarations, guidelines, principles, etc.).

Prior to the meeting, participants were asked to consider the following questions:

- How should organizations working in the fields of human rights and specifically, women's rights, take into account the roles and actions of non-state actors and ensure that when they violate or abuse rights they are sanctioned?
- Is it possible to go beyond scholarly debate about the phenomenon and to formulate ways to actively defend and promote human rights, and, in particular, women's rights?

- What approach can be taken to deal with the problem of the abusive use of human rights concepts by fundamentalist movements to justify unjust actions in the name of "authenticity," morality or culture?
- What approaches need to be developed to demonstrate that "political power" is not always "state power? "
- What approaches can be taken to counter the efforts of fundamentalist movements to control political power from a distance, and to influence and even direct the functioning of the state without becoming the state?
- Has the human rights community, both regionally and internationally, dealt with the problems posed by fundamentalists in a way that supports the efforts of women's and human rights organizations locally and nationally? If not, what must be done to ensure that the problems raised by the dichotomy of the public/private sphere receive adequate, regular and systematic treatment, in cooperation with those who are most directly affected by these problems?

The concrete objective of the meeting was to arrive at a common approach by identifying how each participating organization or individual, within the scope of their respective mandates, can

- take stock of the phenomenon of the rise of fundamentalisms;
- articulate the defence and promotion of women's rights and continue to battle the reversals advocated by fundamentalists;
- begin to develop common guidelines;
- initiate cooperation on relevant issues.

The agenda for the meeting reflected Rights & Democracy's awareness that the issue of fundamentalisms and human rights presents challenges and that there is a diversity of strongly held views and opinions. It was also acknowledged that the subject encompasses a wider range of issues and concerns than could be addressed in one meeting. This did not imply that some issues are of greater importance than others but, rather, reflected a practical need to limit discussions to several areas. The hope is that the outcome of the meeting will serve as a framework for future discussions of, and continuing work on, additional concerns and issues.

It must be acknowledged, at the outset, that there was no agreement at the meeting on a definition of "fundamentalism." Members of WLUML and others living in countries where the effects of fundamentalism are

experienced strongly and daily, have developed their own definition, which was included in the background paper for the meeting (see Appendix I). This definition states that

> *Fundamentalisms are political movements of the extreme right, which, in a context of globalisation, i.e. forceful international economic exploitation and free-for-all capitalism, manipulate religion, culture or ethnicity, in order to achieve their political aims.*[1]

Given the different political and cultural settings in which fundamentalisms arise, the term "extreme right" in the Helie-Lucas definition was taken to mean any platform or agenda that is exclusionary both on its face and in substance and that seeks to narrow the space in which "the other" may live and function.

This definition was not accepted by some participants; specifically, representatives of several of the IHROs. Their reluctance to embrace this definition appeared to reflect, at least in part, an unwillingness or institutional inability to accept that fundamentalisms are very often, if not always, political projects.

In order to keep the meeting from degenerating into a squabble over definitions, participants eventually agreed to use the term "non-state actors" rather than "fundamentalisms." It was clear, however, that for the women at the meeting who "live this life"—the daily struggle to survive the narrow, sometimes violent and exclusionary positions promoted by fundamentalists—the term "non-state actors" *unequivocally includes* fundamentalisms that have at their source political aims. As one participant pointed out, in the context of religion (e.g., Christian evangelicals, conservative Catholics, Pentecostals), leaders impose on followers an obligation "to do politics." In such cases, it is not enough for adherents to be faithful, to follow the church canon, to proselytize and seek conversions. Depending on the context, they may also have a duty, for example, to oppose abortion; to seek to limit the reproductive rights and choices of women through social policy and law; to campaign for the nomination, to national and high courts, of judges whose interpretations of laws most closely reflect their social biases and religious beliefs; to contribute to the

[1] Marieme Helie-Lucas, "What is your tribe? Women's struggles and the construction of Muslimness", Dossier 23-24 at www.wluml.org; first published in a shorter version in *Religious fundamentalism and the Human Rights of Women*, Courtney Howland, 1999, St. Martins Press.

election campaigns of members of their own faith or one that is very similar to theirs; to oppose same-sex marriage and homosexuality in general.

Thus, while the term "non-state actors" was agreed upon for the sake of facilitating the discussions, not all participants accepted the position of the IHROs that human rights and the violations (or abuse) of them by fundamentalists stand removed from politics. This leads to the question of whether IHROs are willing and able to consider the possibility that actions arising from fundamentalisms, whatever their stripe, often have a political source and aims, which obliges IHROs to re-think their assumptions and adapt their methods of work to this reality.

VIEWS OF PARTICIPANTS ON ISSUES RELATED TO FUNDAMENTALISMS AND HUMAN RIGHTS

In order to focus on the themes set out in the agenda, there was an initial general discussion during which participants highlighted a number of areas of concern and/or characteristics of various fundamentalisms. Concerns about fundamentalism as a political tool were raised again. Other points noted included the following:

- The different forms of fundamentalisms and the consequent "fragmenting" of women's priorities and agendas. For example, in one society, women may be called upon to respond and to counter the opposition of conservative Christian movements to women's reproductive rights and choices; while women living in a society influenced by another kind of fundamentalism may be mainly concerned about the effect of personal status laws.
- The global concern regarding security, which was seen as an obstacle to human rights discourse, to the extent that criticism, questioning of, or opposition to, greater national security measures that are promoted by leaders as necessary are unwelcome and often derided.
- The identification by some of "Islam" as the new enemy. This has given rise to such notions as "Islamaphobia" and a failure to distinguish between hatred and intolerance based on race as opposed to religion, which has served the political aims of Islamist fundamentalist movements.
- Identity politics (based on culture, religion, race, ethnicity, etc.). Participants noted that a collectivist formation of identities divides

women into political groups and may isolate women of varying experiences and backgrounds from each other.

- The continued effect of a class hierarchy among women. It was noted that this hierarchy may be based on economic status, birth, education or some other basis (e.g. women from developing countries making up a significant part of the migrant labour pool).
- The increasing use of religious terms to identify the "haves" and "have-nots." The "right believers" are becoming the "haves" and those who do not accept the principles of the faith, or who question them, are becoming the "have-nots."[2]
- The need to find a way to address the tendency of some groups and individuals to characterize the debate as one of morality versus human rights. For example, a "moral" person opposes birth control (except through abstinence) and an "immoral" person supports and promotes the right of women to make their own reproductive choices.
- The sovereignty of both states and individuals. The international system ensures the right of a state's representatives to take action to protect its territory and interests, as they have defined them. It is also necessary for the international system to ensure the right of individuals to be individuals, to choose their own interests and to defend them against arbitrary actions by other persons or, in the context of this meeting, any fundamentalism.

Observations made in response to these points focussed, in part, on the relationship between the citizen and the state. It was noted that a number of forces—for example, community or religious groups and leaders, who may be either self-appointed or chosen by an elite—affecting the lives of women are placed directly between the state and the citizen so that not all interactions take place between the state, its institutions and citizens. In some contexts, there is no sense of nationhood and local mechanisms, such as dispute settlements, have greater influence. Laws are blocked by local processes, including in the area of human rights. There is a need, therefore, to address the emergence of local elites. The point was made that there must be one law that applies to everyone and that parallel structures be eliminated, because the continued existence of such structures and traditional groups makes common discourse more difficult.

[2] The terms 'haves" and "have nots" are not used in an economic sense here.

Participants also noted the increased emergence of "ethnocracies" citing, among others, Israel as a Jewish state, the efforts to establish a Palestinian state, a policy to create a greater Serbia out of the former Yugoslavia, and, in Côte d'Ivoire, threatening manifestos issued by an opposition group targetting persons of other nationalities living in the country (see Appendix I). Related to this phenomenon, participants noted the tendency in a number of states to differentiate among groups of citizens, with the result that people belonging to minorities (racial, religious, ethnic, political, etc.) are disadvantaged. While women are not a minority, it was noted that policies to establish ethnocracies and the politics of differentiation have a particular impact on them. It is therefore necessary to ask who has the right to speak for women.

Citing the example of Algeria, several participants referred to the principle of due diligence and the state's responsibility to protect and promote the rights of citizens. Emphasis was placed on the need, however, to find ways to directly address the responsibility of non-state actors without going through the due diligence process. It was noted that fundamentalists may be the victims of state actions but they are also the perpetrators of abuse and violations and, again, that they operate on the basis of political platforms. It is imperative, therefore, not to legitimize them and to ensure that they are held accountable. In terms of how the international community defines and relates to fundamentalist groups with political platforms, it was noted that the emphasis placed on popular elections is, in some instances, misplaced. Participants stressed that elections do not equal democracy but, rather, should be seen as the means to achieve more democracy. It was noted, in particular, that some elected regimes can be very undemocratic, and Hitler's elected regime was used as an example. It was also pointed out that the tendency of some states in the international community to replace an unelected regime with another does not always result in greater freedoms for citizens. An example is that of Afghanistan, where the government installed by the Soviet Union was displaced, only to be followed by the Taliban.

Again using Algeria as an example, several participants insisted on the definition of fundamentalism as a "political movement of an extreme right nature," based on notions of superiority, a mythical past and the presence of "sub-humans" (heretics) who must be eliminated, marginalized or in some other way silenced.

With these and other observations in mind, participants noted the following, *inter alia*:

- The need for human rights organizations to deal with the establishment by groups (founded on the basis of faith, race, political platform, economic status, etc.) of a de facto parallel state (in areas such as taxes, marriage and divorce). Participants noted that the existence of such structures leads to the erosion of the state, the sapping of its power and the "privatization" of many functions that can only be properly carried out by the state on behalf of all citizens.
- The continued perception, in some settings, that both human rights and women's rights are a Western creation. The leaders of fundamentalist movements in a number of societies successfully characterize human rights principles as unreligious, immoral, unethical, etc. They preach the submission of women to men or dissent as heresy or blasphemy and stress the rightness of, for example, a single cultural, religious or racial identity.
- The emergence of a wider understanding of fanaticism. Several participants noted that the fanatic nature of some individuals or groups claiming to represent the true nature of Islam is now better appreciated by, among others, non-Muslim political leaders, non-governmental organizations, and the general public. While this may be seen as positive overall, it was also noted that recognition of "fanaticism" by non-Muslims has generated a kind of hysteria that has been translated into a perceived need for tougher and stronger national security laws, which may be enacted at the expense of full protection of the rights of all persons.
- The use of fundamentalisms by politicians to consolidate and justify their power and positions (such as through executive orders and decrees, election delays and secret military tribunals). It was noted that politicians and fundamentalists have developed a kind of "mutual benefit society." The mutual benefit is seen when, for example a fundamentalist group commits a violent act, calls for violence, or imposes an oppressive regime (as in Afghanistan).Politicians, either national or from other countries, respond by playing on the fears of citizens and claiming they are best situated to respond to the action or threat, legally or through para-legal measures (e.g., executive orders), by imposing sanctions on the offending regime and thereby projecting an image of strength that makes citizens reluctant or afraid to change

their leaders. The fundamentalist group responds by characterizing the actions taken against them as a policy devised by "infidels and the immoral" that is aimed at their destruction and only they can save and preserve their religious, racial, ethnic, political, or cultural identity, if necessary, through further violent or oppressive means.

- The fact that human rights law does not provide an answer for every violation and that legal categories regarding non-state actors can also be used. Several participants referred to the provisions in international humanitarian law relating to the protection of civilians, under which non-state actors can be held responsible for high-threshold crimes (genocide, crimes against humanity). Reference was also made to provisions in the *Rome Statute* of the International Criminal Court, noting that they to focus on high-threshold crimes.
- The importance of how religion is defined and the manner in which people relate to it. It was noted that, for example, the Catholic Church is tightly structured, the Vatican is the nation state of the Holy See, the Pope is the supreme leader of Catholics worldwide and the Church is institutionally defined. On the other hand, in Islam, there is no centre of power or single leader (either elected or acclaimed) for the faithful worldwide, or one interpretation of the sacred texts that is institutionally promoted as the only true version.
- The non-acceptance of criticism of religion and ambiguous religious texts by fundamentalist groups. Several participants noted that sacred texts are subject to human interpretation and people tend to act on the basis of faith, what they believe is true and right and not necessarily on what they are told is true and right.
- The precedence given to patriarchal values.
- The fact that the world in which human rights law developed is not the world in which people live today. The point was made that law reflects societies and that the division between national and international law is artificial. The international human rights system, and the treaties upon which it is based, reflects the minimum that each state is compelled to achieve in terms of protecting the rights of citizens. As such, national law and international law must be the same and there must be one law that applies to everyone within a state.
- The need to identify ways in which legal mechanisms can address new situations and non-state actors (including fundamentalisms) di-

rectly. A number of participants emphasized that depending entirely upon the doctrine of due diligence by the state to ensure the accountability of non-state actors is not effective and, depending on the nature of the government in place, may not even be practical. It was also noted that while the provisions in international humanitarian law and the *Rome Statute* may be helpful in some cases, a great many of the violations and abuses perpetrated as a result of fundamentalisms fall well below the threshold established in these instruments.

- The fact that fundamentalisms are not only of the "extreme right" and may equally be of the "extreme left." It was noted that the element of "right" or "left" was not the point. Rather, the element of an "extreme" is the key factor in identifying and responding to fundamentalisms.

Participants also referred to the unacceptability of the idea that it is necessary for human rights to have been violated in order to protect them. The unacceptability of efforts to juxtapose human rights and religion and to suggest that they are mutually exclusive was also noted. These two points touched on the view promoted by some fundamentalists of "conflicting rights." Proponents of this view assert, for example, that freedom of expression does not include the right to criticize or express dissent within a religion, but that leaders who call for the death, marginalization, or exile of individuals or members of another faith, race, class or ethnicity are exercising their right to freedom of expression and this right supersedes the rights of others to life and personal security.

Concerning the concepts and norms upon which human rights law has been understood to be based, several participants noted that it has become rigid in an effort to be foundational. It was suggested that human rights law is a tactic to be used rather than an answer to injustices and, further, that there is a need to arrive at a way of thinking that has a thirst for justice as its source. Referring to a concern about constraining human rights to law, participants also emphasized the need for people to accept human rights. The question as to what accountability would look like for both secular and non-secular entities (if the fundamentalism at issue is religiously based) was posed. Participants underscored that the concept of human rights must be universal and that rights are not above politics. The need to understand fundamentalist strategy (e.g., to acquire greater political power) was noted, in order to develop a counter-strategy to it.

THE USE AND MISUSE OF CULTURE AND RELIGION

Discussions of this topic reflected an awareness that culture and religion can be whatever someone with power and influence declares them to be. In a number of cases, the success of fundamentalist leaders stems from an interpretation of a religious text, or a cultural history, which may be flawed but presented in such a compelling way that others feel a duty, or a need, to adopt the same position. In such cases, adherents may choose that religious and/or cultural identity because it seems to promise safety and protection from non-believers or "the other," it is perceived as a means by which to exact retribution for perceived past wrongs or it offers the best chance for the fundamentalist view to be made into law. The common denominator in such cases appears to be the absence of a concept of religious or cultural liberty.

Among the points raised for further discussion of the topic, participants noted the following:

- the definition of culture as the values and symbols of a collective identity;
- the question of who defines culture and the fact that it is not monolithic and that it changes;
- the tension between majority acceptance of a culture and a minority challenge to it;
- the appropriation of the right to speak on behalf of others;
- the lack of space for alternative voices in societies;
- the fact that the worst option among all choices of how individuals will express and identify themselves will always be applied to women, whether in law, culture or religion;

- the role of state laws in building culture;
- women as the repositories of culture;
- the importance of understanding how groups work (e.g., through charitable activities or appropriating state functions such as the military or education).

Several participants referred to confusion over fundamentalisms, religion and culture and the tendency by some people to equate the three and to try to make them one. In this way of thinking, by definition, a fundamentalism is religious and the religion upon which it is based defines the culture. This point raised the issue of identity politics again, and the question of who is entitled to attribute or assign an identity to others, whether a group or individuals. It was noted that among the challenges posed by culture were tolerance for the idea that some people or groups are more cultural than others; failure to criticize others because it is "their" culture; the selective application of culture. It was also emphasized that just because individuals or groups believe in what they are doing, it does not mean they are right. The question was raised as to whether the human rights framework is equipped to deal with the identity politics that go hand in hand with the use and abuse of religion and culture.

Concerning secularism (separation of church and state), there was acknowledgement that the concept is not universal. For example, given that there is no clergy as such in Islam there is no institutional way to separate it from the state. Also, in Muslim and other societies, secularism is presented as anti-religion or equated with atheism. The issue should be formulated in some contexts as the separation of political functions from religious ones (e.g., religious leaders not using mosques for political purposes and the state not using religion for political reasons).

Participants also referred to fundamentalists using human rights to legitimize themselves. The state's use of culture and religion to divide people was also noted, as was the complicity between state and political parties to use culture to silence others (e.g., by criminalizing opposition and dissent). Several participants emphasized that the discourse of culture is the surface beneath which the struggle for power is taking place.

IHRO representatives at the meeting referred to attempts by some religious, cultural and other kinds of civil society organizations to justify their opposition to human rights norms and law on the basis of a need to defend cultural authenticity. Underlying this attempt at justification is the

position that human rights norms and laws are not consistent with culture and authenticity. The re-invention of culture and an utter intolerance of dissent were also emphasized by participants, who noted that this view makes culture a tool of oppression and that the right to freedom of expression plays a critical role in ensuring that there is a place for a diversity of views and opinions within a culture or religion

With these points as a framework, participants expressed the following:

- The need to ensure that the human rights agenda not only includes such rights as freedom of expression and opinion but also those of employment, health, education, development, etc. Fundamentalism affects social and economic issues and a faith in which women's place is in the home violates their rights in several areas, including equality of opportunity.
- The need to identify and understand how fundamentalisms obstruct the attainment of human rights.
- The view that human rights are not a set of laws and standards but rather are a "voice." Human rights "must be lived" and be relevant for everyone and must not be seen only as a technical exercise.
- It is important to be aware of the consequences of religion rather than its intent. In other words, the precepts by which faith is defined may appear to be honourable and moral (e.g., the sanctity of marriage and the preservation of the family as the basic unit of society) but may, in fact, be harmful (e.g., preventing a woman from leaving an abusive relationship or the removal of a child or children from negligent and/or abusive parents).

THE PRIVATE/PUBLIC DEBATE—STATE AND NON-STATE ACTORS

At the outset of discussion on the private and public domain, several participants noted the conceptual, tactical and strategic limits to human rights law, as well as their normative limits, in terms of fundamentalisms and dealing with non-state actors. Reference was again made to the high threshold for what constitutes a crime established in the Geneva Conventions and the *Rome Statute* and the fact that the provisions do not accommodate prosecution of day-to-day violations by non-state actors. Neither international humanitarian law nor the *Statute* afford the means by which the inequality inherent in many personal status laws or crimes such as gang rape in a community setting, spousal abuse, "honour" crimes and other kinds of violations against women can be systematically addressed. Neither do they necessarily provide a way in which violence against women in the context of low-intensity conflicts, or isolated incidents in areas of conflict, can be dealt with. Participants also returned to the doctrine of due diligence, noting that human rights treaties are sets of standards of human rights conduct for states. While there is recognition of non-state groups in some of the treaties, the principle that responsibility remains with the state is pre-eminent.

As a consequence of the normative limits and the doctrine of due diligence, the focus of the IHROs has been and continues to be on holding states accountable. While state accountability is important, this focus increasingly seems to operate in isolation from the fact that the power of states is weakening and the power of other forces and entities—non-state actors, including fundamentalisms—is increasing.

Among the points noted by participants were

- The limited capacity of IHROs (and others) to monitor non-state actors.
- The influence of non-state actors on the operations of the state. The influence of the religious right in United States was cited as an example. For instance, a few years ago, the federal administration discontinued funding to Planned Parenthood as a result of the religious right's lobby opposing abortion and abortion counselling.
- The ability of non-state actors to avoid accountability and the impunity they consequently enjoy.
- The fact that states are not the only entities that are currently violating human rights. The point was made again that international law only refers to violations by states and defines certain acts by non-state actors as "abuses" —in other words, crimes that states are expected to punish. In part, the reluctance by both states and IHROs to characterize the abuses committed by fundamentalists or in the name of fundamentalisms as violations reflects the continued fear of according the status of states to non-state entities, with all the rights and privileges that would imply.
- The increasing tendency to relegate "women's matters" to the private sphere. This tendency, if allowed to continue, will place many violations of women's rights beyond the reach of the international human rights system. It will also place crimes against women, in a number of cases, beyond the reach of national criminal law, to the extent that abuse, estrangement, disinheritance or similar actions are defined and accepted as "private matters" to be settled through local dispute mechanisms or by the parties themselves.

A number of participants stressed the need to move beyond the public/private debate. They stated that, in order for this to be achieved, there must be consideration of whether a new mechanism is needed to hold non-state actors directly accountable in situations that do not meet the high threshold set out in international humanitarian law. They highlighted two points in this context. First, that greater value is accorded to the public sphere (male domain) than the private. Second, that states are responsible for harm that occurs in the personal/private space and, if due diligence is to mean anything, that states must be pushed more strongly to exercise their powers effectively and fairly. Following on the second

point, the problems of gender bias and the failure of states to implement laws were noted, as was the issue of how much state regulation of private matters is enough and how much is too much—i.e., state interference in the private lives of citizens and the choices they are entitled to make.

Bearing in mind the above points, several participants referred to the fact that human rights law assumes that only the state has the power to represent individuals, even though this is no longer true. The emergence of fundamentalist and other kinds of non-state groups has created situations in which, for example, one sect of a religion will claim to be speaking for all. Also, states have selectively scaled back their responsibilities, but have not given up coercive powers. That being said, participants acknowledged that even though they have been weakened, it is still states that sign and ratify or accede to international agreements, including human rights treaties. Consequently, there are still times when it is necessary to work with the state to carry out, for example, law reform. It was also suggested that there is a need to reinforce the state in order for it to counter non-state groups responsibly and through actions that are proportionate to the actual threat posed.

Other points noted by participants during discussions included situations in which states cannot hold non-state groups accountable, such as when territory is under the control of a non-state group; the need to ensure that any criteria and modalities developed to hold non-state actors to account do not let the state "off the hook"; the potential positive effect of "peer accountability"—private groups conversing with each other (through inter- or intra-faith dialogue, etc.).

Participants also considered the emergence of Pentecostal and evangelical movements. The causes of this phenomenon were identified as including political misrule, moral confusion, the failure of the state and economic disparities. As a consequence, there is a need for states to develop policies that are sensitive to the grievances of fundamentalists and that respond to them; that address social disruption, encourage inter-faith dialogue, empower people to think for themselves, and that avoid stereotypes, understanding that not all fundamentalisms are the same and not all of them are violent.

Six questions emerged from the discussion:

- Are non-state groups in opposition (i.e., exercising their right to dissent and peacefully advocating alternative views) or oppressive (i.e., seeking to limit the capacity of individuals for self-identification, ex-

pression and realization and suppressing dissent or a diversity of views)?

- What tools are available within the human rights framework to deal with non-state groups?
- Can IHROs integrate the concerns of others into their work, specifically in the area of oppressive groups?
- Since the new "privacy" (private sphere) is the religious sector (the "privacy" of religious institutions), will IHROs either get involved or become more involved in this issue?
- Will IHROs insist that states not allow non-state fundamentalists to violate rights?
- Is it legitimate for states to police some private behaviour (e.g., sexuality)?

In response to the additional question of whether there are mechanisms to hold non-state actors directly accountable, participants referred to special tribunals or courts (e.g., regarding Rwanda, Cambodia, Sierra Leone, the former Yugoslavia); the human rights framework to deal with the practices of transnational corporations (with respect to employment, health, environmental rights, etc.). At the same time, it was recognized that the human rights framework has its limits and that solutions to issues such as the negative impact of religious fundamentalism may lie outside that framework.

The duty of human rights organizations to monitor a situation was emphasized and, with this as the starting point, questions such as the following were posed:

- If there are limits inherent in human rights law, and divergent views on their applicability, where is the space to move forward? In other words, are there grounds for consensus on how human rights laws may be used to deal with fundamentalisms (non-state actors) so that more progress can be made on this pressing issue?
- Can the scope of the International Criminal Court be expanded and include in its eligibility criteria situations that do not reach the high threshold of crimes such as genocide or crimes against humanity?
- Rather than focussing on individual human rights groups, what can be done to focus on the human rights movement so that it moves forward?

- Have some of the long-established human rights methodologies done harm in some cases?
- What can human rights organizations do to ensure internal accountability—taking account of consequences and learning from failures in order to deal with fundamentalisms?

BALANCING RIGHTS

This subject was included in the agenda in response to the tendency of some groups and individuals to adopt and to work from the position that certain rights are mutually exclusive and incompatible. Thus, while there is a general recognition of the right to freedom of conscience and belief (to have, profess and manifest a faith), the right to have no faith, to leave a religion, or to question the tenets of a faith are not accepted. In a similar vein, there is general acceptance of the right not to be subjected to torture or cruel or inhuman punishment but less tolerance for this right to be extended to individuals detained on suspicion of terrorism or links to a terrorist organization. The same may be said for acceptance of the right to due process, so long as, in the minds of some people, that right is not fully extended to persons charged under national security legislation.

In order to assist participants, examples of losses of the right to freedom of expression were outlined. Among the points noted were the following:

- curtailment of expression and access to information following the attacks in the U.S. in September 2001;
- an increase in self-censorship by media and others;
- community-based (mob) censorship, with the complicity of the state;
- the rise in, for example, anti-Semitism and anti-Muslim movements in certain countries (e.g., Russia);
- the selective application of the law on incitement to religious hatred (i.e., where protection is given to one religion but not all);

Given the previous examples, the need to protect dissident voices within communities was stressed.

It was recognized that there are permissible restrictions on the right to freedom of expression included in human rights treaties. These restrictions relate to protection of national security or public order and protec-

tion of "public health or morals" (ICCPR, article 19). Provisions also refer to a prohibition of war propaganda; prohibition of any advocacy of national, racial or religious hatred; respect for the rights or reputations of others; prohibition of organizations and activities that promote or incite racial discrimination.

Despite the assumption of the equality of rights, participants acknowledged that when rights intersect, a hierarchy determines which ones prevail. In many instances, group rights tend to trump women's rights. The emergence of an "unlimited" right to freedom of conscience was also noted. This development has created the potential for healthcare providers, for example, to refuse to care for individuals who do not share their moral and religious values or for judges to refuse to marry couples whose principles do not accord with their own.

It was suggested that human rights as principle have been poorly served by human rights methodology. This methodology has created an autonomous self but has not dealt with the relational self—that of lives lived in relation to others. It was emphasized that freedoms and rights exercised with coercion cease to be rights and that the exercise of one person's right may not destroy that of another. The methodology has been based on the notion of "harm" as the measure and it has not included the impingement of rights as another standard upon which to evaluate behaviour(s).

In terms of human rights organizations, two questions were raised. First, what is the most urgent obligation of human rights organizations—to address the worst situations, to create a hierarchy of rights, to establish core rights? Second, who are human rights organizations representing? In other words, if a report is published, does it represent the organization or the affected people on the ground in the country concerned? A number of participants stressed the need for IHROs to take direction from local groups.

As a result of the discussions about the above-mentioned themes, participants noted a number of points and areas of common concern, or where it may be possible to develop common actions. The following is a list of the ideas and emphases expressed at the meeting. The order should not be construed as according any point greater or lesser importance.

- Do no harm. There must be rights without coercion.

- Poverty by itself is not a recruiting ground for fundamentalists. Economic deprivation coupled with injustice form the recruiting ground.
- Who can and should speak. In terms of "authenticity," who represents the community?
- The lack of tolerance among human rights organizations for some of the choices that are made. For example, the South African Truth and Reconciliation Commission was criticized by a number of IHROs on the grounds that an attempt was made to coerce victims of violations into reconciling with the perpetrators of those violations, in other words, that the Commission traded justice for peace.
- The centrality of accountability as a check to power. Accountability is not only a check on state power. If the means can be developed to hold non-state actors directly accountable, this will also serve as a check on their power.
- The need for human rights organizations to dedicate more resources to building constituencies at the local level. In some cases, the fact-finding missions undertaken by IHROs do not even contact local groups and organizations, let alone reflect local concerns and priorities in subsequent reports.
- The need to go beyond the legal framework of human rights. This referred to the point raised earlier that human rights are not merely technical or conceptual and that they must be lived and be relevant to everyone.
- The focus of IHROs being limited to reacting to violations once they have occurred. There is a need for these organizations, in cooperation with local constituencies, to pay more attention to the warning signs of a rise in fundamentalisms (early-warning) and place greater emphasis on the protection of rights and the prevention of violations.
- Human rights education. The need for more emphasis on human rights education was noted by a number of participants as part of an effort to increase the level of rights literacy at the local level.
- The need to protect human rights defenders.
- The need to deal with root causes. The point was made that the work directed at addressing violations by fundamentalists must be a part of a larger framework for social change.
- The need to "indigenize" human rights.

- The need to ensure greater visibility of the victims of harmful actions by non-state actors.
- The need to develop an effective strategy to counter the manipulation of human rights concepts by fundamentalisms.
- The fact that most violations of women's human rights are committed by non-state actors.

STRENGTHENING THE HUMAN RIGHTS APPROACH

On the third day of the meeting, two working groups were set up. The groups were asked to reflect on the discussions of the previous two days, particularly elements that reflected common concerns that had been expressed and recurring themes or issues. The main goal of the groups was to consider the issue of accountability, of increasing states' level of accountability, and just as important, devising ways and means for more direct and immediate accountability of non-state entities (in this context, fundamentalists). Participants were asked to focus their discussions on four questions:

- What are the elements of accountability?
- How can accountability be achieved?
- What can each participant/organization do to move the work forward?
- What does each participant/organization need from the others to make it happen?

Referring to levels or elements of accountability, participants noted, *inter alia*, gaps in enforcement of rules and laws; the "privatization" of women's rights; the tendency to negotiate culture and to empower certain individuals to interpret it at the expense of others; the need to identify perpetrators of violations and the harm done; understanding who can hold whom accountable and what standards to use (i.e., a mechanism for responding to calls for violence); the role of political influence.

In terms of achieving accountability, participants referred to, for example (a) locating and focussing the role of the state in relation to non-state actors that perpetrate abuses and violations; (b) establishment by IHROs of

a working group to concentrate on legal standards for non-state actors, including witness protection; (c) expanding mandates of existing human rights mechanisms and their application; (d) developing the means to ensure formal accountability for criminal conduct; (e) raising the profile of women's experiences as the doorway to accountability of non-state actors; (f) using legal and quasi-legal means to criminalize "criminal conduct" (e.g., *tort* law, tribunals, hearings, commissions); (g) the possibility of participants jointly pursuing a test case and taking it to the International Criminal Court; (h) the need not to lose sight of due diligence and the responsibility of officials to act; (i) the need to develop a "warning signs" methodology.

Concerning the way forward, participants identified several priorities. These included developing greater collaboration, partnerships and "globalism" between human rights and women's non-governmental organizations; scrutinizing and challenging the legitimacy of those who speak on behalf of others; empowering individuals within communities (however defined) to challenge and to dissent from the views promoted by leaders and elites; establishing a dialogue to demystify norms and values that violate human rights; systematically including non-state actors and gender in the work of human rights organizations and identifying mechanisms to accomplish this within the organizational structure; being open to common understanding—including through building coalitions with development NGOs, environmentalists, peace activists, etc.—and using the social movement to advance this work; being more aware of and examining the concept of "no harm" in NGO interventions. With these and other points in mind, the question was raised as to what actions should be taken in the political and social spheres to complement the legal sphere.

In terms of practical measures that participants can use to build on the work accomplished during the meeting, the participants agreed that establishing a loose affiliation among the various groups would be helpful and enable more networking to take place so that the momentum gained would not be lost. Individually, participants undertook to do the following:

- Widney Brown, Human Rights Watch: (a) increase its conceptual work in terms of non-state actors; (b) consider how to deal with collectives of non-state actors operating outside the context of armed conflict; (c) ensure that the International Criminal Court addresses

sexual violence; (d) ensure that recommendations included in reports are clear and concise rather than vague or broad.

- Lynn Freedman, Law & Policy Project, Columbia University: (a) undertake more regular communication with others on cases; (b) pay special attention to issues in the context of health.
- Gothom Arya, Forum Asia: introduce issues related to non-state actors into the strategic thinking of the organization.
- Zazi Sadou, Rassemblement algérien des femmes démocrates: continue networking with Women Living Under Muslim Laws and others on issues that were addressed at the meeting.
- Kate Gilmore, Amnesty International: (a) continue strengthening the interaction between law and non-state actors; (b) remain open to feedback on the work the organization does; (c) maintain a dialogue with others and be open to change.
- Philomena Mwaura, Religious Studies Department, Kenyatta University: (a) initiate research on the impact of Christian fundamentalism on women; (b) encourage NGOs to interact with each other—e.g., those focussing on religion engaging more with human rights NGOs.
- Agnès Callamard, Article 19: (a) work with new constituencies (e.g., women, health); (b) develop gender-sensitive guidelines related to freedom of expression and free media; (c) undertake work on the issue of balancing rights (e.g., the right to freedom of expression of fundamentalists); (d) look at "who is not speaking"; (e) address community-based and mob censorship; (f) continue work on the issue of religious hatred as a priority.
- Ursula Owen, Index on Censorship: (a) use the *Index on Censorship* website as a platform for stories and facilitate the publication of women's voices and the voices of people in local situations.
- Hassiba Hadj Sahraoui, International Commission of Jurists: (a) convey the message regarding the gaps in addressing the issue of non-state actors and NGO failures in this area; (b) undertake analytical work on the issue of non-state actors; (c) ensure that country-specific work includes not only non-state actors in situations of armed conflict but violations that occur at a "lower" threshold.
- Archana Pyati, Human Rights First: (a) continue to support human rights defenders; (b) work more closely with UN mechanisms; (c) give

greater focus to the situation of women human rights defenders; (d) join efforts to achieve direct accountability of non-state actors.

- Roberto Javier Blancarte Pimentel, Colegio de México: establish a network of Latin American activists and scholars to work in the area of civil rights and women's rights.
- Yakin Ertürk, UN Special Rapporteur on Violence against Women: (a) integrate elements of the meeting's discussions into the mandate; (b) develop methodologies for the gathering of statistics on violence against women; (c) lobby to strengthen the mandate and develop adequate follow-up to the work undertaken; (d) receive and act on case information that is submitted to the office; (e) give priority to women's rights in all the work.
- Nira Yuval-Davis, University of East London: (a) make the issues discussed at the meeting a part of the work on gender relations and the politics of belonging; (b) make an effort to place these issues at the centre of discussions at a conference of sociologists (planned for 2006); (c) act as a liaison with the London-based network of Women against Fundamentalism.
- Anne-Laurence Lacroix, Organisation mondiale contre la torture: (a) continue to integrate efforts and work with local groups (e.g., in the preparation of "shadow reports" to relevant human rights treaty bodies); (b) participate in the conference planned for September 2005 on the subject of due diligence.
- Robin Phillips, Minnesota Advocates for Human Rights: (a) make better use of the office of the UN Special Rapporteur on Violence against Women; (b) look at pushing for mechanisms of accountability for non-state actors; (c) consider the ways in which previous work has not supported or taken into account the issues raised at the meeting.
- Rashida Manjoo, Law, Race and Gender Unit, University of Cape Town: participate in training programmes for judges, particularly in the area of women's and human rights.
- Virginia Wee, City University of Hong Kong: (a) in light of the Islamization of Indonesia, organize a women's network to document violations of women's human rights by, for example, Imams; (b) continue work on the issue of the gender consequences of the activities of transnationals; (c) continue monitoring international organizations

and NGOs in Aceh (post-tsunami) to ensure that their activities do not violate women's human rights.

- Frances Kissling, Catholics for a Free Choice: (a) seek more opportunities to work with human rights organizations; (b) bring forward to local constituencies issues that other NGOs raise.
- Vahida Nainar, Women's Initiatives for Gender Justice: seek to influence the process of national law reform to take account of gender violence in such situations as Gujarat.
- Marieme Helie-Lucas, Women Living Under Muslim Laws (WLUML): (a) place the focus on warning signs related to the activities and behaviour of non-state (fundamentalist) groups; (b) facilitate the work of those reporting on non-state actors, especially in Algeria.
- Farida Shaheed, Shirgat Gah (Women's Resource Centre): consider how to ensure greater documentation and monitoring of informal dispute settlement mechanisms and how they work.

Rights & Democracy

At the meeting Rights & Democracy undertook (a) to continue to ensure that human rights organizations and women's groups pay attention to each other; (b) to facilitate the informal networking that is already in place and, when possible, to expand it.

Following the meeting, Rights & Democracy will begin developing an outline for an initiative to be incorporated, hopefully, into our regular programming over a three-year period. The initiative is based on several observations by participants, namely: (a) the multiple demands on time and resources, leading to a lack of capacity for systematic follow-up in some areas; (b) the need for one collection point and regular review of cases and situations; (c) the need for analysis of causes and consequences and a strategy based on human rights in order to respond. The project's aim would be to establish one collection point (e.g., establishing an e-mail address, or using an existing one) to which organizations can send all cases, alerts, news of troubling situations, developments in legal reforms, etc. The information gathered would be sorted—either on a country-specific or thematic basis or, perhaps a combination of both—and analyzed. The analysis would take into account a number of elements, including whether the cases, situations and legal developments reflect new patterns of behaviour of either a positive or troubling nature; the informa-

tion indicates an increase in activities by fundamentalist movements that are detrimental to human rights; the state has acted or reacted appropriately in response to the actions of the fundamentalist group(s) (due diligence); there is adequate protection of human rights defenders and advocates seeking to address the cases, situations or legal developments.

The information on cases, situations and legal developments would be summarized in a report. These reports would also include an outline of the analysis that has been conducted and conclusions that can be drawn from the information provided. On the basis of these conclusions, the reports would place the information in a human rights context and recommend actions that could be taken within the human rights framework to address the situation effectively; to seek remedy in individual cases; to contribute to the ongoing effort to achieve the direct accountability of fundamentalists (non-state actors); to press the state to implement laws that have already been adopted, to undertake legal reform, to fulfil its obligation to exercise due diligence.

The reports would be available in French and English, on Rights & Democracy's website. They would also be published in both languages in hard copy. The intent of this work and the reports that flow from it would be to ensure that the information that is now in wide circulation receives the attention it needs and deserves. This work would also be intended to assist activists in a variety of settings in their efforts to uphold the rights elaborated in the international human rights treaties and to hold fundamentalists directly accountable for their actions.

CONCLUSION

The discussions at this meeting did not result in the development of guidelines to assist IHROs and others in their efforts to address the actions of fundamentalist groups. It may be that, as the first meeting of this kind to be held, this goal was unattainable because a number of issues and concerns had to be introduced and discussed before more specific work could be undertaken. The lack of guidelines, however, does not mean the meeting was a failure. Likewise, the inability of participants to agree on a definition of "fundamentalism" was not critical and did not prevent participants from engaging in discussions that were both specific and general in nature. The measure of meeting's success may, therefore, best be found in the frank and sometimes difficult dialogue that took place and the willingness of participants to hear and to take account of the criticisms of others.

In terms of recurring themes and common concerns, it has become clear from discussions that an overriding concern at this juncture, for women living in countries where fundamentalist movements are particularly strong, is to find a way to establish the direct accountability of non-state entities within the framework of human rights law. The agreement, therefore, of the representatives of IHROs to take a closer look at this issue and to consider how the "normative framework" may be developed in this area is an important step forward. So too was the recognition of the need for IHROs to dedicate more resources to developing local constituencies and to take more direct account of local concerns and priorities in their work.

The agreement among all participants to maintain contact through a loose form of networking suggests that the outcome of the meeting was positive and forward-looking enough that resources, however modest, should be dedicated to keeping the dialogue going. The decision of Rights &

Democracy to develop a project that will take the work that is already being done, as well as future work, beyond the mere "talking stage" should ensure that topics and concerns that could not be addressed in detail or at all at the meeting will receive the attention they deserve in future. The project will also do its part to ensure that main preoccupations and common concerns of participants at this meeting will be addressed in a more systematic manner and develop in such a way as to facilitate more effective action by all concerned.

APPENDIX I FUNDAMENTALISMS AND HUMAN RIGHTS

Working Paper

Introduction

Over the last decade or so, the United Nations has hosted a series of world conferences and summits organized around a particular theme: the rights of the child, the environment and sustainable development, human rights, women, social development, the eradication of poverty, food, racism and population, among others. While the connection with human rights was evident at all of these meetings, it was less obvious at others, such as the conference on global warming. Given the scope of rights set out in international and regional human rights treaties, however, the latter type of conferences did address areas, either directly or indirectly, in which rights were or potentially would be affected. It was felt by many that the outcome documents of all these conferences and summits not only reflected a number of the concerns and issues important to women, and by extension to men, but also directly confirmed women's human rights, while committing states and the international and regional systems to respect, promote and protect them. As such, the programmes or platforms for action that were developed provided useful frameworks for activists seeking to advance and vindicate rights.

The UN established a five- or ten-year review process for many of these conferences and summits intended to assess the extent to which the

agreements and commitments had been or were being implemented. The commentaries of states in the context of these reviews raised concerns among women and human rights activists. During the review of the Beijing Declaration and Platform for Action, for example, it became apparent that some states were less interested in fulfilling the obligations they had voluntarily undertaken than in reinterpreting the concluding text and, in some cases, trying to force a renegotiation of it. As a consequence, the concern for activists was not only to ensure the full implementation of prior agreements but also to prevent a "roll back" from the commitments that had been made by states and multilateral institutions.

In some ways, both the UN system itself and the conferences organized by it assume a tidy state-to-state relationship in which reasonable people may disagree on some points but will ultimately choose cooperation, if for no other reason than self-interest. They also depend greatly on the capacity and willingness of UN Members to take joint and separate action so that in each instance a balanced relationship between citizens and state will be established and maintained. The emphasis placed on the responsibilities and privileges of state or state-like entities in the UN system, and similar regional systems (e.g., African Union, Organization of American States), has meant that the policies and practices of non-state entities (e.g., corporate, religious, cultural) have been almost exclusively addressed through the doctrine of a state's responsibility to exercise due diligence, rather than directly.

It could also be said that in some ways the international and regional systems were established on the assumption that, following the Second World War, they would (and could) ensure orderly and measured progress and the development of just societies everywhere. The founding principles upon which such institutions were based did not imagine future political and economic realities—some of their own making—in which the powers of states would be challenged, undermined and, in some cases, virtually superseded by non-state "authorities."

For women and human rights activists there is a sense of "crisis" in which several external elements are seen as contributing factors. One such factor is globalization and its associated power structures. Another is the growing intensity of challenges to the gains women have made through the international and regional systems as well as through national initiatives.

This paper focuses on the second factor and, specifically, the impact of the gathering force of fundamentalisms on women—and by extension on

men—and the challenges this poses. The paper is based on an understanding of "fundamentalisms" as set out by Marieme Hélie-Lucas, namely that:

> *Fundamentalisms are political movements of the extreme right, which, in a context of globalisation, i.e. forceful international economic exploitation and free-for-all capitalism, manipulate religion, culture or ethnicity, in order to achieve their political aims.*[3]

Given the different political and cultural settings in which fundamentalisms are on the rise, the term "extreme right" in the Hélie-Lucas definition is taken to mean any platform or agenda that is exclusionary both on its face and in substance and seeks to narrow the space in which "the other" may live and function.

The paper is intended to assist participants at the meeting in their discussions and the development of guidelines that may be used by activists to increase the effectiveness of the work they are already doing or wish to undertake.

The Language of Human Rights

There has been some debate as to whether "fundamentalism" is the most appropriate term to use when describing the current situation. Some have suggested that a more useful one would be "essentialism." Whichever term one chooses, one characteristic of such movements is the increasing use of the language of human rights to justify their thinking and actions. The following is a brief review of a few of the provisions in international human rights treaties and related texts that have been susceptible to manipulation by those advocating a fundamentalist "way of being."

Article 55 of the UN Charter requires Member States to promote "universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion." In Article 56, Member States commit themselves "to take joint and separate action in cooperation with the Organization [United Nations] for the achievement of the purposes set forth in Article 55." The definition of human rights and fundamental freedoms gained precision with the adop-

[3] Marieme Hélie-Lucas, "What is Your Tribe? Women's Struggles and the Construction of Muslimness," Dossier 23-24 at www.wluml.org; first published in a shorter version in Courtney Howland's *Religious Fundamentalism and the Human Rights of Women* (St. Martins Press, 1999).

tion of the Universal Declaration of Human Rights in 1948. This was followed by the adoption of the International Covenants on Human Rights in 1966 and, ten years later, their entry into force. The rights set out in the Declaration and Covenants were subsequently elaborated in greater detail in associated human rights treaties addressing racial discrimination, discrimination against women, torture, the rights of the child, and the rights of migrant workers and members of their families.

Non-Discrimination

Provisions related to non-discrimination are found in all of the human rights treaties and generally mirror the language found in Article 2 of the International Covenants. This Article stipulates that States Parties to one or both of the Covenants "undertake to guarantee that the rights enunciated (...) will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Article 2 of the Universal Declaration adds that "(...) no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty."

In resolution 1998/5, the Sub-Commission on the Promotion and Protection of Human Rights appointed a Special Rapporteur to prepare a study on the concept of affirmative action. In his final report, the Special Rapporteur noted the tendency of some people to work on the basis that the concept of affirmative action is also encompassed by the term "positive discrimination." The Special Rapporteur stated:

> *... it is of the utmost importance to stress that the latter term makes no sense. In accordance with the now general practice of using the term 'discrimination' exclusively to designate 'arbitrary,' 'unjust' or 'illegitimate distinctions,' the term 'positive discrimination' is a* contradictio in terminis: *either the distinction in question is justified and legitimate, because not arbitrary, and cannot be called 'discrimination,' or the distinction in question is unjustified or illegitimate, because arbitrary, and should not be labelled 'positive.'*[4]

[4]Marc Bossuyt, Special Rapporteur, "The Concept and Practice of Affirmative Action," (final report, E/CN.4/Sub.2/2002/21, 17 June 2002, para. 5).

The Special Rapporteur also stated:

> *The prohibition of discrimination would be a principle without any normative value, if any distinction could be justified by qualifying it as a measure of affirmative action. The principle of equality and non-discrimination, the most basic principle of human rights, which applies to all rights, freedoms and guarantees, would become meaningless if measures which clearly and manifestly deprive persons of any right, freedom or guarantee on the basis of a criterion which is not relevant to the right or freedom in question, were justified by labelling such measures as affirmative action measures. A good intention or a legitimate objective is not sufficient to justify any distinction based on whatever ground in any matter. It is not sufficient that the persons favoured by the measure taken belong to a group whose members were previously the victims of exactly the same kind of measures.* ***An injustice cannot be repaired by another injustice.*** *It is not because the descendants of the victims of the past are substituted for the descendants of the oppressors of the past that a discriminatory measure ceases to be illegal and becomes consistent with the requirements of the protection of human rights and fundamental freedoms.* [Emphasis added][5]

To the extent that a fundamentalist movement can argue or demonstrate discrimination against its members on one or more of the stated grounds, its leaders and advocates manipulate the principle of non-discrimination to advance their own cause. What they do not acknowledge is that both their cause and their campaign to achieve it are, often, arbitrary and, thus, discriminatory in themselves. As such, their actions cannot be justified and, were the movement a state or recognized state-like entity (e.g., self-governing territory), the international human rights system would find them in default in terms of meeting their obligations.

Right to Self-Determination

Another right that is susceptible to manipulation in the context of fundamentalisms is the right of self-determination. It should be noted that international texts do not refer to a right *to* self-determination. Article 1 (2) of the UN Charter states that one of the purposes of the Organization is "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples (…)." In the

[5]Ibid., para. 108.

International Covenants there is identical language, in Article 1, stating that "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." The reference to the right of self-determination, of *peoples*, is now included in virtually every resolution adopted by one or the other of UN bodies, as well as by regional multilateral institutions, and in declarations, programmes of action and human rights and related treaties.

Self-determination, and variations of phrasing that imply for some people the same concept, are often used by movements to justify their actions. It may be helpful, therefore, to recall some of the basic thinking that led to the recognition of a right of self-determination.[6] As Rosalyn Higgins notes in her book "The development of the concept of self-determination was historically bound up with decolonization – with the growing agreement that it was obligatory to bring forward dependent peoples to independence if they so chose (...)."[7] The right came to include the right of peoples to choose to join with another state (e.g., Northern Cameroon [Nigeria], Southern Cameroon [Cameroon]) or to continue in a legally defined relationship with a former colonial power (e.g., Gibraltar [United Kingdom], Puerto Rico [United States]).

Other examples of situations in which the right of self-determination was or is defined by the status of territory include: Western Sahara, for which the UN is continuing to try to organize and hold a referendum; Timor Leste, which chose independence from both Portugal and Indonesia through a popular consultation; Kashmir, for which a referendum was promised; the occupied Arab territories (the establishment of a Palestinian state), for which no resolution has yet been found.

In the years since the UN Charter was written and the Organization established, self-determination has been accepted as a freestanding human right. Higgins states that "the entitlement is also [for peoples] to 'freely pursue their economic, social and cultural development'." Higgins asks "How can that be done if self-determination does not also provide for free choice not only as to *status* but also as to *government*?"[8]

[6]For a good review of the evolution of the right of self-determination see Rosalyn Higgins, *Problems and Progress: International Law and How We Use It* (Oxford: Clarendon Press, 1994), pp. 111-128.

[7]Ibid., p. 113.

[8]Ibid., p. 120.

It is important to bear in mind that while the international system supports the right of self-determination it consistently affirms that the right may not be exercised in a manner, the intention of which, or the result of, is to destroy the territorial integrity of an existing state or state-like entity. The division of Czechoslovakia into the Czech Republic and Slovakia was achieved by mutual agreement, not force. With the dissolution of the Soviet Union, the Confederation of Independent States was created in which the state identity of former republics was re-established. In Canada, there have been two referenda in Quebec in which the people were given the choice of voting to separate from Canada or to remain a part of the country. In that case, federal authorities did not take legal action to prevent the votes from going forward although it was not clear what course would have been taken, in either instance, had the outcome been in favour of separation.

There remain instances in which neighbouring states undertake or support activities detrimental to the stability or territorial integrity of another state. Two examples come to mind. One is the situation in the Democratic Republic of the Congo, in which various other states have been involved in the violence that has afflicted the eastern part of the country. Another is that of Uganda, in which Sudan has provided safe haven and a staging area for members of the Lord's Resistance Army (LRA). The LRA seeks to overthrow the government of Uganda and to establish one based on the Bible's Ten Commandments.

In a number of instances, there continues to be disagreement over whether certain groups invoking the right of self-determination are legitimate "freedom fighters" or groups who seek secession or the overthrow of government by force and justify their action based on a political, "national minority" or ethnic or religious fundamentalism. Recent examples of situations in which the international community has not sanctioned the activities of such groups include: Chechnya (also implicating Dagestan and Ingushetia), the actions of Chechen fighters; Sri Lanka, the armed activities carried out by the Liberation Tigers of Tamil Eelam (LTTE); Turkey, the violence perpetrated by members of the Kurdistan Workers' Party (PKK); Sudan, the Sudan People's Liberation Army (SPLA). It is also important to note that, with the exception of only a few countries, the Taliban was not recognized by states as the legitimate government of Afghanistan following its seizure of controlling power by force. It is also important to remember that the violence perpetrated

against populations by such groups cannot be justified on the basis that it is intended to rectify past or current wrongs.

As noted above, the international system is based on state-to-state relations and efforts to hold national authorities to account for their actions. Historically, the international community has failed to meet the challenge of practices by non-state "liberationist" entities and behaviour which, if acted out by a state, would be condemned for the human rights violations that invariably accompany it. A recent qualified exception to the focus on states was the decision of the Security Council to impose sanctions directed at the União Nacional para a Independência Total de Angola (UNITA). Resolution 1127 (1997) concerned mainly restrictions on the movement of the leadership and members of UNITA (travel, access to aircraft, etc.), but the Security Council expressed "its readiness to consider the imposition of additional measures, such as trade and financial restrictions" if UNITA did not fully comply with its obligations under, among other things, the Lusaka Protocol. The necessary qualification to the measures that were imposed is that their effectiveness depended almost entirely on the willingness of states to implement them.

The failing in the international system in terms of holding non-state entities directly to account is not limited to multilateral governmental institutions. It must be recognized that international and regional human rights non-governmental organizations have not consistently addressed the brutality against populations by non-state entities, other than by invoking state responsibility to exercise due diligence and to ensure that the use of reactive or preventive state force is proportional to the actual threat posed. In the past several years, some organizations have recognized that a more direct approach is needed. For example, in July 2004 Amnesty International and Human Rights Watch issued a public statement condemning the "unlawful killings" perpetrated by a faction of the LTTE in the east of Sri Lanka.[9] The organizations called on "all parties" to order an immediate halt to the killings. In a similar vein, Amnesty International issued an open letter, addressed to Prachanda, of the Communist Party of Nepal (Maoist), expressing concerns over abductions carried out by the CPN (Maoist).[10] While these and similar initiatives by the same or different organizations are welcome, they do not adequately respond to the

[9] Amnesty International, Public Statement, ASA 37/003/2004, 26 July 2004.

[10] Amnesty International, Open Letter, ASA 31/165/2004, September 2004.

challenges and threats posed by so-called "liberation movements" or groups that act on the basis of a fundamentalism, the rationale for which is self-determination.[11]

Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief

Since much of the discussion and concerns centre on fundamentalisms based on religion, it may be helpful to recall that in 1981, the United Nations adopted the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief. In general terms, the provisions of the Declaration relate to:

- the right to freedom of thought, conscience and religion;
- the right to have a religion and to manifest it;
- permissible restrictions on the right (e.g., public safety, order, health or morals, respect for the rights and freedoms of others);
- the prohibition of discrimination by any State, institution, *group of persons, or person* on the grounds of religion or other belief;
- measures by states to prevent and eliminate religious discrimination;
- the rights of parents or legal guardians to organize family life in a manner consistent with their religious belief;
- a child's right to religious education;
- the right to worship and to establish and maintain "appropriate charitable or humanitarian institutions";
- the rights to teach a religion or belief in "suitable" places, to solicit and receive voluntary and other contributions, to choose leaders, to publish and disseminate relevant publications, to observe days of rest and to celebrate holidays and ceremonies, to communicate nationally or internationally with individuals and communities in matters of religion.

[11]A quick review of the lists of publications and thematic programming of other international non-governmental organizations (e.g., the International Commission of Jurists and Human Rights First [formerly the Lawyers Committee for Human Rights] did not turn up any references to programmatic reports focussing on the activities of non-state entities. In some instances, reports may have been prepared on specific country situations in which the activities of such an entity may be addressed.

The Declaration stipulates that nothing in it "shall be construed as restricting or derogating from any rights" defined in the Universal Declaration and the International Covenants.

The prohibition of discrimination by a group of persons or a person is significant. So too, however, is the fact that the Declaration does not specifically set out a right for an individual or group to remain within a faith and, without fear of sanctions, to dissent from or criticize the interpretations of texts advanced by its leader(s), be they self-appointed or appointed by an authority. As such, the Declaration does not address the need for the "democratization of religion" in the face of restrictive and exclusionary fundamentalisms. The main intent of the Declaration is, rather, to ensure, that states: (a) guarantee the space and freedom for religious groups to operate; (b) do not function on the basis of a "state religion" that infringes on the right of people to choose their own faith and to practice and manifest it without interference from the state, or to have no faith; (c) to ensure that groups claiming to be religions are, in fact, "faith-based" and have not been established, for example, to espouse theories of racial superiority.[12]

Separation of Church and State

The doctrine of separation of church and state is held dear in a number of countries and is taken as one of the foundational principles of many democracies. In a perfect world, the principle protects the state from undue influence or control by a religion and therefore ensures that its policies and laws represent and correspond to the interests, rights and needs of the greatest number of people most of the time. In a perfect world, the principle also protects religions and their institutions from interference by the state. Since the world is not perfect, neither supposition is fully realized.

[12] It may be noted that some human rights advocates have proposed that a Convention on Freedom of Religion or Belief, using the Declaration as a starting point, be elaborated within the UN human rights system. Others, including the former UN Special Rapporteur on Freedom of Religion and Belief, do not support such an initiative. While the bases for opposition to the elaboration of a convention are not entirely clear, they may reflect, in part, the bias in favour of the separation of church and state. Were such a convention to be drafted and adopted, however, under the international human rights system it would necessarily deal, primarily, with the behaviour, laws and practices of states. Private actors would only be implicated to the extent that a state's obligation of due diligence may be brought into play.

The Protection of the State

Concerning the protection of the state from significant influence and/or control by a religion, the following examples of influence, if not control, are noted:

- the influence of the Catholic Church in Latin America in such areas as reproductive choice and women's access to family planning;
- the growing political influence of Evangelical Christians and the Pentecostal movement in the United States under the Bush administration (e.g., faith-based initiatives, challenges to *Roe v. Wade*) and, in the past, the opposition of religious conservatives to adoption of the Equal Rights Amendment to the U.S. Constitution;
- the introduction of Shari'ah courts in Northern Nigeria by state governments;
- the power of religious parties in Israel in terms of their cooperation, or not, enabling a majority government to be formed, and the concessions granted to such parties in order to achieve a governing coalition;
- in India, the joint efforts of the Rashtriya Swayamsevak Sangh (RSS), the Bharatiya Janata Party (BJP), and the Vishva Hindu Parishad (VHP), which made electoral gains in 1996 and continue to work for legal reforms to reflect their notion of a Hindu state;
- the establishment of the Taliban regime by force as Afghanistan's government.

A recent example of concern over the extent to which an individual's personal and religious convictions may interfere with the balanced functioning of a state-like structure, especially in terms of rights and freedoms, is found in the impasse at the European Commission. The incoming President of the Commission, José Manuel Durão Barroso nominated Rocco Buttiglione, a Catholic, as commissioner for Justice, Freedom and Security. A number of members of the European Parliament objected to inclusion of Mr Buttiglione in the Commission, following his comments that it was a sin to be gay or lesbian and that "marriage was designed to give women 'the right to have children and the protection of a man.'"[13] The concern rested on the question of whether an individual who holds such views, based at least in part on religious conviction, could perform the

[13]Myles Wearring, "European Commission Dissolved over Gay Comment,", (Sydney Gay & Lesbian Community Publishing Limited, 29 October 2004), www.ssonet.com.au,.

"political" tasks required in a portfolio focussing on issues of justice, freedom and security. Faced with the likelihood of a vote by the European Parliament against the proposed Commission, the incoming President deferred action, pending further consultations.

The Protection of Religions

The protection of religions and their institutions from interference by the state brings into question the related issue of what is public and what is private. Women are all too familiar with this debate because of the generations during which violence against women was seen to be a private matter to be resolved within the family. It is only in the past 20 years or so, that a number of states and localized smaller jurisdictions within states (e.g., municipal police services, provincial or county prosecutorial services) have adopted laws and policing approaches that recognize this violence as a public criminal matter requiring prosecution.

As Madhavi Sunder states:

> *... human rights law continues to define religion in the twenty-first century as a sovereign, extralegal jurisdiction in which inequality is not only accepted, but expected. Law views religion as natural, irrational, incontestable, and imposed—in contrast to the public sphere, the only viable space for freedom and reason.*[14]

The debate over what is public and what is private in the context of religion and faith will not be resolved by requiring all states to declare, in law, that all citizens and residents must be agnostic. The challenge inherent in the question is how to mediate between public and private and to identify doctrines, interpretations and practices that cease to be private (extralegal) and become matters of public interest and importance in which the involvement of the state is both necessary and prudent.

The private character of faith may be as simple as "What passes between me and my God." It may also be seen as the space in which "The Word" is identified and defined and the trustees of the basic tenets may promote them, proselytize and seek conversions. Private may also include the development of canonical (e.g., Catholic) or similar religious law (e.g., the Shari'ah and rabbinical) which structures and regulates the practice of that religion. Private may also include confessional practices (the Catholic

[14]Madhavi Sunder, "Piercing the Veil," *The Yale Law Journal*, Vol. 112 (2003): p. 1402.

which is private, between priest and person; the Quaker, which is public to the extent of confession and/or admission within the community setting).

In considering how to build the bridge between public and private, activists may want to consider that, while restrictive in some aspects, human rights law is not intended to be coercive. Thus, the interpretation of protection of religion from interference by the state surely cannot mean that the civil authorities are, by definition, precluded from taking action when the implications of the tenets of a faith, or their manifestations, implicitly and explicitly violate the fundamental rights and freedoms of individuals both within and outside that faith. Neither can it be taken to mean that the state has no power to take action when a faith is declared and used as a cover for a criminal enterprise or, for example, as the means for the personal enrichment of its self-declared leaders. Neither does it mean that the state may not intervene when the behaviour of the church itself, or any of its representatives violate civil and criminal laws by which all citizens and residents are bound.

The extent to which human rights law not only allows but also requires the state (the public) to take either reactive or preventive steps to ensure fundamental rights and freedoms may be best illustrated by reviewing provisions in some human rights instruments. In the following examples the emphasis is added:

- **The Universal Declaration of Human Rights**: Article 30 states that nothing in the Declaration "may be interpreted as implying for any State, *group or person* any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms" set out in the UDHR.
- **The International Covenants on Human Rights**: Article 5 (1) in both states that nothing "in the Covenant may be interpreted as implying for any State, *group or person* any right to engage in any activity aimed at the destruction of any of the rights and freedoms recognized" or "at their limitation to a greater extent than is provided for." Also, in the concluding preambular paragraph of both Covenants, States Parties "[Realize] that *the individual*, having duties to other individuals and the community to which he [*sic*] belongs, is under a responsibility to strive for the promotion and observance of the rights" recognized in the Covenants.

- **The UN Declaration on the Elimination of Violence against Women**: Article 4 (c) requires states to "exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or *by private persons*."
- **The Convention on the Elimination of All Forms of Discrimination against Women**: Article 2 (1) stipulates that States Parties undertake "to take all appropriate measures to eliminate discrimination against women *by any person, organization or enterprise*."
- **The American Convention on Human Rights**: Article 29 (a) stipulates that no provision may be interpreted as "Permitting any State Party, *group or person* to suppress the enjoyment or the rights and freedoms" recognized in it or "to restrict them to a greater extent" than is provided for in the Convention.
- **The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women**: Under Article 7 (b) States Parties undertake to "apply due diligence to prevent, investigate and impose penalties for violence against women" whether (under Article 2) that violence occurs within the family, the community or is perpetrated or condoned by the state.
- **The Draft Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa**: Under Article 5 (a), States Parties are required "to prohibit all forms of violence against women *whether they take place in the private sphere or in society and public life*."
- **The European Convention for the Protection of Human Rights and Fundamental Freedoms**: Article 17 states that nothing in the Convention "may be interpreted as implying for any State, *group or person* any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms or at their limitation greater than the extent" that is provided for in the Convention.
- **The UN Declaration on the Rights of Human Rights Defenders** (short form): Article 19 stipulates that nothing in the Declaration may be interpreted "as implying for any individual, group or organ of society or any State the right to engage in any activity or to perform any act aimed at the destruction of the rights and freedoms" to which the Declaration makes reference. Article 20 states that the Declaration may not be interpreted "as permitting States to support and promote

activities of *individuals, groups of individuals, institutions or non-governmental organizations*" contrary to the provisions of the UN Charter.

- **The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography**: Article 3 (4) requires each State Party to take measures "where appropriate to establish *the liability of legal persons* for offences" established under the Protocol and states that such liability may be criminal, civil or administrative.
- **The UN Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children**: Virtually by definition, the Convention deals with private/non-state actors. Under Article 4 of the Protocol, unless otherwise stated in the instrument, its provisions apply "to the prevention, investigation and prosecution of the offences established" by the Protocol, "where those offences are transnational in nature and involve *an organized criminal group*, as well as to the protection of victims of such offences."
- **The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**: Article 21 states that "It shall be unlawful for anyone, *other than a public official duly authorized by law*, to confiscate, destroy or attempt to destroy identity documents, documents authorizing entry to or stay, residence or establishment in the national territory or work permits." Article 25 (2) stipulates that "It shall not be lawful to derogate *in private contracts of employment* from the principle of equality of treatment." And Article 68 requires States Parties to work together to prevent and eliminate "illegal or clandestine movements and employment of migrant workers in an irregular situation; sub-paragraphs (b) and (c) of this Article require measures to be taken "to detect and eradicate illegal or clandestine movements of migrant workers and members of their families and to impose *effective sanctions on persons, groups or entities* which organize, operate or assist in organizing or operating such movements" and "to impose effective sanctions *on persons, groups or entities* which use violence, threats or intimidation against migrant workers or members of their families in an irregular situation."
- **The Convention on the Elimination of Racial Discrimination**: Article 4 (b) requires States Parties to "declare illegal and prohibit organi-

zations" that promote or incite racial discrimination; the same Article further stipulates, among other things, that participation in such organizations or activities is an offence punishable by law.

Clearly, a number of these instruments do not have a direct relationship to the question of public and private spheres in the context of religions. They do reflect the intention, however, that human rights law not accord unlimited scope to private behaviour, whether by individuals, groups or formally and legally established institutions. Article 2 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief similarly reflects this intent by stating that "No one shall be subject to discrimination by any State, *institution, group of persons or person* on the grounds of religion or belief." [Emphasis added] And, it should be recalled, the Declaration specifically states that nothing in it "shall be construed as restricting or derogating from any rights" defined in the Universal Declaration and the International Covenants.

The points noted above should make it clear that the violence arising from the actions of non-state actors with a fundamentalist bias—be it based on a religious, political, racial, ethnic or other view—is not sanctioned in *any* of the international human rights treaties, declarations, protocols or charters. Further, they should make it clear that not only may the state not perpetrate such violence, the state may not sanction or tolerate such violence.

It can be argued that the so-called problem with human rights law, in terms of its scope of application, is less real than apparent. The problem may, in fact, be more a case of a failure of international human rights organizations, and their regional and national partners, to seize on the language available to them in many human rights instruments, concerning the policies, practices and behaviours of private groups, individuals and organizations. If these provisions were given more weight more consistently, it would be possible to make the case that a number of fundamentalist manifestations are violative and require an individual state or multilateral institution to take immediate and appropriate remedial action.

With the above points in mind, it can be understood that any manifestation of a fundamentalism (religious or otherwise) is not a "private state," brooking no interference whatsoever, within a public state.

The only exception that comes to mind in this regard is the Vatican where the church is also a state.[15] As such, it must be assumed that the religious authorities, who are also state authorities, are bound by church laws of a non-theological nature. In 2001, the Vatican admitted that priests had "regularly abused nuns sexually." Research conducted by the *National Catholic Reporter* indicated that cases of abuse occurred in 23 countries, including Ireland, Italy and the United States. It is reasonable to expect and require the Vatican, which insists on its character as church *and* state, to take prosecutorial actions against offenders in such cases. Failure to do so would necessarily mean that the church accepts the sexual abuse of nuns by priests as normal and non-criminal, although the Vatican authorities would likely insist on criminal sanctions of the sexual abuse of nuns by anyone not of the priesthood, either within the church or outside of it.

Another example of the limits placed on non-interference by the state in the functioning of churches is found in the cases, in the United States, of the sexual abuse of boys by priests. Some of the senior officials of the Church admitted that the abuse had been going on for some years and was not reported to U.S. authorities. The Church chose, instead, to construe this paedophilia as an illness but not necessarily a crime, to establish centres to provide medical assistance to offending priests, to reassign a number of these priests to different parishes, and to pay compensation to victims under seal. The protection of the reputation of the Church and its integrity before believers was given precedence. Once cases began to come to light, and for those for which the statute of limitations had not expired, the status of the Church and the public/private dichotomy did not prevent the relevant authorities in the U.S. government from conducting investigations and laying charges where warranted.

The above two examples were chosen to demonstrate that the doctrine of the separation of church and state is not intended to allow the church to endorse or tolerate criminal behaviour and to place that behaviour beyond the boundaries of state responsibility. The doctrine does not preclude public accountability and the civil and/or criminal responsibility of those who committed and/or condoned the acts in question.

[15] The Holy See (Vatican) is the only non-Member State that has observer status in the UN. Although it does not have a vote, the Vatican participates fully in relevant UN governmental bodies, international conferences and events. It may be noted that three Dutch deputies of the European Parliament have challenged the standing accorded to the Vatican City State, noting that the Catholic Church is the only religion that is represented as a state in world politics.

A third example related to the issue of potential interference by the state, or not, in the functioning of churches is reflected in the current debate in Canada over same-sex marriage. The federal government has the powers of marriage and divorce. Draft legislation has been prepared to permit same-sex marriages. The federal government requested the Supreme Court of Canada to conduct a hearing on the draft legislation and specifically on four questions. Three of the questions dealt with whether the federal Parliament has exclusive legislative authority in the matter and whether the proposed law would be consistent with the Canadian Charter of Rights and Freedoms. The other question is: "Does the freedom of religion guaranteed by paragraph 2(a) of the Canadian Charter Rights and Freedoms protect religious officials from being compelled to perform a marriage between two persons of the same sex that is contrary to their religious beliefs?" Proponents of the adoption of a law on the legal capacity for marriage for civil purposes (same-sex marriage) argued before the Court that the law would function similarly to legislation in place in a number of European countries where marriage and divorce are state matters. A marriage ceremony in a church sanctifies a union but does not give it the legal definition from which state benefits and other rights flow.[16]

There are two other examples in which the separation of church and state plays a role.

The first example turns on the question of equal protection of religions *by* the state. The issue arose in the context of Britain's long-standing blasphemy law. In a case in 1838, the court restricted the application of the law to protect the "tenets and beliefs of the Church of England." In 1977, a private prosecution was brought under the law against the *Gay News* which had published a poem. According to one source the poem depicted Christ as a promiscuous homosexual. Another source stated that the poem depicted a centurion's love for Christ. The trial judge in the case was reported to have said that "blasphemous libel was committed in a

[16]In January 2005, the Supreme Court issued its Advisory Opinion in which it responded to Question 3 of the government's reference. The Court stated: "Absent unique circumstances with respect to which the Court will not speculate, the guarantee of religious freedom in s. 2(a) of the *Charter* [*of Rights and Freedoms*] is broad enough to protect religious officials from being compelled by the state to perform civil or religious same-sex marriages that are contrary to their religious beliefs." Note: Participants may find the whole of the Advisory Opinion of the Court helpful because it also deals with the question of legislation that may bring into conflict the rights of one group with those of another. The Court considers this point in several respects and refers to the potential of resolving any future conflicts that may arise within, and in a manner consistent with, the *Charter of Rights and Freedoms*. The full text of the Opinion of the Court can be found at www.lexum.umontreal.ca/csc-scc/en/-index.html.

publication about God, Christ, the Christian religion or the Bible and used words which were scurrilous, abusive or offensive, which vilified Christianity and might lead to a breach of the peace." The private prosecution was successful. An effort by British Muslims to have Salman Rushdie tried under the law after publication of his novel *The Satanic Verses* failed. In that instance, the relevant authorities stated that the law only recognized blasphemy against the Church of England.[17] As such, the decisions appeared to demonstrate a bias in terms of protection of Christian faiths and not others, to the extent that, in this instance, blasphemy of another faith (whether real or alleged) was not recognized.

The second, and final, example under the heading of separation of church and state concerns a proposed law in the United States and entails both questions: protection of the state from religious influence and protection of religions from the state. As reported in the 15 October 2004 edition of *The Christian Science Monitor*, some 130 members of the US House of Representatives are attempting to amend a law that prohibits partisan activities (e.g., political rallies and fundraisers) by churches and their authorities.[18] The case is a good example where the language of human rights is being used to advance a religious/political agenda. Proponents of the change argue that the amendment is needed "to restore free speech to religious leaders." And further, that "Barring political endorsements from the pulpit curtails the First Amendment rights of pastors." The bill's sponsor, Rep. Walter Jones, a Republican from North Carolina, is quoted as saying that "Nothing is more important than our spiritual leaders having the right to name candidates who stand for protecting morality." The change to the law would permit political speech and "presentations" during services or at church gatherings.

The article notes the concerns of opponents of the amendment, including: (a) turning churches into campaign vehicles; (b) the possible reshaping of the political and religious landscapes in the country in harmful ways; (c) the potential for political endorsements to divide churches; (d) the recon-

[17]See BBC News, online, at http://news.bbc.co.uk, 18 October 2004. It should be noted that the British government planned to repeal the law following the introduction of a new offence of incitement to religious hatred. The House of Lords Select Committee had stated that any prosecution for blasphemy laws would not succeed or would be overturned on appeal because the European Convention on Human Rights had been incorporated into British law. The new law on incitement of religious hatred was intended to provide equal protection for multi-ethnic faith groups as that accorded Jews and Sikhs. Proponents of the new law stated that it would not interfere with "legitimate debate, religious activities or the freedom of expression."

[18]Jane Lampman, "Does US Law Mute Voices of Churches?" *The Christian Science Monitor* (15 October 2004), available on line at www.csmonitor.com.

figuration of church memberships along political lines; (e) the potential dilution of the spiritual purpose of churches and their "prophetic role as societal consciences"; (f) the possibility that church coffers would become unregulated channels for campaign financing. The article notes that the Bush-Cheney camp was criticized "for seeking to obtain church membership rosters for use" in their 2004 campaign.

The article cites comments by a law professor, countering the human rights/free speech assertions of the proponents of the amendment. Professor Robert Tuttle stated that, under the current law, "The government isn't telling religious leaders they can't talk about anything they want to; it says if you choose to engage in political activity, you are going to be treated under a certain set of rules." Those rules generally relate to tax-exempt organizations and prohibit such organizations from endorsing or opposing political candidates.

The principle of the separation of church and state is not an "all or nothing" proposition. As the above examples demonstrate, there are a number of areas and instances in which the separation neither is nor can be clean. The same examples should help make clear that the separation of public and private, which often accompanies discussions of church and state, is not strictly required by international and regional human rights instruments. In many ways, just the opposite is required. Some matters related to the self-definition and doctrinal bases for faiths do and should remain beyond the reach of the state. There are a number of areas, however, where human rights law does not and will not allow the state to condone or tolerate discriminatory and anti-rights practices by faith-based groups or institutions, or by individuals professing a faith and acting on the basis of that profession.

National, Racial or Ethnic fundamentalisms

The concerns of women over the impact of fundamentalisms on their lives are more frequently reported in the context of religion than in any other. The impact of national, racial or ethnic fundamentalisms on women and men, however, cannot be ignored. The statements and proselytizing of those advancing a national, racial or ethnic cause often take on the fervour of a religion. In some instances, both the leaders and proponents of such movements do not hesitate to mix messages of racial or ethnic purity and necessity, for example, with religious imprecations di-

rected at "the other." As such, in a number of instances, these fundamentalisms play on and with the minds of individuals and communities by invoking both the fear of God (however manifested) and fear of "the other." Similar to more strictly religious fundamentalisms, these movements preach and pursue the "politics of authenticity" and anyone not deemed to be authentic is, virtually by definition, to be eliminated or subjugated.

There are a number of historical examples of the "politics of authenticity" which produced inquisitions and regional conflicts or similar conditions. At their most expansive, they produced conflicts that came to be characterized as "world wars." More contemporary manifestations of this kind of politics have, in some cases, resulted in conflict while others have produced resentments, fear and discrimination, thus laying the groundwork for armed conflict should any one person or group choose to seize the moment and exploit it.

The following examples of contemporary fundamentalisms based on the politics of authenticity are cited because each has distinct characteristics and led to different outcomes or, as yet, no definitive conclusion.

Côte d'Ivoire

In the mid-1990s, in Côte d'Ivoire, the text of a tract with xenophobic contents was circulating in the country addressed to Ambassadors "for the information of their citizens." The tract claimed that after the November 1996, Bedie would free the country and that, "like Hitler," he wanted a pure race and an undivided Côte d'Ivoire for "pure-bred Ivorians." The tract was signed by the "soldiers of Bedie," the "pure-bred Ivorians." The statement was seen to reflect a wave of xenophobia that was washing over the country at that time. The full text of the tract is as follows:

TO AMBASSADORS FOR THE INFORMATION OF THEIR CITIZENS

> *Please accept our sincere thanks for your contribution to our country's development. Now please go and develop your own countries which you have deliberately neglected and abandoned to poverty.*
>
> *Get out of our schools, our markets, our streets, our hospitals, our temples, our churches, our mosques, our university, our countryside, our villages, our fields and above all our port, in a word, get out of our country. We are suffocating and we've had our fill. 'Côte d'Ivoire belongs to the Ivorians' is*

not a hollow slogan.

You can guess from the Electoral Code what to expect next November [1996] after the elections. Act now before the major decisions are taken, don't just wait to experience what's in the offing. Save your women and children now or else it will be like in Algeria, we are prepared to hunt you down everywhere.

Above all don't count on the police or army to hold us back, and even less on the authorities because we all agree: by opening our borders President Houphouet has dropped us in it. Now it's over, Bedie will free Côte d'Ivoire; he himself has said that you can't govern against the people. It's you we're talking to, because what the Ivorian people want is for you to get out. What Bedie wants, like Hitler, is a pure race; an undivided Côte d'Ivoire for pure-bred Ivorians.

Growth is once again within our grasp and we refuse to share it.

Get the so-called international agencies, ADB, ILO, UNICEF, UNIDO, Air Afrique, the World Bank, IMF, WHO, etc.—in other words everything international off our backs. We're going to run national offices and keep to ourselves—a pure race.

It is not our fault if your Presidents are useless.

It is not our fault if your countries are pathetic.

It is not our fault if you are land-locked.

What if there was no Côte d'Ivoire? So get out.

We the undersigned, the soldiers of Bedie. The pure bred Ivorians.[19]

In 2001, the UN Special Rapporteur on religious intolerance reported on conditions in Côte d'Ivoire during the October 2000 presidential election.[20] The Special Rapporteur noted that violent clashes between militants of the Front Populaire Ivoirien (FPI) and the Rassemblement des Républicains (RDR) reportedly took on a religious tone. Political fighting turned into violent ethnic, but also religious, confrontations between Muslim Senufos and Dioulas from the north, who supported the RDR, and Christians from the south, who supported the FPI. As a result of this unrest, at least several dozen people died and mosques and churches were destroyed. In its response to the concerns expressed by the Special

[19]Reproduced in the report of the UN Special Rapporteur on racism and racial discrimination, E/CN.4/1997/71, para. 82.

[20]Report of the UN Special Rapporteur on religious intolerance, E/CN.4/2001/63).

Rapporteur, the government stated that it was the victim of a persistent misinformation campaign intended to give the impression that the country had suddenly become xenophobic, was torn by ethnic and religious conflicts and on the brink of civil war. Among other things, the government noted that it had given assurances to the government of Burkina Faso specifically that its citizens were safe in Côte d'Ivoire and that Mandé communities were free to build mosques alongside temples and churches. The government also referred to the events surrounding the October 2000 presidential elections and the crisis that followed, which included actions against churches, temples and mosques, and to the fact that Côte d'Ivoire is a secular state which gives equal importance to the celebration of Christian and Muslim holidays.[21]

Serbia

By now, most people are familiar with the "Serbia for Serbs" or "Greater Serbia" nationalism of the Miloševič era in what was then known as the former Yugoslavia. There was eventually extensive coverage of the rape camps that were set up in which sexual violence against Muslim women was mandated as well as of the extrajudicial killing of Muslim men in, for example, Srebrenica. Also reported at length was the "cleansing" of Kosovo in which many thousands of ethnic Albanians were threatened and forcibly removed from the territory. Less commonly known and understood are conditions in Serbia following October 2000 and the election of Koštunica, an event that was generally welcomed by the international community. As Staša Zajovič noted, the "nationalism without Miloševič" was said to reflect such attributes as democratic, evangelistic, moderate and civilized.[22] Zajovič outlines some of the main features, however, of the "authentic nationalism" promoted in Serbia by the Koštunica government and those that have come after, including:

- clerical nationalism, in which political leaders tried to win the favour of the Serbian Orthodox Church (SPC);
- theocratization of the state and de-secularization of society;
- introduction of religious teachings in state schools;
- clericalization of public life;

[21]Interim report of the Special Rapporteur on religious intolerance to the General Assembly, A/56/253, Annex, para. 11.

[22]Staša Zajovič, "Religious Fundamentalisms and Repression over Reproductive and Sexual Rights," available at www.wluml.org.

- strengthening of clerical fascist tendencies;
- disproportionate attention in media to such tendencies rather than to their opponents;
- use of the language of hatred and exclusion of others by some political parties (e.g., Nova Demokratija);
- revision of history, particularly in terms of the crimes committed during the 1991-1999 wars;
- the preaching of religion as the only form of spiritual culture.

Contrary to the expectation or assumptions of many that Serbia has joined the community of states in which the expression of nationalism is not detrimental, "the influence of retrograde para-religious forces from the SPC and other religious communities" had not diminished and, in fact, "they have been allowed more public space and are being treated—primarily the Serbia Orthodox Church—as equal political collocutors, whose views must be taken into consideration."[23]

It may be noted that in the climate generated in Serbia after October 2000, non-governmental organizations have come to be seen as a "sect" or "sects" and part of an anti-Serb conspiracy.

Palestine

In her paper, Nahda Younis Shehada states that in Palestine, "an examination of the main nationalist movement (Fatah, the ruling party of the PLO and consequently of the Palestinian Authority [PA]) and the main Islamist movement (Hamas) shows the blurred boundaries between the two."[24] In the context of the first *Intifada* and all that has come after, a number of points were noted, including:

- the imposition of the *hijab* in Gaza, by Hamas, as a manifestation of Islamist power to impose rules by attacking secularist groups and Fatah "at their most vulnerable points: over issues of women's liberation";[25]
- the weakness of the "Left," and the emergence of two alternatives: (a) the revival of traditional social structures promoted by the secular Right; (b) increased popularity of Islamists;

[23] Ibid.

[24] Nahda Younis Shehada, "The Rise of Fundamentalism and the Role of the 'State' in the Specific Political Context of Palestine," available at www.wluml.org.

[25] Ibid.

- following the signing of the Oslo agreement, rising dissatisfaction with the Palestinian Authority, its poor performance and corruption, and the consequent rise in popularity of the Islamists;
- Islamists strategies as a political response to the Oslo Agreement and the PA leadership;
- the use by the PA of the discourse of negotiation and by Hamas of the discourse of resistance.

In the concluding section of her paper, Shehada states that:

> *... the objective of the Islamists in the 1980s (of Hamas, in particular), and especially during the Intifada, was to establish an alternative to the PLO project politically and socially. Hamas' political alternative was to build a religious Islamic state in which the main source of legislation would be the Qur'an and Shari'a as they interpret and define them. Nine years after Oslo, Hamas has been shifting its strategy from reformism to violence, towards achieving this end. The squeeze on Hamas funds following its labelling as a terrorist group by the U.S. has served to provide a further reason for the shift away from reformism. Hamas' ultimate goal is not to destroy the peace process per se, nor is it to reassert Islamic culture; its aim is to radically oppose the PA's political project and seize power once and for all. In the end, the price of the ascendancy of Islamists will be paid not only by women, but also by all the democratic, secular and leftist forces in Palestine.*[26]

Common Concerns

A review of some of the many papers and books that have been written about fundamentalisms—of whatever religious, political, racial, ethnic, economic or other stripe—suggests that women, their lives and their rights are very often the battleground on which conflicts regarding who or what is "most correct" are fought, either with or without guns. The review also suggests that while there are specific conditions and circumstances affecting women in very different parts of the world, there are common themes and concerns shared by women, although perhaps described and experienced in different ways. These generally arise as a result of the impact of the "politics of authenticity" or the "politics of identity." As noted above, these politics may be used either by self-appointed, elected or selected guardians of "The Word," whether that Word be of a religious or some other character.

[26]Ibid.

In her paper on constructing identities, with particular reference to the Muslim world, Farida Shaheed stated:

> *For women, who are frequently made the repositories of culture, the issue of identity is crucial. Women's empowerment both challenges and is challenged by cultural and political issues of identity/identities: how identity is formed; who defines it; how definitions of gender fit into definitions of community and those of a collective and personal self; the interplay between definitions at the local, regional and international levels are of direct consequence to women wanting to redefine the parameters of their lives.*[27]

In order to be clear that establishing one's own identity is not confused with the right of peoples of self-determination (as above), it may be helpful to note that Shaheed speaks of *self-definition*. Variations on this term which may also serve include self-realization and self-expression.

A recurring theme in much of the literature on fundamentalisms, and particularly faith-based fundamentalisms, is that of secular vs. religious, with human rights often seen to be secular and non-responsive to the tenets of religion. In his comparison between Western and Islamic approaches to religion, secularism and human rights, Michael Freeman arrives at two conclusions, namely: "(...) 1) at the philosophical level, there may be no decisive argument for according priority to secularism or religion; 2) the politics of this debate may be more important in practice than questions of religious philosophy."[28]

Bearing in mind these two conclusions, the question for women activists and human rights organizations may well be: Is it really necessary to engage in, and expend resources on, the disputes and debates over the so-called secular character of human rights and (or versus) the canons of faiths? Can the goal of self-definition of both the individual and the community be achieved by standing above or moving beyond those arguments?

The following listing reflects points that arise in the literature on fundamentalisms and are more or less shared despite the real or imagined boundaries and differences cited by some between people and peoples, whether individual or communal. The listing also reflects a general un-

[27]Farida Shaheed, "Constructing Identities – Culture, Women's Agency and the Muslim World," Dossier 23-24, July 2001, available at www.wluml.org.

[28]Michael Freeman, "The Problem of Secularism in Human Rights Theory," *Human Rights Quarterly*,25 (John Hopkins University Press, 2004), p. 375.

derstanding that, whatever the context, a "Word of the One" (or several, in the case of certain religions), exists. This "Word" may be the Qur'an, the Torah, the Bible, the Veda, the Pali Buddhist canon, or any other collation of foundational principles and laws (political, economic, social, etc.). It is also generally understood that, following its first rendering, this "Word" is subject to interpretation, re-interpretation and manipulation by individuals and groups in order to achieve power (political, economic, social, cultural, etc.), very often at the expense of women. Also noted is the practice of systematically eliminating references to the contributions of women scholars in the evolution of the principles and laws at play, thereby ensuring the invisibility of women as intellectuals and leaders. The following list of common themes and concerns is random; the order in which the points are made does not imply greater or lesser importance, thus:

- the use and abuse of a religious or other doctrine by emphasizing the role of women as guarantors of "the future," the source of children (soldiers and sign-bearers) and preservers of family;
- the need to guarantee a space in which women may discuss their situation and the discrimination against them in current laws (freedom of expression and the right to participate);[29]
- use of the "purity argument" to stigmatize and discriminate against women and men who choose same-sex relationships;[30]
- the exploitation of the divisions among women, to weaken their position vis-à-vis men, and the silencing of diversity and dissenting voices;[31]
- the willingness of the state to authorize local authoritarian rulers, who are not governed by state laws, to govern the lives of citizens;
- the need for plurality and choice within culture;
- the imposition of identity by law;
- the view that religious laws are fixed and immutable;
- the use of religious arguments to prevent legal reform;

[29]For example, in the context of Palestine, see Nahda Younis Shehada, "The Model Parliament for Family Law Reform: A significant step towards linking women's issues with national concerns.".

[30]See, for example, Anisa de Jong, "Attack against Lesbian, Gay and Bisexual People: Warning Signs of Fundamentalism?"

[31]See, for example, Ziba Mir-Hosseini, "Iran: Nationalism, Liberation and the Alliance between 'Fundamentalists' and Government Opposition."

- the codification by religious or political authorities of the most conservative opinion into law;
- the separation of religion from other parts of the social sphere—religion becoming a mark of "otherness" and also being "othered";
- the creation of an "atmosphere of civil war" by "traders in religion";
- a gendered approach to education in which: (a) the roles of girls and women are generally portrayed as revolving almost entirely around the family and service to the husband, or the household in cases of joint family systems; (b) education is denied girls and women; (c) religious education is not provided to girls or women;
- a profoundly patriarchal world view and the use of fundamentalist conspiracy theories as a "labour saving device" to reduce complexity and to "explain" what goes on;[32]
- the role of religions in changing the state's fundamental legal systems, to the detriment of women;[33]
- the exclusion of women from the decision-making (or senior levels) of religious institutions, which impedes women's contribution to the processes of setting norms and policies within those institutions;
- repression of women's reproductive and sexual rights;
- the influence of religions and their power to use "religiously based" personal status laws to perpetuate the "second-class" status of women and girls (marriage, divorce, marital rights, inheritance, education, etc.);[34]
- the transformation of religion into an ideology for political struggle and a source of legitimacy;[35]
- the tendency of fundamentalist authorities to codify the most conservative opinion into law;
- the silence of the state when faced with a fundamentalism that attacks women;[36] noting that this silence gives these sub-state entities legitimacy, including those who favour the position adopted by the state,

[32]See, for example, Elfiede Harth, "America's Mission of Saving the World from Satan: Christian Fundamentalism in the USA."

[33]See, for example, Sanusi Lamido Sanusi, "Fundamentalist Groups and the Nigerian Legal System: Some Reflections."

[34]See, for example, Nira Yuvai-Davis, "Jewish Fundamentalisms and Women."

[35]See, for example, Zainah Anwar, "Islamisation and its Impact on Laws and the Law-Making Process in Malaysia."

[36]See, for example, Louisa Ait-Hamou, "Women's Struggle against Muslim Fundamentalism in Algeria: Strategies or a Lesson for Survival."

and allows them to continue and expand their activities against women;

- the images projected by media of both fundamentalisms and their impact on women;[37]
- the fight to "democratize" within a fundamentalism, that is, ensuring the space within a set of fundamentalist beliefs in which dissent is permitted without fear of retribution or such practices as shunning, ostracism or ex-communication; also expressed as the denial of the right to engage in cultural, religious, political or other community activities on one's own terms;
- the exclusionary and fascist character of fundamentalist movements;[38]
- the contradiction between the lifestyles of extremist scholars and what they preach over the media.[39]

The over-arching statement about fundamentalisms in the literature that was reviewed is that, irrespective of its character, the proponents and proselytizers of a fundamentalism are engaged in a struggle for power. In order to achieve power, fundamentalisms: (a) create or play upon a fear of "the other"; (b) often successfully equate their view with morality and moral values and, thus, the need to protect the state, the church and/or community from the "immorality" of others, as defined by them;[40] (c) arbitrarily establish that which is "authentic" and systematically seek to exclude, eliminate or eradicate that which they do not accept as such.

There are two other points that should be noted.

First, fundamentalist projects that violate human rights gain credence and legitimacy from each other. When one group is not held accountable for the violence and abuses it perpetrates, another is emboldened and, usu-

[37]See, for example, Gabeba Baderoon, "Revelation and Religion: Representations of Gender and Islam in Media, Recalling 11 September 2001 from a South African View."

[38]See, for example, Nadje Al-Ali, "Secular Women's Activities in Contemporary Egypt."

[39]See, for example, Aime Bojang-Sissoho, "The Media and Signs of Fundamentalism: A Case in the Gambia."

[40]In the United States, Representative Walter Jones, a Republican from North Carolina, and the sponsor of the bill to amend laws concerning the political activities of religious leaders and churches (as above), is quoted as saying "Nothing is more important than our spiritual leaders having the right to name candidates who stand for protecting morality." This statement reflects a common thinking that in order to be "moral" one must also be "religious." For instance, the proponents of the Christian evangelicals in the U.S. particularly, but also elsewhere, do not seem to accept that a person can be an agnostic, for example, and still live a moral life informed by positive human values. Cited in the article by Jane Lampman, published in *The Christian Science Monitor*, op. cit.

ally, also not held accountable. Thus, the "identity" parameters of one group provide justification for others.

Second, the proponents of a fundamentalism are rigorous in their demands to "have it both ways." An example of this is found in the absolute demand of the right of girls and women, as an expression of faith and religious freedom, to wear the head scarf (e.g., in France). The same proponents do not tolerate, however, the right of women, as an expression of personal freedom, to dress as they choose (e.g., to wear short skirts or, in the case of Pakistan, jeans). The double standards, or contradictions, common in fundamentalist projects is seldom addressed, either by the proponents themselves or those who are critical of them.

The Development of Guidelines

The complexity of fundamentalisms—and the responses, or lack of response, to them—makes it difficult if not impossible to come up with a definitive list or approach that will adequately address their negative aspects and impact, particularly on women. Guidelines may be developed, however, in some areas. Participants may, therefore, wish to consider the following questions when considering what kind of guidelines may be most helpful in the effort to resist and reverse the impact and influence of fundamentalisms. The posing of these questions is not intended to preclude the inclusion of consideration of other questions which participants at the meeting may consider of greater or equal resonance and immediacy.

- What can be done to displace the public/private dichotomy in current debate and approaches so as to ensure that provisions in relevant treaties and related instruments—referring to *persons, groups or institutions*— can be effectively used to curtail and counteract fundamentalisms? What steps might be taken to ensure that the actions and activities of so-called private (non-state) entities are adequately scrutinized and, when violative of rights, adequately and appropriately sanctioned?
- Is it possible to stand above or beyond scholarly arguments over secularism and theology, and by association "universality," and suggest ways of working and advocating on behalf of women? Is it possible to use, as a starting point, the need to ensure for each person an envi-

ronment respectful of human dignity and in which each person is ensured the capacity and freedom for self-definition?

- What steps might be taken to "democratize" the movement, organization or national, religious or cultural institution? That is, what can be done to ensure that the right to leave or to adopt, practice and manifest a faith or political position includes the right to remain within, to dissent, and to press for internal changes without fear of retribution?
- What steps might be taken to address the use and abuse of human rights language by fundamentalisms to justify unjust actions in the name of "authenticity," the protection of morality or other cause?
- Are there approaches that can be used to make the point that "political power" is not always the "power of the state?" If so, what steps might be taken to address the quest by fundamentalisms for political power by "remote-control," influencing or directing the functioning of the state without becoming it?
- Given the tendency of fundamentalisms to take life from conspiracy theories (those labour-saving devices that eliminate complexity), what approach can be taken to dismantle this dependency and to insist on the complexity of societies? In other words, what steps can be taken to overcome reductionist thinking?
- In instances where the leaders of a fundamentalism will not engage in dialogue with those seeking change, and the state remains non-responsive, what other avenues may be taken to address the impact of that fundamentalism on women and, by extension, on men?
- Has the international and/or regional non-governmental human rights community handled the issue of fundamentalisms and their behaviour with a consistent approach to support the efforts of local and national women's organizations and human rights organizations? If not, what steps could be taken to ensure that, for example, problems arising from the public/private dichotomy are adequately, regularly and systematically addressed, in partnership with those most affected?

Conclusion

As noted at the outset, this paper is not intended to be prescriptive. The goal was to deal with some areas and aspects of fundamentalisms that

have a profound, usually negative, impact on the lives and rights of women. It also reflects an attempt to address the failure of states, the international community of states, and human rights organizations to deal with fundamentalisms in a consistent way and to suggest that the emphasis on secular/theological, public/private and "the West vs. others" is, in many ways, detrimental to the long-term cause of human rights.

In elaborating guidelines, participants are encouraged to bear in mind several points:

- the Vienna principle of the universality, indivisibility, interdependence and inter-relatedness of human rights as a guide;
- the backlash that is now evident to the statement that the rights of women and girls are an "inalienable, integral and indivisible part of universal human rights";
- the priority given in Beijing to the eradication of all forms of discrimination based on sex and what this means within the public/private sphere;
- the need to recognize, as human rights organizations, the relevance of the equality principles in the public and private spheres, noting that these principles cannot be maintained in one sphere and not in the other.

APPENDIX II
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