We need marriage equality

The fight for same-sex rights has moved past civil unions and must now focus on marriage, former Australian High Court Justice Michael Kirby has said.

At the same time, he warned against losing sight of the more important global objective of decriminalising same-sex activities.

The Honourable Michael Kirby, one of Australia’s highest-profile gay rights proponents, made the comments at yesterday morning’s session titled ‘The tie that binds: same-sex marriage, civil unions, or just friends? Why the difference matters’.

Civil unions are tainted by a separate-but-equal status. “The caravan has moved under the bridge… I think it’s now marriage or nothing,” Kirby said, referring to Australia. Just five months ago US President Barrack Obama announced his support for same-sex marriage.

Canada, Argentina and South Africa have the most liberal same-sex marriage laws, permitting non-citizens to marry.

New Zealand’s parliament has just passed a bill to legalise same-sex marriage which is soon expected to become law. The latest developments in New Zealand are tipped to pressure its larger neighbour to instigate similar laws.

Kirby’s comments on Wednesday were delivered to a packed audience that included the IBA president-elect Michael Reynolds.

They were in response to a question from the audience about a potential same-sex union bill in Australia. As constitutional difficulties have marred previous attempts to introduce same-sex marriage in the country, the audience-member (who is connected to the proposal) asked how a civil union bill would be received by the homosexual community. Specifically, he asked if it would cause offence, given the right to marriage could be more appropriate.

“I don’t think GLBT [gay, lesbian, bisexual and transgender] people would accept it now,” Kirby responded. “I don’t think they would want to get civil unions or civil partnerships.”

He noted that opinion polls show that 70% of the country’s population favour marriage equality.

A more urgent priority

While the marriage debate has reached the forefront of many countries’ gay-rights movements, Kirby urged the room to “keep their feet on the ground” and not lose sight of the more important goal: removing the laws that criminalise same-sex activities.

“That is the urgent challenge,” he said.

Panelist and Canadian barrister Roy Douglas Elliott noted that international law has recognised that failure to repeal sodomy laws violates the UN treaty on the International Covenant on Civil and Political Rights (ICCPR).

Elliot said all countries that have committed to the treaty – “if they are serious about their commitment to international legal principles” – should be taking the relevant steps in their home jurisdictions.

The panel’s comments in this context were focused on the Commonwealth of Nations. “It was a uniform, most unlovely gift of British administration throughout the world… every place where the union jack ever flew got the sodomy law,” Kirby said.

Elliott reminded the audience: “Aboriginal cultures in Canada did recognise same-sex marriage prior to the arrival of the Europeans.”

Of the 54 Commonwealth states, 41 still punish adult, private, consensual homosexual acts. Last year the Eminent persons group on the future of the Commonwealth unanimously recommended the removal of the remaining laws against GLBT people in Commonwealth countries.

Not only does criminalising and penalising these activities go against international principles, it has a devastating impact on many people’s lives. Kirby said: “It leads to violence, it leads to blackmail, it leads to police brutality, it leads to stigma, and it leads to HIV/AIDS.”

Spreading the enlightenment

An audience member noted that the French parliament is debating same-sex marriage, and that the latest argument against the bill is that it opens the door to polygamy and other more radical extensions of the concept of marriage.

Such arguments were deemed an example of the overreaction that comes from ignorance and discomfort about same-sex relationships.

Kirby made an impassioned plea for more people to get to know more same-sex couples, and create a more accurate dialogue on the topic. “I think if people get to know more people who are in long-term gay, lesbian and transgender relationships, they will feel less threatened by it,” he said.

The session was marked by personal stories from the panel members, a number of which had been in long-term same-sex relationships. Kirby referred to an Australian senator’s smear campaign against him and his partner 10 years ago. The senator was subsequently forced to stand-down from his position as cabinet secretary.

Common misperceptions about GLBT persons have led to a denial of the dignity of their relationships. “Really what [people] have got to do is know more GLBT people who are in long-term relationships and find out that boringly enough…the reality is that we are all fundamentally the same,” said Kirby.

The IBA’s LGTB issues subcommittee, which co-hosted the session, was formed just a few years ago. It is one of their goals to help individuals and lawyers in countries that are further away from recognising same-sex rights.

The subcommittee’s chair, Ramyar Moghadasi, recalled being contacted a year ago by a very active member from Nigeria. The member said he could no longer participate in the subcommittee’s activities as it was against his religion.

“My personal view is that he was pressurised into saying that,” said Moghadasi. “So it is one of our goals to help colleagues not to have to go through that.”

This session was also co-chaired by the IBA’s Immigration and Nationality Committee.
UN sanctions process must improve

The UN Security Council’s Al-Qaeda and Taliban Sanctions Committee, which oversees the ombudsman, yesterday called for lawyers to work together to find a way to maintain credible UN sanctions powers that do not disregard the rights of the individual and entities involved.

The UN’s Al-Qaeda sanctions regime was first established in 1999 by resolution 1267. The UN Office of the Ombudsperson of the Security Council’s 1267 Committee was created in 2009 to assess the legitimacy of sanctioned individual and entities’ requests for removal from the 1267 list.

The UK Supreme Court and European Court of Justice have since dismissed the Office as insufficient to establish sufficient legal, political and procedural safeguards on UN sanctions.

Speaking on yesterday’s ‘UN and EC sanctions – a due process wilderness’ panel, UN Security Council’s Al-Qaeda and Taliban Sanctions Committee ombudsman Judge Kimberly Prost said such conclusions had been drawn prematurely.

“I don’t think the office of the ombudsman should be dismissed without real and thorough consideration as to whether it is providing sufficient due process in a very unique context,” she said.

Through a process established by Prost, the office of the ombudsman responds to delisting requests by individuals and entities included on the UN 1267 sanctions list based on all relevant information, including classified data. Decisions are made as to whether the information gathered is enough to retain an individuals’ listing presently.

It is not, however, a judicial review. “There are those who say this process is not fair because it is not a judicial review,” said Prost. “But whose judicial review are they referring to?”

She cited the case of Yasin al-Qud, a Saudi Arabian businessman listed by the UN as well as EU and US governments as a ‘Specially Designated Global Terrorist’, despite being defended by friends and associates as a philanthropist.

“If you compare the recent US court decision on al-Qudi with the decision made by the ECJ, there is no consistent view of what judicial review is,” she said. “Should it be a separate kind of process in the international context?”

“Does the process even need to be a judicial review or would an independent review such that conducted by the office of the ombudsman suffice?” she asked.

The latter review process was more beneficial than a judicial review in many ways, she said. “There is no deference involved, for instance,” she said. “In addition, I’m making decisions based on all the information available and not – as with a judicial review – with information frozen in time.”

The question as to what exactly the fair process was in the context of the UN Security Council, was of huge importance, she said, and a question that no court had addressed.

How to make lawyers popular

Although public perception of lawyers, fuelled by media stereotypes, is broadly negative, a survey yesterday heard that there are positive steps the profession can take to rehabilitate its public image.

Indeed, if life’s just a popularity contest, lawyers seem to be losing. One survey carried out last year, Legal Services Consumer Panel revealed that only 43% of the public trust lawyers. This is down from 47% in 2011.

But lawyers permeate society in almost every country: the first 11 pages of the Irish Times yesterday ran a story involving lawyers on every page. “Everyone knows lawyers, everyone interacts with lawyers, everyone thinks their own lawyer is terrific but that lawyers generally are terrible,” said James Klotz, of Miller Thomson in Canada.

The 43% satisfaction level in the UK contrasts with 80% public trust in doctors. A US Harris interactive poll recently concluded that occupations enjoying prestige were those perceived as helping people. It listed nurses, teachers and the fire service. “At the heart, isn’t helping people essentially what lawyers are about too?” said Elizabeth Davies of the Legal Services Consumer Panel in the UK.

Media stereotypes propagate an image of lawyers as either Dickensian figures, out of touch with reality, profit-hungry or port-sudden Rumpole of the Bailey-type characters. The rise of the compensation culture can also be linked to a decline in the image of lawyers.

Another survey recently found that the profession topped the list of people respondents would least like to sit next to at a dinner party, in front of Big Brother reality television contestants and Victoria Beckham.

And, with reports of some 30 million jokes a day about lawyers on the internet, there seems to be a real issue around how lawyers are perceived on the public stage.

But, according to Davies, it’s not a question of better publicity. “When was the last time you saw a news story about something good happening in a hospital?” she said, referring to the widespread popularity of the medical profession. “The media is a red herring that can really lead to complacency. There are tangible actions that are within the control of the profession and the regulators that will change public perception.”

Among the tips offered to build public confidence in lawyers at yesterday’s session was to embrace regulation which is independent of the profession and operates transparently. Making efforts to welcome competition and abandon protectionism was another suggestion.

“We’re moving to an approach in the UK where anyone able to demonstrate their competence can offer legal services and any suitable person can own a law firm,” said Davies.

Other tips were to provide excellent customer service, deal effectively and properly with complaints and improve the diversity of workforce. Davies also suggested modernising education and training regimes, writing codes of conduct in a language which consumers can understand and involving the public more in the development of regulation.

According to Ola/uspo Shashore of Aujumogoba & Okere Barristers & Solicitors in Nigeria, the consequences of poor perception of lawyers in society can be dire. If the profession has a bad reputation, enrolment in the law as a profession will diminish. “The consequences of this are not just the trivial of our profession, they are the very soul and fabric of our society,” added the Nigerian lawyer.

When the patronage of a profession is low and perception is poor, the result is that people have very low trust in institutions that are associated with the profession, said Shashore, listing the courts and law enforcement mechanisms as examples.

This could result in a low level of trust in the rule of law, which itself could lead to the breakdown of law and order and social upheaval.

Using the capture of Muammar Gaddafi as an example, Shashore said that the Libyan dictator’s human rights were disregarded. “Nobody had any time for lawyers,” he added. “The last thought on anybody’s mind was to call a lawyer and read him his rights.”

This was contrasted with the capture of Gaddafi’s son in Mali, who was treated with more dignity. He was put on a plane and handed over to the state so that the machin- ery of justice could start.

“That was so because, whereas in Libya there was total disrespect for law and the profession, in Mali, because there hadn’t been social upheaval, there was still some regard for law and order,” said Shashore.
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A winning team

Each year, the IBA recognises the achievements of three outstanding lawyers at its annual conference. Here are the worthy winners

**Young Lawyer of the Year Award**

**Kimathi Kuenyehia Sr.**

Kimathi Kuenyehia Sr, a Harvard-educated transactional lawyer won the IBA Young Lawyer of the Year Award, in recognition of William Reece Smith Jr. Kuenyehia is the first African to win the award.

He is the managing partner at Kimathi and Partners and has been consistently ranked as one of the leading corporate lawyers in Ghana. Over the past year, he has negotiated the acquisition of a bank, an oil block, a mining company, an insurance company, among other large projects.

In March, Kuenyehia was honoured by the World Economic Forum as a Young Global Leader 2012, in recognition of his ‘professional accomplishments, commitment to society and potential to contribute to shaping the future of the world through inspiring leadership’.

Kuenyehia also mentors and offers free legal services to start ups and young entrepreneurs. One such start up, Dropifi, was selected by Forbes Africa Magazine as one of the Top 20 start ups in Africa. He also provides free legal services to prisoners who have been on remand for a long time without trial.

Kuenyehia has established a reading programme for young people in Ghana. “There is a dearth of libraries in Ghana. So I open up my library to the young people that I mentor,” he says.

The Young Lawyer of the Year award, sponsored by LexisNexis, is open to all lawyers up to the age of 35 and is offered to a candidate who has distinguished him or herself while showing commitment to ethical standards.

**Human Rights Award**

**Abdolfattah Soltani**

Iranian human rights lawyer Abdolfattah Soltani wins this year’s Human Rights award.

Soltani is the co-founder (with Nobel peace prize winner Shirin Ebadi) of the Defender of Human Rights Centre. He also established the National Peace Council.

Soltani has provided pro-bono legal advice and counsel to students, workers, teachers, religious and ethnic minorities, human rights activists and women activists. Included in that list is Shirin Ebadi, winner of the Nobel peace prize; seven Baha’i leaders in Iran, represented by Soltani when many other lawyers were too afraid to take on the case and Baha’i’s online university teachers and professors.

Over the last decade, Soltani has been persistently persecuted by the Iranian authorities for his human rights activities as a lawyer, and for peaceful protest.

He is currently serving a 13-year sentence, in Borazjan prison 1000km from his family in Tehran, on various charges, including ‘spreading propaganda against the system’ and ‘gathering and colluding with intent to harm national security.’ He was also banned from practising law for 20 years.

Soltani is also the co-founder of Iranian Campaign Stop Child Executions.

‘The IBA award for outstanding contribution by a legal practitioner to human rights, sponsored by LexisNexis, recognises personal endeavour in the field of law that makes an outstanding contribution to the promotion, protection and advancement of human rights and the rule of law.’

**Pro Bono and Access to Justice Award**

**Tong Lihua**

Tong Lihua is the deserved recipient of the IBA Pro Bono and Access to Justice Committee 2012 Annual Pro Bono Award.

As well as a director at Beijing Zhicheng Law Firm, Tong is a leading public interest lawyer in China who is dedicated to pro bono work.

Tong’s efforts have had a significant impact on disadvantaged communities, such as children and migrant workers in China. As one of the first professional public interest lawyers in China, Tong has been contributing significantly to the development of pro bono work in China for more than 13 years. He used his personal funds to establish the Beijing Children’s Rights Legal Aid and Research Centre (BCLARC), which was the first non-governmental organisation dedicated to providing pro bono legal service to children.

During a particularly trying time, Tong even sold his own property to support the operation of the BCLARC. Through his personal effort as well as the hard work of his team, the BCLARC has developed its own integrated model for pro bono work, which includes direct legal service, evidence-based research and legal reform advocacy.

The IBA Pro Bono and Access to Justice Committee fosters worldwide recognition of the principle that access to justice is the right of all individuals and promotes access to justice for all, regardless of their financial means, race, age, ethnicity, gender, or popularity of cause.

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Forty-two years ago, the New York Times Magazine published an essay titled ‘The Social Responsibility of Business is to Increase its Profits’ by famed American economist Milton Friedman. How things have changed. Today, almost all Fortune 500 companies issue sustainability reports and the UN’s corporate accountability initiative – Global Compact – has more than 8000 signatories from 135 countries.

Ironically, the buzz surrounding the concept of corporate social responsibility (CSR) could be its Achilles heel. CSR is at risk of becoming an overused acronym, the real meaning of which is lost on those responsible for its implementation.

Nowhere is this more obvious than in Africa. Among multinationals operating on the continent, there is a sharp divide between those who treat the concept as a mirage, and those that deal with the broader impact of their activities.

This distinction sparked the need for today’s session titled ‘CSR in Africa – effective tool or convenient escape?’

“There are two different responses to the concept of CSR. One is to perform lip service, and the other to take it seriously and go beyond window dressing,” says Toyin Bashorun, session co-chair and partner at Churchfields Solicitors in Lagos, Nigeria.

The panel consists of representatives of government, corporations and civil society from across Africa, Europe and North America. Their different – and perhaps conflicting – takes on CSR, in Africa means the session will scratch beyond the surface of the topic. A panelist of particular note is Babatunde Fashola, the governor of Lagos state, Nigeria.

The case of Africa

Of all the continents, Africa has the lowest GDP per capita and is also (arguably) the most resource-rich. It’s an unequaled dichotomy which, when combined with investors’ growing fascination with emerging markets over the past 30 years, has placed considerable strain on the region’s environment and its people. Much of the activity has been infrastructure and mineral projects. These project contracts contain CSR requirements, many of which exceed what’s required under local laws. However, the difficulties have not been caused by refusing to agree to these requirements. The bigger issue is ensuring they are actioned by the signing companies, and properly policed by local authorities.

Critics of the performance of CSR in Africa point out recent oil spills as a basis of comparison. On the one hand is the explosion of BP’s Deepwater Horizon drilling rig in the Gulf of Mexico in April 2010. The media jumped on the event, branding it the worst environmental disaster in the UN’s history. This created visibility around the world and placed a huge amount of public pressure on BP. Independent research reports place the resulting damage from the oil spill between $60 billion and $100 billion.

On the other hand is the numerous oil spills in the Niger Delta region over the past five decades. The oil-rich region off the south coast of Nigeria has repeatedly been contaminated by oil leaks. A UN report from last year estimates it will take 30 years to clean the area. The contamination caused by these spills has been destructive to the local fishing industry, which the local population relies on. The gas released during fires on oil rigs in the region also required a ban on fishing for up to four months. Incidents like these have deprived locals of their earning capacity. Yet these events are less well known than the Deepwater Horizon disaster.

The different response and level of awareness of these events could well be beyond the scope of law, but it is clear evidence that CSR faces greater challenges in Africa than elsewhere.

Standards v law

A factor which some say contributes to the ineffectiveness of CSR is that it lacks the force of law. It’s not a body of law, per se, but rising the advocating of a change of attitude. Some associate corporate responsibility standards with ISO 26000. It’s alleged that this contributes to a half-hearted response.

However session chair Kayode Oladele, general counsel of Juris International, is quick to point out that some governments have acted beyond these standards. “Several countries now ensure that companies use part of their resources to take care of their immediate environment and ensure its people benefit from sustainable development,” he says.

More important, though, is that policing powers ensure that companies live up to governemnts’ expectations. “Regardless of whether there are laws or not on CSR, governments have the obligation to make sure that companies operating within their jurisdiction abide by the local rules and regulations that ensure the sustainable development of the area,” Oladele says.

Shifting sands

In measuring the success of CSR in Africa, it’s important to look back as well as forward. “If you compare what has happened in the past 10 years to what has happened in the past 20 years, there have been significant improvements,” says Oladele. “But it’s still more talk than action,” he adds.

Bashorun is a little more encouraged by what she sees. More and more pressure groups are becoming involved, and the progress made by non-government organisations focused on environment and human rights should be commended.

The balance between the two schools of thought is also shifting. “The responses are beginning to change as companies become aware that they must be socially responsible,” she says. “Society is changing and no man is an island.”

Ironically, one of the factors driving this momentum is somewhat self-serving. Multinationals in Africa are well aware of the public relations disasters triggered by high-profile wrongdoings in developed markets. “It [CSR] impacts a company’s image. And we are at a time when company image is key,” says Bashorun. “After Enron, for example, companies really had to change their mind-set.”

This reflects another CSR trend. Companies are slowly becoming more proactive, rather than creating programmes and policies after patching up their mistakes.

Despite CSR working its way into popular discourse, there is still some confusion among companies required to implement CSR policies. It’s not always clear exactly what is expected of them. “Many say they donate money, but that is philanthropy,” says Oladele. Indeed, the distinction between corporate citizenship and philanthropy is not necessarily obvious to all boards.

These kinds of mistakes have acted as a catalyst for today’s session. “We need to create as much awareness as possible, as this – CSR – is the future,” says Bashorun.

A session with solutions

This year’s session is part of a programme being run by the Corporate Social Responsibility Committee over successive IBA conferences. Last year the focus was on business and banking behaviour in the US and human rights in South Africa. This year the focus is on the environment. The organising committees expect an interesting and interactive session.

It promises to be an outcome-focused, no holds barred session. As people are coming from all over the world, the panel plans to do more than just moot the topic. “It will be a very interactive, and at the end of the day we want to come out with solutions, recommendations and proposals for sustainable development in Africa,” says Oladele.

‘CSR in Africa – effective tool or convenient escape?’ is a joint session presented by the African Regional Forum and the Corporate Social Responsibility Committee. It will take place today at 9.30am.

Joining Oladele, Basorun and Governor Fashola on the panel will be Jacob Zuma of South Africa and Company in Ghana, Jack Blyen of Baker Hostetler in the US, Thomas Hansom of Nordic Law Group in Denmark, Wale Tinubu on Zenon House in Nigeria, and Athine Ntsepe Tshiamo of Garlicke & Bousfield in South Africa.
Guess who kissed the Blarney Stone?

Our IBA Team from the top: Sadiq Jafar, Managing Partner Dubai, Richard Briggs, Executive Partner Dubai, Alan Rodgers, Partner, Michael Lunjevich, Partner, Sameer Huda, Partner, Erik Muthow, Partner

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Has justice been done?

The Extraordinary Chambers in Cambodia has laudable intentions. But as this morning’s session examines, it’s now facing criticisms that threaten to overshadow its original aim. Gemma Varriale reports

Between 1975 and 1979, Khmer Rouge forces rounded up political opponents and minorities, as well as Cambodia’s elite and educated classes, and sent them to prison camps where they were tortured and killed. At least 1.5 million people died as a result of the atrocities of one of the bloodiest regimes of the twentieth century.

The Extraordinary Chambers in the Courts of Cambodia (ECCC) was set up in 2003 to prosecute the senior leaders most responsible for these crimes. But the ECCC, despite its laudable aim of ensuring accountability, has been plagued with accusations over impartiality and government interference since it was established.

Dr Mark Ellis, executive director of the International Bar Association (IBA), is one of the most outspoken proponents of the view that the judicial process of the Cambodian court is flawed and the whole endeavour lacks credibility. Dr Ellis will be presenting his argument, alongside other panelists, at “The extraordinary chamber in Cambodia – has justice been done?” session this morning at 9.30.

“To me those who advocate for international accountability through war crimes tribunals must ask the difficult question: if a tribunal does not meet international standards of fairness and impartiality, should that tribunal continue to operate?” says Ellis.

As of June 2011, the ECCC has only convicted former prison chief Kaing Guek Eav. He was sentenced to 19 years in prison for war crimes and crimes against humanity that caused the deaths of at least 14,000 people.

But ambassador David Scheffer, the UN Secretary-General’s special expert on UN Assistance for the Khmer Rouge trials said that those in search of the perfect war crimes tribunal dispensing perfect justice will never find it.

Scheffer, although not speaking on the IBA panel, has vast experience and strong views on the subject of the ECCC. He believes the issue is understanding what international standards of due process mean, particularly when one is internationalising a domestic court and thus taking into account, far more than with a truly international tribunal, the interests and influences of the sovereign government that is an integral part of the process.

“The easiest course is to criticise every perceived imperfection and quickly abandon the effort, even at the expense of the interests of the victims who yearn for justice,” says Scheffer. “The harder path, but one worth taking, is to do one’s best to work through the daily problems of a hybrid tribunal that poses unique challenges, occasional setbacks, but also great promise for the rendering of justice and the tribunal that poses unique challenges, occasional setbacks, but also great promise for the rendering of justice and the establishment of a far more complete historical record.”

Origins

In June 2003, an agreement between the United Nations (UN) and the Royal Government of Cambodia established the ECCC as a domestic court, with international participation. The Court is based on the Cambodian legal system and the majority of the judges are Cambodian. From the date of its creation, the ECCC has come under repeated fire for failing to adequately safeguard the judiciary from influence by the Cambodian government.

Ellis argues that, in resting the legitimacy of the ECCC on that of the Cambodian political process, the ECCC has weakened the UN brand in the realm of internationalised accountability. According to the executive director of the IBA, there has to be a line where the international community, including the UN, needs to decide the process is not working, and that it can no longer support a process that permits this type of governmental interference.

“If at the end of the ECCC’s mandate, the world looks back and says the process had no credibility, then what is the point of pursuing and supporting the Court at this moment?” says Ellis.

Several allegations have called into question the independence of the ECCC judiciary. Ellis cited cases 003 and 004 as evidence of the Court’s impartiality. Prime Minister Hun Sen stated that these cases would not proceed for the sake of the country’s stability. The second example, which became a lightning rod for criticism, was the government interference in preventing the selection of the new International Reserve Co-Investigating Judge.

This latest controversy followed the resignation of International Co-Investigating Judge (CIJ) Blank in October 2011. Instead of replacing the former CIJ with the Reserve International CIJ, Judge Kasper-Ansermet, the Supreme Council of Magistracy (SCM), entered a prolonged period of deliberation.

As Ellis wrote in his paper on the subject, it emerged that this was due to posts made by Judge Kasper-Ansermet on his Twitter account, in which he showed an interest in allegations of executive interference at the ECCC and wished to investigate cases 003 and 004. Ultimately, on January 20 2012, the SCM rejected Judge Kasper-Ansermet.

The ECCC has also been blighted by allegations of bribery among judges regarding the disposition of cases. In a positive development, an Independent Counselor position to deal with corruption issues has been created in response to these claims.

Despite this, the Open Society Justice Initiative (OSJI) published a report in 2010 stating that the exercise of political influence by government actors at all levels in Phnom Penh has tainted the Court’s operation and infringed upon its judicial independence. The report concluded that, “to date, the spectre of political interference has not been addressed adequately, despite the ECCC’s general commitment to respect international standards.”

In its December 2007 report, the Cambodian League for the Promotion and Defense of Human Rights (LICADHO) criticised the judicial appointment to the ECCC and outlined concerns about the Cambodian appointees. These include the fact that Major-General Ney Thol, Military Court President and CPP Central Committee member, does not hold a law degree and presided over the trials of Prince Norodom Ranariddh; Thou Mony acquitted Cambodian Prime Minister Hun Sen’s nephew of manslaughter in 2004; and Pen Pich Saly has never served as a judge.

LICADHO stated that, ‘It is a matter of grave concern that, before a single suspect has been brought to trial, the ECCC was already tarnished by the assignment of Cambodian judges with track records of serious political bias. Far from being a role model, it appears that the tribunal is so far serving to reinforce and reward the very worst aspects of the Cambodian judicial system’.

Legacies

According to Ellis, who has also sat in the Chamber on behalf of the defence, one of the legacies the ECCC leaves in the development of international criminal justice is the realisation that it’s difficult to start a credible justice process 35 years after the crimes were committed.

However, Scheffer believes that the legitimacy of the ECCC rests on far more than the Cambodian political process, which has its own complex dynamic with the ECCC. “It also rests on the engagement of the ECCC’s international staff, of the UN, and of the governments committed to the mandate established by the UN General Assembly,” says Scheffer. “The UN addresses challenges in the toughest parts of the world and is doing so in Cambodia, where others would abandon those challenges.”

In Scheffer’s view that enhances, rather than weakens, the UN brand. One could just as easily argue that when the International Criminal Court defers to or implements the principle of complementarity, with all of its complexities and political influences, then the ICC is weakening in brand of international accountability, he adds.

“But that, of course, is not the case,” says the special expert to the UN. “The ICC sometimes has to wade deeply into the sovereign decision-making of national governments and devise formulas for justice that work both for the ICC and for the national government. Much is negotiated. Controversies erupt over that process all the time.”
Mary Robinson was the first female president of Ireland from 1990 to 1997, before taking up the position of UN High Commissioner for Human Rights. Since leaving the UN in 2002, she has continued to promote human rights on a global level. She is the honorary president of Oxfam and chair of the Council for Women World Leaders, of which she was a founding member. She is delivering the George Seward Memorial Lecture at the IBA on Friday, and will discuss her recent work fighting climate change from a human rights perspective through the Mary Robinson Foundation for Climate Justice.

Do you think treating climate change as a human rights issue is more likely to encourage action, rather than viewing it as purely scientific or environmental?

I hope it will encourage more people to act because the sense people have is that it’s a problem in the future, so I want to bring home that it’s a current issue that is very much at the present and one that is hurting. I came to climate change from seeing, in African countries in particular, the actual effect it is having on the poorest. The perspective was from the viewpoint of the injustice, and how climate impacts on those who are least responsible for global warming.

Is there awareness now that gender inequality is not entirely separate to other areas of international development?

We're slowly recognising that if you undermine the very poorest, it is women who have to bear the major burden. Equally there is a huge dimension of women’s empowerment making such a difference, because we need to change attitudes and behaviour in rich and poor countries, and who changes the behaviour in the household? It’s the woman.

What are the major barriers towards women reaching positions of power?

We actually have women at interesting levels of decision making. At the last three climate conferences it has been women who have been presidents of the conferences: in Copenhagen Connie Hedegaard, in Mexico Patricia Espinosa, and in South Africa Maitie Nkoana-Mashabane. There are many women who are ministers for the environment and ministers for energy, but it hasn’t made the difference that it should.

In their individual positions women are slow to be the one in cabinet always talking about gender. Women who were very active in the women’s movement become the only woman in the cabinet and they find themselves in an entirely male environment. After one or two tries, they say ‘Just because I’m a woman, I don’t want to be the only one who’s always talking about gender’ and therefore they don’t. That’s a real problem.

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Are partnerships doomed?

Law firms are increasingly moving away from the traditional partnership management model in favour of unilateral leadership styles, but some seek to retain the structure as a way to protect their firm's cultural integrity.

Lawyers debated leadership structures and techniques during a discussion presented by the Law Firm Management Committee yesterday morning. The panelists were split over the best way forward.

“A traditional partnership is in no way an extinct dinosaur,” said Aku Sorainen, senior partner of Sorainen Law Firm in Estonia and co-chair of the discussion. “It is living very strongly today and there are many good examples of very successful law firms which have had the same kind of partnership structures for decades and don’t see a reason to change it.”

Rainer Loges, a partner at Gleiss Lutz said his firm’s traditional partnership structure incentivises bright lawyers to work there.

“We have to manage our firms in the same way that clients manage their businesses”

“Do we need to change it,” Loges said. “We change as much as necessary and we keep as much as possible.”

One firm widely cited as a traditional partnership is Wachtell Lipton Rosen & Katz. Davies Ward Phillips & Vineberg partner Robert Vineberg said Wachtell is the exception to the rule that firms should be managed by a strong executive.

“We have to manage our firms in the same way that clients manage their businesses,” Vineberg said. “We need a strong leader with well-defined authority governed by a board of directors.”

Panelists noted there are typically different levels of decision makers even in traditional partnerships, however.

“To me, Wachtell is not a traditional partnership,” Liam Quirke, managing partner at Matheson Ormsby Prentice in Dublin, said. “Does anybody doubt if Marty Lipton wants to do something, it’s not done?”

Firms will have to decide whether to choose one of their lawyers or look outside of the firm to fill what is perceived by some as a leadership void. Panelists said an excellent lawyer does not always make an outstanding leader. Furthermore, firms are not thought to have executive development programs on a par with traditional corporates.

Poland’s defamation problem

Poland’s criminal law against the defamation of public officials is an example of how human rights may be protected under a governing law but overlooked in practice.

Article 212 of the penal code allows an individual to be convicted for publicly insulting a government official through the use of mass media. Violators of the provision can be sentenced to prison for up to a year.

“Defamation is a good example showing how difficult it can be to enhance human rights protection even within the EU,” said Piotr Chybalski, a Polish constitutional law specialist at the Bureau of Research of the Chancellery of the Sejm in Warsaw.

Article 212 is considered a deterrent against journalists who may otherwise criticise the government. The burden of proof lies on the journalist in these proceedings, making it difficult to avoid a sentence when claims are brought.

“The press fears defamation and they may not criticise government as much as they could,” added Chybalski.

A recent application of Article 212 involved the founder of a website, Amtikonor.pl, who openly criticised Polish President Bronislaw Komorowski. Robert Frycz has since appealed a 15-month restriction of liberty sentence issued in September.

The Organisation for Security and Cooperation in Europe representative on the Constitution of Media criticised the sentence. Other organisations have also spoken out against Article 212 and its application, namely the United Nations Human Rights Committee which pressured the Polish government to eliminate the provision in 2010.

Legislation is needed to eliminate the provision because a 2006 Constitutional Tribunal of the Republic of Poland judgment Article 212 did not conflict with freedom of the press protections in the constitution.

Chybalski thinks non-governmental organisations, newspapers and lawyers do not take advantage of all of the tools available to change the law.

“According to our constitution, a group of at least 100,000 citizens can initiate a bill and they didn’t do that,” Chybalski said. “There is support for campaigns that would eliminate defamation (sentences).”

The problem of defamation is mostly enforced at the local level. Chybalski said this is because central politicians are concerned over potential backlash from bringing such claims against citizens.

Chybalski expects legislation will repeal the law within the next few years as the government bows to international pressure on the topic.
Counterfeit sportswear is increasingly being supplied – unwittingly – by the very brand owners that are losing out.

At yesterday’s session titled ‘Athletic and catwalk criminals: an in-depth look at crime in the fashion and sports industries’, speakers explained the problems surrounding so-called real fakes: garments sold illegally, but using the brand owner’s official fabrics.

“Why sell heroin when you can sell fake sportswear, and face less chance of enforcement, weaker penalties and make much more money?” said Judy Roth of Schiff Hardin, New York.

The causes for real fakes often stem from companies’ use of an auction process to find the cheapest manufacturers.

An auction proceeds when a brand lists the number of items, types of fabric and quality of the product it requires. Various manufacturers submit bids based on when they can deliver the products and the quality specified by the brand.

The bid process however, produces no clear winner. Once a winning bidder is chosen, the other manufacturers determine whether they would still like to participate in the process.

“Why sell heroin when you can sell fake sportswear?” Judy Roth, Schiff Hardin

“This creates a situation where the designs and the fabric are being given to multiple manufacturers which are all making the kits at the same time,” said Sabrina Fiorellino, of Cassels Brock in Canada.

A true winning bidder is chosen only when the brand decides which manufacturer has delivered the highest quality products. This manufacturer is paid for its services, but the others keep the fabric they were given to participate. This can result in real fakes.

But as well as auction processes, real fakes can emerge from the approved factories themselves.

Although brand owners try and retain control over inventory, using approved factories, they have to supply those factories with a surplus of materials, much of which is specific to the kits themselves. This includes patterns built into fabric or colours unique to the season.

“While the brand owners try and ensure the inventory is kept under strict control, it’s near impossible to do,” said Garrett Breen of William Fry in Ireland.

This can result in garments being made beyond the inventory, often from spare fabric. “This is sometimes carried out by night shifts at those relevant factories,” said Breen.

Similarly, with quality control systems now dominant in the sportswear manufacturing industry, Breen said that second quality garments are separated from the first quality garments. The second quality pieces are then sometimes sold through criminal channels. “It’s a very big problem, and reputable shop owners can suffer from it. I had to carry out a raid in Cork [in Ireland], and they simply didn’t realise they were selling fakes,” said Breen.

Enforcement

Breen said that in Ireland, brand owners have two options when dealing with the problem. Firstly, a seizure order which is suitable for market stall or backstreet operations. The other option is a delivery up order, more suitable for legitimate retailers, with brand owners wishing to avoid jeopardising relationships with their supply chains. In this case an order is served, requesting the shop to deliver any fake goods.

Organised crime has discovered that there are enormous opportunities to make money through merchandising, said Roth. “Criminals in Italy and in other locations have the resources to do very big business in real fakes,” she added.

Although fakes are most commonly found in football kits, athletics suffered from the problem in this summer’s Olympics, with Egyptian athletes being issued with fake kits to wear during London’s games.

Egypt’s Olympic Committee (EOC) confirmed that the Nike sportswear it bought for its Olympic team was counterfeit. “We bought the clothing from a Nike agent. You can never tell the difference between the original and the fake ones,” EOC chairman General Mahmoud Ahmed Ali said in August.

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