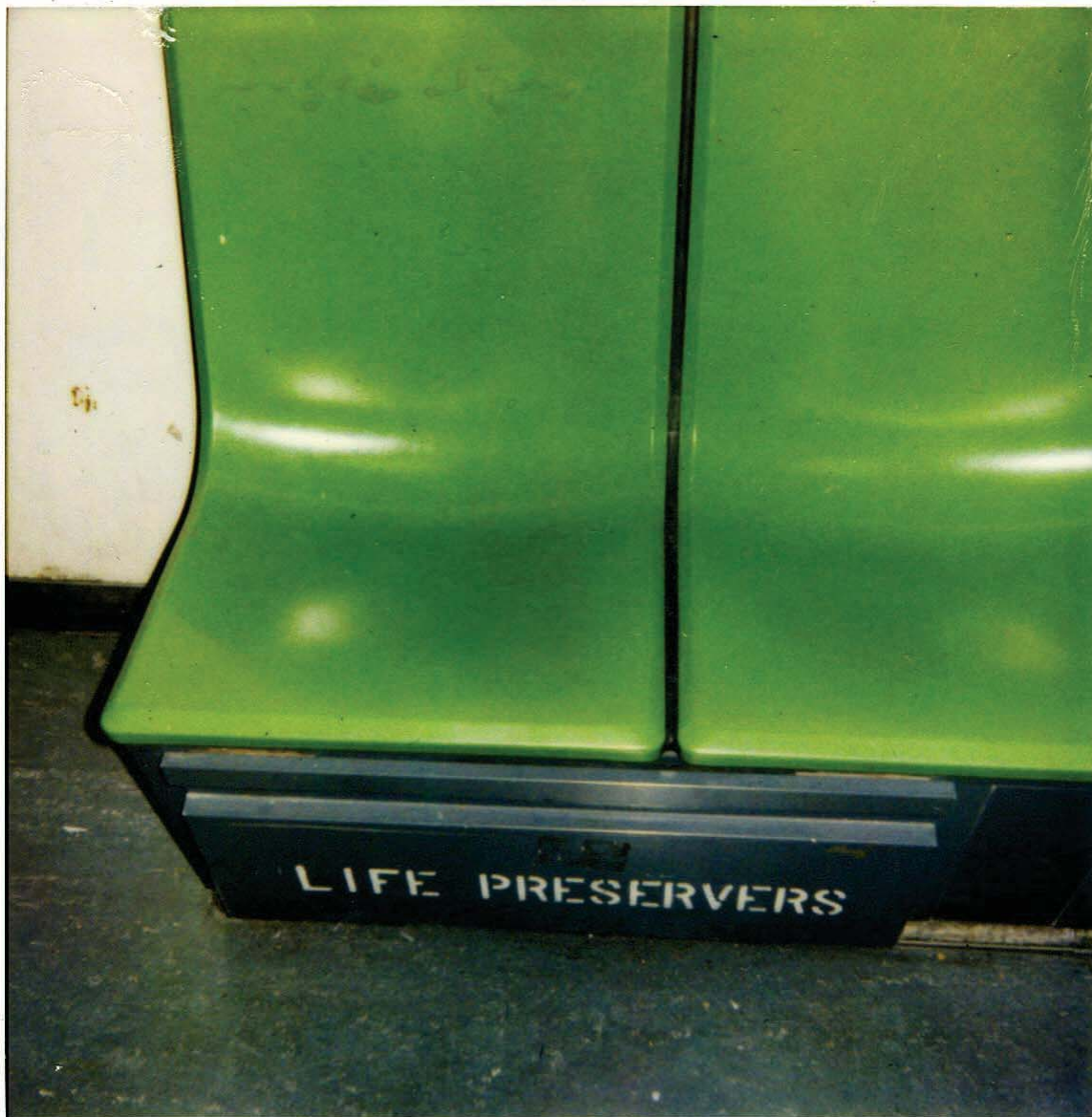


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Corporate Accountability - Human Rights in Palestine - The Role of NGOs in
Australia and the Asia Pacific - Institutionalised Social Exclusion

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Front Cover Artwork

Karma Jercher, *Seven Choices*, 2008, inkjet print, 40x50cm. From the exhibition *2008 Kodak Salon* at the Centre for Contemporary Photography 2008

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This issue of the *Human Rights Defender* focuses on the role of non-government organisations (NGOs) as human rights defenders. We are by now familiar with NGOs as important players in local and international contexts, having witnessed an enormous proliferation of NGOs in the last two decades – partly as a result of the state retreating from many of its roles, and partly due to the increasing recognition and support for the promotion of human rights.

NGOs are involved in a wide range of activities from service delivery to lobbying and advocacy. Conceptually, we understand NGOs as situated in civil society – that place of citizen action and political engagement – between the state and the market. In this sense, NGOs are seen as an important voice in critiquing both the actions of the state and of business. Many NGOs are engaged in monitoring and promoting the human rights of individuals and groups whose rights are violated by state or by non-state actors.

In 2000, the Commission on Human Rights established a mandate on human rights defenders to give support to the implementation of the Declaration on Human Rights Defenders, adopted by the General Assembly of the United Nations in 1998. Since March 2008, Mrs Margaret Sekaggaya has undertaken the role of Special Rapporteur for this mandate, following the her predecessor, Ms. Hina Jilani. The role of the Special Rapporteur is to support the work of human rights defenders, most often NGO workers, through monitoring and reporting mechanisms including country visits which involve responding to individual cases of rights violations committed against defenders. NGOs are pivotal in local monitoring of human rights situations and act as an information source for mandates of the Human Rights Council.

The articles in this issue of the *HRD* focus on the work of NGOs in protecting human rights in local and international settings. The first article points to the tensions in human rights protection which arise from business activity. Justine Nolan and Michael Posner focus on the work of the organisation, Human Rights First, in advocating for the development of human rights standards for business. Here, as in many of the articles that follow, NGOs are highlighted as having a critical role in monitoring human rights violations. This article explores the work of NGOs in developing a code of conduct for business. Similarly, Dominic Renfrey explores business conduct, in this case asking what action is possible where Australian corporations have been involved in misconduct overseas. The role of the UN's Special Representative on the issue of human rights and Transnational corporations and other business enterprises is of special interest here, with NGOs playing a crucial role in monitoring, reporting and advocacy. Several cases are explored such as the alleged role of Australian based Anvil Mining in human rights abuses in the Congo, as well as Oxfam Australia's operation of a mining ombudsman.

Catherine Renshaw and Katrina Taylor explore the role of National Human Rights Institutions (NHRIs) and their relationship to NGOs. With particular reference to the work of the Asia Pacific Forum of NHRIs, Renshaw and Taylor argue that NGOs are critical to the effectiveness of NHRIs in the promotion of rights .

Two articles in this issue focus on Palestinian NGOs engaged in the promotion of human rights. Randa Siniora explores the history of Palestinian human rights NGOs in the period since the 1967 occupation of the West Bank and Gaza. Siniora shows how occupation resulted in the rise and proliferation of human rights organisations, such as Al-Haq, the first such organisation to be established. Siniora also discusses the work of the Independent Commission for Human Rights (ICHR) established in 1993, the first National Palestinian human rights institution and the first organisation of its kind in the Middle East. Michelle Burgis gives a very personal account of working with the Palestinian human rights organisation, Al-Haq. Central to the work of Al-Haq is the careful documenting of human rights violations, not only at the institutional level, but in the everyday life of Palestinians. Al-Haq fieldworkers gather affidavits and write regular reports for dissemination, locally and internationally. In the December 2007 issue of the *HRD*, the work of B'tselem, an Israeli human rights organisation was explored. B'tselem takes a similar approach to Al-Haq, of careful documentation, monitoring and reporting on human rights violations. Burgis' article continues by outlining the work of Al-Haq in petitioning the Israeli High Court.

The final articles focus on Australia. Katherine Neeson explores the promotion of an Australian Bill of Rights to extend the human rights protections of Australians. NGOs have had a pivotal role in highlighting the need for a Federal Bill of Rights given the minimal protections afforded by the Constitution. The *Human Rights Act for Australian Campaign* has been the vehicle for the promotion of a Bill of Rights since 2005.

In Australia, the St Vincent de Paul Society has an increasingly important role in both service delivery and advocacy for some of the most marginalised groups. This role is of particular importance given the devolution of state responsibilities to NGOs and the diminishing rights of citizens. John Falzon gives an overview of the tensions in promoting the rights of the poorest Australians. He argues that the gradual shift to a 'user-pays' society, as well as the stigmatisation of the poor as solely implicit in their fate, normalises social exclusion in an insidious fashion.

My thanks to Katherine Neeson, student editor of this *HRD*. She has played an important role in its preparation. We hope you enjoy this issue.

Claudia Tazreiter, co-editor, *Human Rights Defender*

By John Falzon

LOCKED UP, LOCKED OUT



Peter Jeffs, *Untitled 1*, 1995-2000/2007, gelatin silver photograph, 115x174cm. From the exhibition *Time and Distance* at Centre for Contemporary Photography 2008

Fernando Silva ran the children's hospital in Managua. On Christmas Eve, he worked late into the night. Firecrackers were exploding and fireworks lit up the sky when Fernando decided it was time to leave. They were expecting him at home to celebrate the holiday.

He took one last look around, checking to see that everything was in order, when he heard cottony footsteps behind him. He turned to find one of the sick children walking after him. In the half light he recognised the lonely, doomed child. Fernando recognised that face lined with death and those eyes asking for forgiveness, or perhaps permission.

Fernando walked over to him and the boy gave him his hand. "Tell someone,..." the child whispered. "Tell someone I'm here."¹

Like the boy in this vignette, being excluded in prosperous Australia is akin to being both blamed and forgotten.

The history of institutional welfare, whether it emanates from political or civil society, is laden with the realities of surveillance, control and coercion in conjunction with moralising discourses. The welfare-to-work policy paradigm championed by the last Federal Government, especially when viewed in relation to its bed-fellow, *Workchoices*, was a good example of all of the above. Since this period, excluded Australians continue to live with the fruits of this ideological reasoning.

If you're broke and broken in the lucky country, there has to be something wrong with you. Something wrong with you. You are a living testimony to the refusal of *our way of life, our standards, our aspirations*.

Genuine inclusion can never be achieved at the expense of human dignity. Policies that are characterized by punitive means or exploitative ends will only deliver short-term, and somewhat superficial results, such as reducing the number of people in receipt of income support payments, whilst failing to enable them to enjoy long-term security and participation.

Further, the coercive corraling of disadvantaged groups into the low end of the labour market may result in the lowering of labour costs, but this in itself can act as a disincentive for business to actually invest in training and technological innovation. In other words, productivity increases can be discouraged because profit margins are increased on the backs of cheaper and more compliant labour.

The way people are constructed in the dominant discourse is

If you're broke and broken in the lucky country, there has to be something wrong with you. Seriously! Something wrong with you. You are a living testimony to the refusal of our way of life, our standards, our aspirations.

extremely important in this respect. At worst they are demonised or even criminalised. At best they are pathologized. The capacity-deficit is seen as theirs and theirs alone.

In his address at the Westin Hotel in 2006 the then Prime Minister set out the five challenges facing the nation. The fifth challenge, as he saw it, was framed as being the greatest:

*'...that is to maintain our great national unity, our social cohesion and above all our egalitarian spirit. I am proud of what this Government has done to modernise our social welfare system and to support the weak and vulnerable in our society.... We need to find innovative ways to break the vicious cycles of poor parenting, low levels of education, unemployment and health problems that can afflict some individuals and communities.... We need to find ways of restoring order to zones of chaos in some homes and communities, zones of chaos that can wreck young Australian lives.'*²

The 'zones of chaos' metaphor is both powerful and provocative. It hinges on the strategic assumption of a national or global order that is endangered by any exceptions to this order. While most of us would agree with the thesis that there are postcodes of disadvantage and that this can indeed be empirically shown, for example by the excellent research of Tony Vinson³, we should be wary of putting all our social inclusion eggs in the spatial disadvantage basket.

I would also like to sound a critical note of warning regarding the less empirically-based thesis that disadvantaged communities are solely lacking in so-called social capital. It could also be argued that in many of these communities there is a very strong sense of social capital and less insularity than in many areas of relative affluence. I am reminded of the comments of historian Mark Peel⁴ to the effect that it is capital rather than social capital that is sorely needed in communities of concentrated disadvantage.

The market has not proven to be the best mechanism by which the capital is attracted to these communities and we also need to remain ever vigilant regarding the subjection of essential services to the logic of the market. Governments must do what markets cannot. Markets can lock people out. Governments can lock people up. They can also, however provide the architecture of inclusion.

The United Nations' Human Settlements Programme report, *The Challenge of the Slums*,⁵ makes the global point that the 'main single cause of increases in poverty and inequality during the 1980s and 1990s was the retreat of the state'. According to *Australia Fair*⁶, in 1994, 7.6 per cent of Australians were living in poverty. In 2005/6 the figure was 11.1% on the austere 50% of median income measure. The situation is actually worse than this since social exclusion isn't just about income. The stand-out feature that the members of Vinnies see

every day is the impact of cost-shifting on low economic resource households. There is a strong sense that costs have shifted from the public purse to the private pocket for most of these battling families, many of whom include one or more members who are in paid work. Social inclusion has to involve income adequacy for households, whether they rely on social security benefits, paid work, or a combination of both. This has to be the starting point. But intertwined with this is the access to essential services and the space in which to build solidarity.

As the just released ACOSS Australian Community Sector Survey⁷ shows, 1 in every 25 people who accessed a community service was turned away last year. We've got to do better than this.

If we don't try then we have already failed. If we listen to the whispers of hope from the edges of society, we are compelled to believe that another kind of world is possible.

The 2004 Senate Inquiry into poverty and financial hardship

The greatest power for progressive social change lies precisely with the excluded. The people who can best define and interpret the reality of exclusion and socio-economic insecurity are also potentially the only ones who can, in the end, determine the means towards, and the ends of, social inclusion.

provided Australia with evidence that another kind of world is not only possible but absolutely essential. It provided a space in which people experiencing exclusion could tell their stories;

'Like millions of other low-income Australians, I am one of the hidden poor, just keeping afloat. We are flat out treading water out here. We are making very little headway towards our aspirations, and we are one crisis or catastrophe away from the poor box. We are living on the edge.'

*'We live in the shadows of the dismal statistics. We are not mad, bad, sad or totally dysfunctionally overwhelmed by our life circumstances. Many of us are highly skilled and well educated. We are all doing what we can to contribute to society with the resources we have. Our poverty is poverty of resources, services, opportunities... it is getting too hard to make ends meet, let alone work towards our dreams.'*⁸

The 1975 Commission of Inquiry into Poverty⁹ noted that: 'If poverty is seen as a result of structural inequality within society, any serious attempt to eliminate poverty must seek to change those conditions which produce it.'

The greatest power for progressive social change lies precisely with the excluded. The people who can best define and interpret the reality of exclusion and socio-economic insecurity are also potentially the only ones who can, in the end, determine the means towards, and the ends of, social inclusion.

As the poet Bertolt Brecht put it so well, *'the compassion of the oppressed for the oppressed is indispensable. It is the world's one hope.'*¹⁰

The role of government is to create the legislative, social and economic frameworks in which this hope can be realised. It is the disempowerment of people that is the most crippling and significant obstacle to the change that will challenge but also enrich the whole of society. This disempowerment is, of course, organically connected to the increasing sense of alienation and atomization, even in the closest-knit communities. Indeed, it is this disempowerment that is crippling on nearly all levels.

Epidemiologist, Michael Marmot, in his 2007 Harveian Oration, noted that:

*'failing to meet the fundamental needs of autonomy, empowerment, and human freedom is a potent cause of ill health.'*¹¹

Our creative mission is both personal and collective. The last word must therefore be the collective word from Lilla Watson and a group of Aboriginal activists in Queensland in the 1970s:

'If you have come to help me, you are wasting your time. But if you have come because your liberation is bound up with mine, then let us work together.'

Dr John Falzon is Chief Executive Officer of the St Vincent de Paul Society National Council.

Endnotes

- 1 Galeano, E. *The Book of Embraces*, W.W. Norton, New York, 1991, p.72.
- 2 Howard, J. Address to the 10th Anniversary Dinner, Westin Hotel, Sydney, 2 March, 2006. <http://pandora.nla.gov.au/pan/10052/20060321-0000/www.pm.gov.au/news/speeches/speech1799.html>
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- 5 United Nations Human Settlements Programme, *The Challenge of Slums: Global report on Human Settlements 2003*, Earthscan, London, 2003, p. 43.
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- 9 Commission of Inquiry into Poverty, *First Main Report: Poverty in Australia*, AGPS, Canberra, 1975, p.viii.
- 10 Brecht, B. 'The world's one hope' in B. Brecht, *Poems 1913-1956*, Methuen, New York, 1976, p.328.
- 11 Marmot, M. 'Harveian Oration: Health in an unequal world', *Lancet*, vol.368, 2006, p.2081.

The *Australian Human Rights Centre* is an inter-disciplinary research and teaching institute based in the Faculty of Law at the University of New South Wales. Established in 1986, the *AHRC* aims to increase public awareness about human rights procedures, standards and issues within Australia and the international community. The Centre undertakes research projects on contemporary human rights issues and provides accessible information on developments within the field. The *Human Rights Defender* is published as part of this commitment to raise public awareness.

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APOLOGY - Volume 17, Issue 1, March 2008, pg. 24. The work, *Down to Earth*, by Claudia Chaseling was incorrectly attributed to Nicholas Blowers. See right.



Claudia Chaseling *Down to Earth*, 2007, Egg Tempura and Oil on Canvas, 200x400cm. Courtesy of the artist and Boutwell Draper Gallery, Sydney.

UPCOMING EVENT - Wednesday 24th September 2008, *Australian Human Rights Centre Annual Public Lecture: Reconciliation and Human Rights*, by Professor Stephan Permentier from the Faculty of Law of the Catholic University of Leuven, Belgium. Professor Permentier is an international expert in political crimes and transitional justice.

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Bindi Cole
 Wathaurung Mob, 2008
 pigment print on rag paper
 97 x 130 cm

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We cannot choose the historical conditions we find ourselves in, but we can choose how we respond to them – Ajamu Baraka



Michael Corridore Untitled 1 2005, type C photograph, 100x150cm. From the exhibition *Angry Black Snake* at the Centre for Contemporary Photography 2008