

## Editorial

*by Julia Yonetani*

Tension between forces that seek to increase state power under claims of 'national security' on the one hand, and those that seek to guarantee civil liberties on the other, have existed since the onset of the modern nation-state system. The sovereign territorial nation-state has often been the institution of last recourse and highest appeal in seeking to fulfil ideals of equality, liberty, justice, and democracy. Yet left unchecked, state power also threatens to cancel out any gains made in ensuring democratic processes are upheld.

In the 'global war on terror,' which has amounted to a declaration of war against an indeterminate enemy for an indefinite period, this tension has come directly to the fore, and democratic processes have subsequently come under direct jeopardy. As the effects of global processes exceed the reach of sovereign states, late modernity is, in the words of William Connolly, a "time without a corresponding political place."<sup>1</sup> In the face of fragmentation, political, social, and economic alienation, and acts of violence, the state has increasingly lost its ability to guarantee social equality, social welfare, or individual security against terrorist attack. At the same time, in an environment of uncertainty and fear, the need to increase 'national security' is used to legitimise increases in state powers of surveillance and policing. This in turn further threatens the guarantee of civil rights.

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<sup>1</sup> William Connolly, *Identity and Difference: Democratic Negotiations of Political Paradox*. Ithaca and London: Cornell University Press, 1991, p. 216

This second edition of *AsiaRights* focuses on issues of civil rights and state power in three very different countries in terms of political makeup and international position: Indonesia, Australia, and Japan.

As Bivitri Susanti notes in her contribution to this edition, historically the Indonesian state has been repressive, and the use of military power against civilians common. More recently, civil liberties have to a limited extent increased. Yet after the Bali Bombing in October 2002, Counter-Terrorism Laws were introduced that significantly increased powers to arrest without authorisation, to detain suspects, and to place suspects under surveillance, as well as widened the definition of proof. It is a scenario, she concludes: “that can be found in countries with an authoritarian regime or countries in transition, in which the status quo still holds power and wishes to maintain that power.” In other words, “‘terrorism’ and ‘national security’ interpreted by the state are used as tools to preserve state power.”

The case of Indonesia is moreover complicated, Susanti observes, by the fact that it is the country with the largest Muslim population in the world. The general population tend to consider terrorism to be a less important issue than domestic political issues. At the same time, however, the government faces international pressure to present the appearance that it is dealing with the terrorist threat.

In contrast to the case of Indonesia, it may be said that Australia has a longer history of democratic government. Yet, as George Williams points out in his contribution, this does not necessarily make the threat anti-terrorist legislation can pose to fundamental democratic freedoms any less real.

In his succinct and frighteningly convincing case for the enactment of an Australian Bill of Rights, Williams considers the legal implications of the host of new anti-terrorism laws. Particularly in their original draft form, these laws potentially vastly increased state powers, while defining terrorism in such vague

terms that any form of unlawful civil protest could be considered a terrorist act, the maximum penalty of which was imprisonment for life. In its original form, further anti-terrorism legislation moreover gave ASIO the power to strip-search and detain anyone who may have useful information about terrorism *indefinitely*. At it now stands, persons may be detained for one week and questioned for 24 hours (48 if an interpreter is needed). The attorney general also has powers to ban organizations deemed on “reasonable grounds” to be indirectly or directly engaged in or preparing a terrorist attack. The original ASIO bill of 2002 in particular Williams describes as “one of the worst pieces of legislation ever introduced into the federal parliament.”

Rather than focusing on anti-terrorism legislation directly, Yukiko Miki’s contribution examines the important role citizen’s movements played in increasing citizen rights to information through the formation of an information disclosure system. National information disclosure law was finally enacted in 1999, though the system is far from complete and many obstacles to the right to information remain. The Japanese state has been largely reluctant to guarantee citizen rights to information, and national legislation was only implemented after decades of citizen activism and local government initiatives. Even great hurdles are faced in seeking to secure fundamental human rights through national legislation in the case of Minorities, as Yuuki Hasegawa examines in her study on the status of Ainu within Japanese legislation.

Miki’s and Hasegawa’s detailed examinations teaches us important lessons in the context of Bivitri’s and Williams’ studies on counter-terrorist laws and civil rights. Namely, that is civil liberties are often only won through many years of continual effort on the part of citizen’s groups and civil society, it is therefore important not to take such liberties for granted, and, finally, and importantly, government claims that increases in ‘national security’ do not threaten (and may even increase) democratic freedoms should not be taken merely at face value.

About the Editor

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