Minority Rights and Reconciliation in the Commonwealth

Cumberland Lodge Conference Essay

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Introduction

To begin to understand the importance of minority and indigenous rights it is worth quoting an Adivasi, devastated by the destruction brought by an open cut coal mine in Northern India: 'We dream about our land. Everything that we see, that we walk on, that we feel through our body, belongs to our land. We need the land to think about ourselves to know who we are. We are not people without our land.' This Cumberland Lodge Conference explored why rights for particular ethnic, cultural, religious and indigenous groups might be necessary, or morally obligatory, and weighed up the problems of recognising such rights. Why have minority and indigenous rights become such a major issue in international politics? There are three broad reasons. Most starkly, the forces of western development and the market economy have disrupted, or destroyed, the traditional lifestyles of many minority and indigenous peoples throughout the world. Are such groups necessarily doomed by a process of historical evolution? In addition, some ethnic groups - indigenous or not - feel they have been the victims of historic wrongs or discrimination which make them seriously disadvantaged in the fight for education and employment opportunities. Policies towards minorities and indigenous groups could address these injustices by giving special privileges such as university places, scholarships, positions in the public services, or trade licenses, leading to a redistribution of wealth and opportunity over a period of time. Finally, it is argued that majoritarian rule in a democracy will inevitably favour the dominant cultural group. Sometimes people are not able to study, live and work in their own language and culture because the needs of the majority determine the nature of education, social service provision and employment practice.

So how can the interests of those marginalized numerically, economically or historically be served? How can modern democracies around the world foster respect for different social, ethnic, or religious groups? For individuals and groups suffering social exclusion for whatever reason these questions are acutely important. They are also vital questions for society in general, as minority, ethnic or religious groups often become the focus of violent attack in unstable or weak societies. If a civilised society is one that can recognise the diversity of human nature, creativity and religious belief, how is this diversity to be preserved and celebrated in a modern, democratic, market economy? At the conference there were many different opinions, and considerable debate, on what respect for different social groups means and how this might be promoted or guaranteed.

Individual versus collective rights in democratic states

On 10 December 1948 the General Assembly of the United Nations declared: 'Recognition of the inherent dignity and of equal and inalienable rights of all members of the human family is

the foundation of freedom, justice and peace in the world.' Eleanor Roosevelt, chairing the Human Rights Commission, said that if individual human rights are respected specific minority rights are not necessary, as human rights for individuals mean the acceptance of the liberty of the individual and equal rights for all citizens regardless of race, gender, colour, creed or political belief. If a society took Article 2 of the Universal Declaration - prohibiting discrimination - seriously there would be no need to describe collective rights for people. Is this correct? At the conference there was considerable debate on whether respect for minorities is already guaranteed in a country which respects individual human rights. Are rights for individuals enough to protect and enable those people disadvantaged by history and economic forces? Should an ethnic, religious, cultural or linguistic group be ring-fenced with rights so as to be protected at the expense of integration and social cohesion? Yet it was pointed out that hard questions can also be asked about individual human rights: are rights for individuals enough to protect and preserve the collective in which an individual finds his or her particular identity, purpose and well-being? If humans are fulfilled through social and group interaction, are collective rights a precondition for individual ones?[1]

While there are theoretical questions about the concept of collective rights there are also, clearly, particular groups in society which are the victims of racial or religious prejudice and discrimination. As a consequence, these people may suffer poverty, high infant mortality, low life expectancy, high rates of suicide, high rates of imprisonment, or a dependence on harmful drugs. Saladin Meckled-Garcia thought that affirmative action is needed to correct the injustices, to assist those from ethnic minorities gain education and employment. While he was in favour of affirmative action he felt this was still only an expression of standard human rights provisions for individuals; for him affirmative action does not warrant being described as a 'minority right'. Hanif Vally felt that minority rights expressed in terms of affirmative action was a natural and positive extension of the principle of human rights for individuals, but David Chandler was against such affirmative action because he thought this notion was fundamentally at odds with the principle of equality enshrined in the notion of human rights. Tony Carty feels that the supposition that our society respects the rights of individuals is a myth; instead, society is fairly inevitably polarised by a majority/minority, dominator/dominated dichotomy, so it is always necessary to be alert to biases against minority groups. The author of this essay suggests that rather than trying to justify minority rights by explaining it in terms of a prior belief in human rights for individuals, a more compelling case can perhaps be made on empirical grounds. It seems clear that sometimes particular ethnic or religious groups in a society become so alienated they cause civil unrest or

[1] Freeman, M. 'Are there Collective Human Rights?', *Political Studies* Vol. 43 (1995) p 32

even turn to terrorism. For this reason alone it seems dangerous to ignore the discrimination and injustice in society which cause the alienation of the poor or disadvantaged.

While Saladin Meckled-Garcia accepted the notion of remedial measures for minority groups, as part of anti-discrimination measures of individual human rights, he was less in favour of minority rights when they take the form of positive measures by a state to preserve the culture of a minority community, to protect that community within an ethos of respect. While affirmative action will help minorities become more integrated into society, rights that are intended to preserve cultures will clearly re-enforce and strengthen difference. Such protective measures might include: subsidy for education in the language of the minority cultural group; right of veto by a minority cultural group over the things that happen in the territory they occupy; prevention of settlement by members of the majority culture in the region of the minority group; or symbolic measures by the state to make the culture of the group an integral part of the education curriculum. Saladin Meckled-Garcia argued that to insist on 'cultural rights', rather than just anti-discrimination or human rights measures, is to misunderstand the nature of culture; that it is formed in the context of struggle, adversity and varied material circumstances and is always influenced by other cultures. It is a mistake to view culture as something people are locked into decisively, with no possibility of self-expression outside that culture. Being a member of a group is not like being a member of a party or organisation that needs to differentiate and preserve its own identity. Too much emphasis on the value of preserving a particular culture overstates and misunderstands its dynamic nature and may be the source of future trouble.

Saladin Meckled-Garcia felt that while cultural groups should not have their identity preserved by the law, protection is still needed to ensure that a democratic state will not function against any particular group of people. A democracy worth the name is not just about majoritarian rule because this can quite easily co-exist with oppression, torture, and pressuring people into a certain voting pattern. History has shown that the democratic system does not necessarily guarantee respect for different ethic, religious, or cultural groups; in the 20th Century Hitler was able to kill the Jews and Stalin to slaughter Ukrainian peasants without much popular disapproval. Ian Linden pointed out that the Universal Declaration of Human Rights, intended to prevent the recurrence of such atrocities, describes rights which can generally be thought of as claims for entitlements or liberties made against the state to promote economic and political well being. Yet it is important to realise that there is another kind of right described by the Declaration that is often overlooked: the right to meaning through the freedom to express religious, ethnic or cultural observance. Although the Declaration seeks to preserve and promote both the rights to economic and political well

being and the right to meaning, it can still be a problem that sometimes the cultural practices in which meaning is found interfere or clash with the need for efficiency in economic and political terms. The dominance of the market economy and a democratic majority will almost inevitably put down the language and culture of a minority group. A participant pointed out that the adoption of a particular national language may be done for justifiable reasons and have nothing to do with discrimination or persecution of minority groups, but this policy might still disadvantage those in a minority. Minority cultural and religious groups are clearly vulnerable even in modern democracies. How can a liberal democracy combine enabling and active citizenship within a context of genuine pluralism that acknowledges and recognises the reality of different cultural groups within the nation-state border? The question is a difficult one, but it seems clear that asking it is a vital part of a healthy and democratic society; suppressing the need for minorities to find and create meaning in their particular culture or religion is manifestly wrong.

Indigenous Peoples' Rights

The need for cultural rights appears most acute in relation to indigenous peoples as the injustices seem clear, and the peoples so marginalized and impoverished. The call for indigenous peoples' rights has been based on two themes: the history of colonialism - when land was taken from peoples whose ways of life depended on it, and the sacred attachment that indigenous peoples have to their lands and territories. Helena Whall said that those international powers which deny the validity of the concept are guilty of perpetuating the process of dispossession or even genocide, but this time in the name of progress, democracy and individual human rights. These arguments have been recognised over the last 20 years, as the international legal system and jurisprudence have increasingly acknowledged indigenous rights. Indigenous peoples in different parts of the world have been given restitution of lands and compensation for losses; the right to develop control and use of communal lands, territories, and resources; the right to maintain their traditional culture and way of life; to represent themselves through their own institutions; and to exercise their customary law. The Forest Stewardship Council has recognised the right of indigenous peoples to control their lands and to give their free, prior, informed consent before logging or plantations can take place. Many industry spokespeople and environmental organisations have agreed to this norm and it now applies to about 45 million hectares of forest worldwide.

Currently the most contested right is that of self-determination, which the Indigenous Work Group for Indigenous Affairs has defined as: 'the right to control over their institutions, territories, resources, social orders and cultures without external domination or interference and their right to establish their relationship with the dominant society and the state on the

basis of consent.' The right to indigenous self-determination is said to underpin the other rights; if this right were satisfied, the other rights would follow naturally. Although there are attempts to promote the right to self-determination, especially through the UN Draft Declaration on the Rights of Indigenous People, countries such as Australia, Canada and the United Kingdom remain reluctant to recognise the self-determination of indigenous peoples.

How effective are international organisations such as the United Nations or the Commonwealth, when real power lies in the world's states? Helena Whall said ultimately states are responsible for developing their policies for indigenous groups, although they may be judged against the international legal benchmarks on indigenous rights. It is thought that the United Nations Draft Declaration of the Rights of Indigenous Peoples will be an important step, since this will provide indigenous peoples around the world with a mandate to take states to task if they fail to uphold the principles of the Declaration. However the Draft Declaration, if it is adopted, will not be legally binding on states. It was pointed out that the Commonwealth, in contrast with other regional and intergovernmental associations, has no consensus or official position on the rights of indigenous peoples; each government develops its own policies to respond to indigenous people's concerns. Helena Whall asked why do so many Commonwealth countries resist indigenous self-determination? Self-determination seems to challenge the concept of a unified nation-state; there is a fear that recognition of the right of self-determination for indigenous peoples could endorse secession, or that the principle of self-determination could become a blank cheque, thus enabling any group which sees itself as 'indigenous' to claim indigenous rights. In addition, many Commonwealth countries have wanted to emphasize cohesive nation building rather than the recognition of ethnic or other differences. To the Howard government of Australia there is a fear that self-determination implies the establishment of separate laws and nations. The UK government is also particularly reluctant to recognise the concept of collective human rights on the grounds that this could challenge or override other internationally recognised individual rights.

While Helena Whall said that for the majority of indigenous peoples self-determination is not about separatism but autonomy or self-government, Ian Linden asked whether the use of the word 'autonomy', in the struggle for the recognition of indigenous rights, was counter productive, as in many situations indigenous peoples require the support or protection of the state through the provision of health care, education and other social services? Is it not a mistake, strategically, to push only for absolute self-determination, if people want a level of control that is not necessarily absolute self-determination? The reply was given by Marcus Colchester that since indigenous peoples are seeking to renegotiate their relations with the state, autonomy is a useful word; it embraces different levels of independence for groups,

ranging from full secession through to quite minor forms of independence such as choosing to be educated in a particular language. In claiming the right to self-determination few indigenous peoples are seeking to dismember existing states. Instead most take a functional approach, preferring recognition and constitutional reform within states, so as to develop indigenous political institutions and determine their development in accordance with their own values. Indigenous self-determination is about ensuring good democratic governance and requires responsiveness by the state and participation in the state. However those who are sceptical might still ask: what roles or responsibilities do indigenous peoples have within the state that recognises their right to self-determination? Are there reciprocal obligations in return for the recognition of collective rights and how are these promoted?

The conference speakers discussed another way in which indigenous rights are controversial; should an indigenous group be accorded the right to speak out as a polity, as a recognised collective? Do they speak out as individuals to protest against what is happening, or do they have the right to speak as a group? Mark Lattimer noted that the British government does not recognise the concept of collective human rights because it sees a problem in determining how and by whom a collective is defined. The Foreign and Commonwealth Office recognises a right that is collectively exercised, but it does not like the argument that one group should be regarded as having rights while another does not. Perhaps it would be better to develop collective remedies, rather than always working for collective rights? The writer of this essay asks: while there may be strong historical, social, cultural and spiritual identities that unite them, what does it mean in political terms to give them a collective voice? Are indigenous rights about giving political power to one group at the possible expense of other groups or individuals? Does this concept of collective rights automatically trump the rights afforded to individuals and if so, is this necessarily the best policy? It is certainly the case that human rights for individuals sometimes have to be weighted against the general needs of society; much of European human rights jurisprudence is about the limitations that need to be placed on human rights in the interest of a democratic society. It seems necessary to acknowledge that minority rights may also need to be weighed against other human rights claims and the needs of society as a whole.

The individual versus collective values debate is perhaps most evident when there needs to be a legal response to a controversy between people within a society. Tony Carty pointed out that in a liberal society it is difficult for the judiciary to appeal to an objective concept of the ‘good’ to reconcile conflicting concepts of individual or group rights, as what the ‘good’ might be is debatable. It was suggested that if there is rhetorical support for individual, minority and indigenous rights, when in reality these conflict, our policies are likely to fail. A

participant noted that in India substantial rights have been given to Muslims, particularly in relation to family law, but many Muslim women regard this as unfavourable to themselves, and the judiciary have been called upon to arbitrate. Similarly, there have been conflicts between indigenous peoples' rights and development projects conceived by national governments and large corporations. There may be tension between a land claim made on the basis of historic sovereignty and reversing the consequences of colonial wrongs, and the claims made by settlers who have worked and develop the land for several generations. Hanif Vally said in reply there clearly needs to be a complex weighing up of different rights; is a hierarchy of rights a solution to the problem, or should each case be negotiated according to the particular needs and demands in question? It was suggested that we need a system for determining the common good, and a way of arbitrating between rights for individuals and the common good. It seems that our judicial system is not always adequate for dealing with the issue of minority rights and the conflicts which arise from the competing claims of different groups.

Natalia Alvarez asked: 'how much use is international law when national governments are promising everything and delivering little?' While the constitutions of some countries may recognise indigenous rights, this does not mean the laws have been enacted to implement reforms. While in 2001 Mexico altered its constitution give indigenous peoples the right to self-determination, at the provincial level the government has done little to enact the legislation. In Nicaragua the government gave a logging company access to the traditional lands of the Awas Tingni community, but the Interamerican Court of Human Rights ruled that this was wrong, that the indigenous community should have been protected. The state was called upon to demarcate the lands of the community, however in the demarcation process, neighbouring communities entered into conflict and the State of Nicaragua and the regional authorities had to work for land rights and conflict resolution.

It is clear there are sometimes huge differences between international statements and national politics if states are not committed to what they are saying in the international arena. Marcus Colchester suggested that indigenous peoples have not taken enough advantage themselves of the gains made at the international level, by using the international complaints procedures, the tribunals and the courts that exist to evoke their rights. They may need more instruction on how to use the international legal system. However John Kissane suggested that talking only in terms of 'rights' inhibits debate and discussion rather than promoting it; if everyone starts from their own position of moral certainly, there is more likely to be antagonism than compromise. Natalia Alvarez suggested that it is better to find a solution to conflicts at the community level rather than resorting to international courts, as the courts can raise

expectations too high and lead people to expect generous compensation. Indigenous groups' claims are not only a matter of rights but also entail a process of dialogue and re-structuring different levels of the State. She suggested that the rhetorical recognition of rights might serve only to keep indigenous peoples in the same social structures. Perhaps we need, apart from a theory of the recognition of rights in constitutions, a new theory of the subject of the law and their capacity to negotiate their own status. This might be a more effective way of solving conflicts, and promote more respect for the views and rights of others.

At the conference it was asked whether indigenous peoples want land rights for the sake of being able to maintain their spiritual attachment and their sacred traditions? Sceptical participants asked whether it was helpful or realistic to think that indigenous peoples only want to maintain their traditional lifestyles? Is it not time to recognise the changes brought by globalisation and government programmes which assist with development and social integration? Steven Corry emphasised the importance of land rights and land ownership, which would give indigenous peoples some control over the pace and speed of development projects and processes. Indigenous rights, more specifically the right to self-determination, are not primarily concerned with either integration or preservation of cultures; they are intended to give indigenous peoples the power to make their own decisions and are necessary just to ensure their survival. It was claimed that for indigenous peoples the right to self-determination is crucial to their sense of dignity and self-respect; it is the best way to achieve respect for traditional cultures that such groups need to survive, while also giving individuals the confidence and self-respect so they are able to become more integrated into mainstream society if they wish.

The root of the problem for indigenous peoples appears to be the lack of self-confidence and self-respect which comes from social respect, however it is possible to ask whether the right to self-determination recognised through political concessions is the best and only answer to their needs? It also seems important to provide more sensitive and responsive education, so young people can develop their own resources to survive and flourish. One participant, sceptical of the value of self-determination, asked: 'how do you bring these people into the mainstream if they move from place to place without settling, so the children don't have access to education or health care?' Steven Corry replied that it is hard for indigenous groups if the schooling is an imposed system, if children are not allowed to speak in their own language, and if they are routinely ridiculed and regarded as backward for being from a tribal group. If this happens the children will simply not stay at school. However it is quite easy to provide schooling which is appropriate for an indigenous group, with their own teachers, in setting and environment in which they feel comfortable. To make integration possible

education needs to be provided in a culturally sensitive way, so children can gain the skills and confidence that will allow them to move between their two worlds.

Multi-ethnic states

In multi-ethnic states rights for specific minority groups are often an important issue, especially when constitutional arrangements are made to accommodate different people. Michael Freeman noted that the interest of collectives might require special representation in government, although this would be at odds with the principle of social equality. Proportional ethnic representation is clearly intended to protect the individual human rights of members of minority groups, to protect their collective interests, and to maintain peace. The examples of Malaysia, South Africa and Zimbabwe were discussed at the conference and they show the varying degrees of success of constitutional arrangements for keeping social stability and providing life chances to everyone. For these three case studies the differing perceptions of national history and identity seemed to account for the relative success of the constitutional arrangements.

A conference paper, written by Richard Nzerem and read by his son Keme Nzerem, explained how prior to 1994 none of South Africa's constitutions took account of the multi-ethnic nature of the country; they catered almost exclusively for the white, largely Afrikaans minority and ignored the plight of many others who had been dispossessed of land and were the victims of gross human rights violations. The failures to recognise human rights under Apartheid formed the backdrop to negotiations of the 1996 Constitution, when there was again debate about whether minority rights should be entrenched. While it was unacceptable to the 'majority' for emphasis to be placed on Afrikaans 'minority rights' at their expense, those keen to enforce 'minority rights' said that they were concerned about their vulnerability to majority manipulation. It was finally decided that the new constitutional arrangements should adopt a Bill of Rights for the protection of individual rights rather than specific minority rights. Constitutionalism, it was thought, should not be a means either of wrapping up power or keeping groups out of it, but should offer advantages to everyone. It became apparent that many of those who had favoured the creation of semi-independent states, under the guise of protecting 'minority rights' had done so because they wished to resist, rather than promote, democracy through a system of rural autocracy sustained by local police and paramilitary units. Federalism would preserve areas of exclusive white control and privilege the perpetuation of injustice and divisiveness. Instead of facile solutions to the difficulties posed by the presence of minorities it was felt there needed to be clear principles providing an equalization of life chances. One of the central questions was how to enable new multi-cultural communities to grow based on a three-tier government, each level having clearly

defined powers and responsibilities so they could function under the constitution without the fear of the regional or local levels being abolished by an over-zealous central government? Another major consideration was the need for property rights and affirmative action, as international human rights law recognises that special measures aimed at enabling groups to break out of patterns of disadvantage are not considered as violating the principle of non-discrimination. It was hoped that a system emphasizing the relativity rather than the absoluteness of rights would stand a better chance of achieving lasting results.

Unlike South Africa's new constitution, the 1980 Independence Constitution of Zimbabwe contained a detailed property clause which prevented the new government from restructuring colonial property rights and was regarded as an 'unashamed minority protection provision'. Richard Nzerem explained how this contributed to poisoning relations between the mainly white minority commercial farming community and the government, which is now seen by many as having improperly used state power to terrorise its citizens and squander a rich natural heritage. European colonisation of Zimbabwe began in 1890 when settlers forcibly acquired lands and justified this by the doctrine of 'native title', not recognising the black Africans' forms of tenure as 'property'. The country was divided between the European settlers and the black African community, but the land reserved for the latter was of much poorer quality. In 1965 the white minority government in Zimbabwe unilaterally declared its independence, and this led to a bitter-armed struggle fought essentially over the maldistribution of land. The war ended with the signing of the Lancaster House Agreement in 1979 and Zimbabwe became independent in 1980, and it was felt necessary to protect the minority community in the Constitution. Despite several changes to the Independence Constitution tension has simmered over the years, and this finally boiled over into open hostilities between the government and the commercial farming community. Land rights have been the subject of litigation before the Supreme Court of Zimbabwe, but it has not been able to reconcile the various claims or to deliver closure. In some cases involving debatable points of law the Supreme Court decided the matter in the state's favour, but in other instances it felt duty bound to protect property rights from what it regarded as the abuse of state power. Thus judicial independence has been severely compromised and tensions have been heightened in an already politically charged situation.

Andrew Harding described how protection provisions were also put into the Constitution of Malaysia, but this time they were for the disadvantaged and underprivileged. At the end of World War II Malaysia had a deeply fractured society, so the 1957 Constitution was an attempt to build a nation out of 178 different ethnic groups. The Constitution recognised that the political parties successful in electoral terms were those based on ethnic representation,

Malay Muslims, the Chinese and the people from the Indian sub-continent. Leaders from these three parties agreed that as Malays were the majority 'indigenous' community, but owned only one percent of national wealth at independence, economic policies should be put in place which would ensure the redistribution of wealth over 20 years. As there has been general understanding of the historical background and injustices that lead to the special constitutional privileges, a climate of tolerance has pervaded Malay politics for the past 50 years.

Andrew Harding explained the strengths and weaknesses of Malay politics. First, the social contract is not regarded as being open for discussion and the main parties discuss issues behind closed doors. It is thought that discussing issues in public might lead to a revival of ethnic violence and tensions of the past. When Chinese business leaders questioned whether the system of special privileges should be continued, and pointed out the problems in terms of economic development and foreign investment, they were regarded as virtually traitors. Maintaining the positive discrimination has also entailed the erosion of constitutional rights, and restrictions on freedom of speech, civil liberties and rights of participation in the democratic process. Internal security laws are used repeatedly to suppress dissent, while challenging elements of the social contract in parliament is regarded as sedition and may lead to a fine or jail. While there has been the separate development of the different communities, there has been no real integration in broader society. In addition, judicial independence has been eroded. Yet economic growth has been considerable and property and religious rights are guaranteed. The social contract appears to have worked, but whether it will be a permanent solution to the problems of Malaysia remains to be seen.

Conflict in weak states

Human rights and the rule of law may underpin well-developed societies, but how can human rights be applied to weak states? What can be done to help minorities which are the victims of violent attack within their own countries? It is thought that the majority of human rights violations around the world have an ethnic or religious dimension, as 70 percent of the worlds wars involve mass killings, torture, rape or the displacement of ethnic, cultural or religious groups. Some of the problems may result from the colonial period, when boundaries were drawn around territories which did not correspond to the traditional demarcations between tribes. The 1997 Carnegie Commission on the prevention of deadly conflict, which concluded that the suppression of ethnic religious and cultural differences has often led to bloodshed, while the accommodation of diversity within appropriate constitutional forms has prevented bloodshed. However another conference participant suggested that there is still debate as to whether special constitutional provision will be of assistance, or whether it will, in fact, lead

to conflict; in Lebanon, for example, there was an attempt to enshrine constitutional differences which ended up leading to a prolonged and devastating civil war. Michael Freeman suggested that problems for minorities are often due to large-scale structural forces for which there can be no glib solutions; we cannot say 'if we only we had ten or twenty minority rights and gave some courts jurisdiction everything would be well'. In reality minority rights laws may not be adequate to protect those from ethnic minorities who are the victims of violent attack. Human rights might provide a framework for thinking about the problems of a weak society, but there also needs to be a comprehensive understanding of the causes of particular conflicts which are likely to be both complex and historically deep. David Chandler said that while minority rights regulate and institutionalise a problem, they do not solve it; it is not possible to legislate a solution to a problem. While minorities may be the most obvious victims in weak states it is likely the population in general will suffer from violations of their human rights. Countries with institutional weaknesses, which lack strong legal or political institutions, and have poor relations between the military and civil politics are likely to disregard human rights in general, not only in relation to minorities. There needs to be efforts made to strengthen the rule of law and respect for all human rights in weak states, but it is important to note that this requires economic investment. There is increasing concern among academics that economic injustice and inequality internationally contributes to the lack of respect for human rights. Michael Freeman pointed out that postcolonial states are always at a disadvantage in the global capitalist system; while the World Bank, the IMF and the WTO are supposed to help poor countries they do not always have this effect. It seems that concern for minority and individual human rights needs to be accompanied by economic growth, improved education and the strengthening of social institutions.

In recognising that minorities are victims of the most serious violations of human rights it is necessary to ask: how should the international community respond to the abuse of minorities in weak states? Mark Lattimer suggested that an important advance for minorities has been the range of new collective legal protections. The statutes of international criminal law now include killing, rape, murder and torture, and cover persecution against a wide array of groups, including those defined by gender or political status. The laws open-ended nature mean protection is offered to potentially anyone faced with group persecution. Apart from passing these new laws, the international community may intervene militarily to protect minorities, although there is the risk that intervention will create more human rights problems than it solves. Paul Oestreicher noted that the UK Ministry of Defence is training British Army officers in peacekeeping operations, so they can go into countries after wars to protect the rights of minorities. He went on to suggest that instead of describing specific instances within a war as a breech of human or minority rights, we need to view war itself as a violation

of human rights, a crime against human beings on a major scale. The attempt to destroy deliberately the Jewish population of Europe could only happen socially and politically under the cover of a war, this made the holocaust possible. Crimes happen in all situations of war and are committed by all sides, so the elimination of unnecessary wars is an important element in valuing human rights.

Reconciliation

Paul Oestreicher described the Truth and Reconciliation Commission (TRC) of South Africa as one of the most important developments in reconciliation processes, because it tried to promote not just the theological principle that forgiveness was necessary, but a structural approach for the society to work through problems of deep alienation, racism and discord. Is reconciliation achieved by legislation or by education? Actually both are essential; legal structures are needed to build justice into an unjust situation, but it is also necessary to change the minds of those involved. This second part may take a very long time. Ian Linden said that the TRC achieved most in political terms; it was important because it totally discredited the white extremists and the apartheid system, so they could never again hold power. Yet Zonke Majodina said that on a more personal level there was the feeling that the TRC did not achieve social justice; it was not highly effective at analysing the system of white political domination and so beneficiaries were left untouched, and were not made to feel any sense of moral obligation to be part of the national movement towards social justice and reconciliation. Those who had perpetrated the abuse of human rights got off with little punishment in a personal sense. Blacks on one side forgave unconditionally, yet what did they get in return? The captains of industry who benefited enormously from the harsh policies of apartheid were left untouched. The one sidedness of the process of reconciliation has been one of the central impediments to healing for the majority of the population. Ian Linden said from his experiences working with victims of conflict and appalling levels of human rights abuse in Burundi, Guatemala and Nicaragua achieving reconciliation on a personal level is an extremely long, slow process and perhaps it is not reconciliation that is finally achieved, but co-existence and toleration. John Kissane suggested that there might be confusion between reconciliation on the one hand and reparation or revenge on the other. He suggested that if we want reconciliation we need to give up two unofficial ‘rights’ that most of us believe we have: the right to be a victim, and the right to revenge. If we don’t give up these we will not achieve reconciliation. Paul Oestreicker concluded by saying that the one principle our legal system takes for granted is that victims do not have the right to revenge. The word revenge has been removed from the law. It is only in a lawless society that people take the law into their own hands and wreak revenge. Punishment needs to given by the judiciary and be based on justice,

not on the feelings of victims. That may be hard on victims but to let revenge have its course is morally wrong and will help fuel the next conflict.

Conclusion

At the conference speakers represented a range of positions between two extremes: the view that we are always members of collectives and that politics is about the collective exercise of power, versus the belief that the only essential unit of value is the individual and thus, of course, individual human rights. Those holding the latter view might say that individual human rights are important because in this way collective groups are also benefited. However those who hold the former view could claim that it is in collectives that we can find meaning, and that collective rights are necessary for political action. With such different perspectives the issue of minority rights is obviously contentious, and on this basis it seems problematic for the legal system to be the only means to resolve disputes. Arguably the competing claims of minorities and individuals could be resolved through dialogue in a democratic political process with a flexible rather than uncompromisingly moralistic concept of rights. In the view of the author it is not a particular concept of either collective or individual rights that protect and enable a society, but the humane interpretation and mediation of all our rights, and the willingness to build societies based on the principles of non-discrimination and justice. How are these values best promoted in democratic societies? How are they to be promoted in weak states where there are the worst abuses of human rights?