



sydney
PEN

PEN magazine



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Freedom of opinion and expression an inalienable right of a free people



As Australian citizens it is our right and our duty to vote in elections. Consequently we have a civic duty to inform ourselves so that we can cast a considered vote. The High Court has held in *Lange v Australian Broadcasting Commission* (1997) that freedom of political communication is protected by our Constitution. As a result the parliament and the executive may not unreasonably restrict political communication.

A free press is a necessary element of our democracy. We expect the news media to shine a light on matters of public interest, to maintain ethical and professional standards of truth, fairness and accuracy, to distinguish fact from opinion, respect individual privacy and to hold public figures and institutions to account. But to whom should the press be accountable?

At present, newspapers are regulated by the Australian Press Council which is funded by the industry. On 28 February, the Report of the Independent Inquiry into the Media and Media Regulation by the Hon Ray Finkelstein QC and assisted by Professor Mathew Ricketson was delivered to the Minister for Broadband, Communications and the Digital Economy. The Report recommends that a News Media Council be established as an independent statutory body, funded by government. It recommends that the Council set journalistic standards for all news and current affairs media, including newspapers with a circulation of 3,000 copies or more per issue, broadcast radio and television and online sites with 15,000 or more hits per year. The Council would have the power to require a news outlet to publish an apology, correction or retraction,

or afford a person a right to reply. It would also handle complaints made by the public. Some commentators have criticised the recommendations, saying that regulation of news and current affairs outlets by the proposed Council would be an unwarranted intrusion by Government into the freedom of the press and a threat to freedom of expression and the public's right to know. On the other hand, those that support the Report's recommendations point out that the Council would be independent of government in the same way that other important statutory bodies such as the ACCC are independent and are seen to be so.*

The Australian Press Council, the current industry self-regulatory body, states in its *Charter for a Free Press in Australia*: "Freedom of opinion and expression is an inalienable right of a free people." However, the Finkelstein Report recommends that the proposed new regulatory body, the News Media Council should not include the promotion of free speech among its functions, noting that there are others in the community who do that.

Any news media regulation will necessarily impose limits on freedom of expression to a greater or lesser degree. The role of PEN and like-minded organisations, which advocate for the right to freedom of expression – freedom to write and freedom to read – is indispensable as the community debates how we regulate new generations of media. It cannot be academics, journalists and media professionals alone who engage in this debate. I encourage all our readers to be involved and to join PEN and support our work. The value that we put on our freedoms and liberties in practice will determine how they find expression in our laws and institutions.

Michael Fraser

* A report on the forum, Who Guards the Guardians, presented by the Australian Centre for Independent Journalism, on The Finkelstein Report is on page 28.

Sydney PEN

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Dr Rosie Scott awarded Life Membership



Award winner Dr Rosie Scott

At the Sydney PEN Annual General Meeting, held on April 10, Dr Rosie Scott, a former Vice-President, was acknowledged and honoured with Life Membership. Dr Scott was awarded the inaugural Sydney PEN Award in 2006. She served on the Sydney PEN Committee for eight years, and established the Writers in Detention Committee with Tom Keneally and Dr Denise Leith in 2003 to bring to light the presence of writers in Australian refugee detention centres.

Professor Michael Fraser, the President of Sydney PEN, who presented the award to Dr Scott, said she worked tirelessly to raise the plight of refugee writers in the wider community, setting up strikes, public meetings and bringing all the Committee on board with the issue.

With Tom Keneally, Dr Scott also edited an anthology of work by writers in detention, released as a special issue of the journal *Southerly* in 2004, entitled *Another Country*. An important aspect of the work of the anthology was the tracking down of those asylum-seekers who had been 'called to write' while in the camps.

In 2004, the Committee's work earned Sydney PEN the Human Rights and Equal Opportunity Community Award. The raising of this issue by Sydney PEN brought the organisation to the attention of the Australian public and raised its profile in Australia. Dr Scott was also responsible for raising the issue of writers in detention in International PEN, after which other PEN centres recognised that they, too, had the same problems in their

countries and began writers in detention committees of their own.

She accepted Life Membership with great humility, saying she was honoured, thanking the committee and members who voted in favour of it. In praising the work of PEN and its volunteers, she said such a commitment was needed now more than ever before.

"These days, human rights are being trampled everywhere, and writers are being goaled, exiled and treated terribly. Often PEN is their only lifeline," she said.

Dr Scott said that her work with PEN was one of the things that had made her most proud in her life. In an interview afterwards, she spoke about the experience of liaising with refugee Tony Zandavar as one of the most profound, having seen him go from "nearly dying of depression" in detention, to finally seeing his release after five years both at Baxter and Villawood detention centres.



Michael Fraser with Rosie Scott and her husband Danny Vendramini

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Letizia De Rosa

He had found his confidence again after Dr Scott wrote to him to say one of his poems had deeply moved her.

"It was a beautiful poem so I wrote and said this is wonderful, I'll publish it," she says. The tireless lobbying of Dr Scott and the Writers in Detention Committee eventually resulted in Mr Zandavar's release, and today he is happily married in Tasmania.

She said that many of the writers published in the anthology of refugee stories, *Another Country*, had experienced their darkest days in detention, but the opportunity to communicate with someone on the outside had a huge effect on their "sense of themselves".



Helen Macallan and Angelo Loukakis

"We can do positive things in a very direct way through PEN. We belong to an organisation that's part of a long tradition we can be very proud of," she said.

Denise Leith, also a long standing member of PEN and the Writers in Detention Committee, described *Another Country* as Dr Scott's "crowning glory", in her tireless, long fight to "challenge Australia's definition of itself as an humanitarian nation," work she did voluntarily without any form of recompense for eight years.

Denise Leith says of Dr Scott: "In her work she offered hope, solace and friendship, freedom for some, a voice for others, and a bridge to link those of us who are free with those of us who wish to be. It was Noam Chomsky, Rosie reminded me once, who

said that educated people, intellectuals and writers, have a duty to speak out against injustice because of their position."

Dr Scott has always been passionate about activism, being inspired at an early age by her parents. She said of PEN, "It's an important rite of passage for writers, especially when we're in democracies where we can write what we like. This is what we can do to help our fellow writers, in places that are very



Elisabeth Barry and Joel Gibson



Zoe Roberts and Michael Fraser

scary, and it's the smallest thing you can do."

During the meeting, Professor Fraser said that Sydney PEN's new program, *Free Voices, Raising awareness of freedom of expression in a time of complacency*, would be the organisation's theme for the next several years. Established under a grant from Copyright Agency Limited, the program will consist of a series of essays, lectures, interviews, publicity, campaign work and online activities. The aim is to build public awareness and concern, galvanise a larger, broader demographic of supporters who will challenge human rights abuses and stand up for the freedom to write and read.

The program will centre on giving 10 writers the opportunity to raise (for emerging writers) and utilise (for already eminent writers) their profiles and express their commitment to freedom of expression in a contemporary context. The first essay, 'There's nothing funny about ban on Parliamentary satire', by television and radio presenter Craig Reucassel, who is a founding member of the satirical team *The Chaser*, is published in this magazine on page 24.

Bernadette Burke

Writers in peril

PEN's current case list covers Afghanistan, Bangladesh, China, Tibet, Indonesia, Malaysia, Maldives, Mongolia, Myanmar, Pakistan, Philippines, Singapore, Sri Lanka, Thailand and Vietnam. In all these countries writers are being attacked, harassed and gaoled. Below is a selection of writers, reporters and academics who have suffered persecution.

CHINA

Imprisoned

GUO Quan

Born in 1968, Guo Quan is an Internet writer and activist who was reportedly arrested at his home in Nanjing, capital of Jiangsu province for "suspicion of subversion of state power" in November 2008. At the time of his arrest, the police confiscated his articles and computer. He was held incommunicado at Nanjing City Public Security Bureau.

In October 2009, Guo Quan was sentenced to 10 years in prison and three years of deprivation of political rights for his pro-democracy activities and critical writings. Guo was charged for a series of articles entitled 'Herald of Democracy' posted online between mid-2007 and November 2008. He is a former criminal-court judge and literature professor at Nanjing Normal University however, due to his political activities, he has been banned from teaching. He is an honorary member of Independent Chinese PEN, Uighur PEN.



Professor Guo Quan

LU Jianhua

Born in 1960, he was Research Professor at the Chinese Academy of Social Sciences, Deputy Director of Public Policy Research and Executive Director of the China Development Strategy. He was arrested in 2005 and sentenced to 20 years in prison on charges of "leaking state secrets" to a Hong Kong reporter who was sentenced to five years for spying. Human rights groups have questioned the evidence in the reporter's case, but Lu's trial was held in secret and reportedly only lasted 90 minutes. Held incommunicado, his



Professor Lu Jianhua

wife is not allowed access to him. Honorary member: Independent Chinese PEN Centre (ICPC)

LIU Xianbin

A dissident writer and activist, he was arrested in June 2010 and sentenced to 10 years in prison for "inciting subversion of state power" in a series of articles calling for political reform published in overseas Chinese-language websites from August 2009 to June 2010. Honorary member of Independent Chinese PEN Centre (ICPC).

QI Chonghuai

Born in 1965, Qi Chonghuai is a journalist who was arrested in 2007 and sentenced to four years in prison following the publication of an article alleging corruption in the Tengzhou Communist Party, which was published in June 2007 on the Xinhuanet website. He was sentenced to a further eight years in June 2011. Qi Chonghuai had been a journalist for 13 years before his arrest. He is known for his reporting on corruption and social injustice in Shangdong province. He is said to have been repeatedly warned by the authorities

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Writers in peril

to cease such reporting prior to his arrest. Honorary member of Independent Chinese PEN Centre

YANG Tongyan (aka Yang Tianshui)
Born in 1961, Yang Tongyan is a dissident writer and member of Independent Chinese PEN Centre (ICPC) who was arrested in 2005 and sentenced to 12 years in prison following his conviction of subversion for posting anti-government articles on the Internet, and organising branches of the (outlawed) China Democracy Party. He is a recipient of Independent Chinese PEN Centre's 2006 Writer in Prison Award, and the 2008 PEN/Barbara Goldsmith Freedom to Write Award. Honorary Member of PEN Canada, Italian PEN.

HEZIM Tursunjan
Born in 1973, Hezim is a former history teacher and founder of the now closed popular Uyghur history website Orkhun. He was arrested shortly after the 5 July 2009 protests in Urumchi, which turned violent after police cracked down on peaceful protesters. Hezim's family was never informed of the charges against him and his whereabouts remain unknown. No official reason has been given for his detention. He was reported in March 2011 to have been sentenced in July 2010 to seven years in jail by the Aksu district court at a closed trial.

According to Amnesty International, the Orkhun website mainly featured scholarly articles on Uyghur history and culture and was an important resource for Uyghur intellectuals and students. PEN is seeking further information about the charges against him.

LI Tie
Aged 48, Li Tie is an activist and internet writer who was arrested in September 2010 by the Wuhan City Public Security Bureau on suspicion of "inciting subversion of state power" for his critical articles. The charge was changed to the more serious "subversion of state power" in October 2010. Li is known for his articles about democracy and constitutional government published online

on overseas Chinese language websites such as Democratic China and the news portal Boxun. He is also a signatory of Charter 08.

ZHU Yufu
Internet writer, founder and editor of the China Democracy Party's magazine, and member of the Independent Chinese PEN Centre, Zhu Yufu was charged in April 2011 on suspicion of "inciting subversion of state power" for his critical articles. He had spent a total of nine years in prison before this latest arrest.

ZUO Xiaohuan
Born in 1969, he is a freelance writer, human rights activist and former teacher. He was arrested in 2010 for his civil rights activism and critical reports and articles published on the Internet and accused of giving critical interviews to the overseas media. Zuo Xiaohuan was charged in 2010 with "suspicion of inciting subversion of the State power". No date for the trial has yet been set and he remains detained pending trial. From September 2006, he spent two years in a detention centre of "re-education through labor" for "inciting subversion of the state power" for his online writings. As a result, he was dismissed from his post as a teacher and had been unable to find other employment. Honorary member of Independent Chinese PEN.

TIBET AUTONOMOUS REGION

Imprisoned

TSANG Gopey
Born in 1970, he is a writer and editor of the Tibetan language website Chomei. He was arrested in February 2009 on charges of "disclosing state secrets" and sentenced to 15 years in prison. The Chomei website, which promotes Tibetan



Gopey Tsang

culture and literature, was created by Gopey Tsang and Tibetan poet Kyab-chen De-drol in 2005 and since then has been closely monitored by the authorities.

KYAB Dolma

A writer and teacher, he was arrested in 2005 for allegedly endangering state security in his unpublished book *Sao dong de Ximalayasha* (*The Restless Himalayas*). In another book, Dolma Kyab reportedly gives sensitive information on issues such as the location and number of Chinese military camps in Tibet. He was charged with "espionage" and "illegal border crossing" and sentenced to 10 and a half years in prison. Honorary member of English, American and German PEN.

NORBU Paljor (aka Panjue Ruobu)

Born in 1927, he is a renowned master printer who was arrested in 2008 at his home in Lhasa for allegedly printing "prohibited material", including the banned Tibetan flag and "inciting separatism". He was sentenced to seven years in prison.

INDIA

Killed

RAJPUT Umesh

A reporter with the Hindi daily *Nai Duniya*, he was shot dead by two unidentified men in a targeted attack in January 2011 outside his home near Raipur. A note written in red ink was found near the crime scene reportedly stating: "If you don't stop publishing news, you will die".

DEY Jyotirmoy

The investigations editor for the *Mid Day* newspaper, he was shot dead by four men on motorcycles as he returned home on in June 2011. Police say the killing was carried out by a professional gang and have launched an investigation. Dey was a leading crime reporter and had recently written about "an oil Mafia" that had been pilfering fuel.

BURMA

Imprisoned

AUNG Than, Zeya AUNG, MAUNG Maung Oo and SEIN Hlaing
Student activist and NLD member, student, publisher and distributor respectively, they were arrested in 2006 and sentenced to 19 years in prison (Aung Than and Zeya Aung), 14 years in prison (Maung Maung Oo) and seven years in prison (Sein Hlaing) for publishing an "anti-government" book of poems entitled *Dawn Mann* (*The Fighting Spirit of the Peacock*). The peacock is the symbol of the pro-democracy movement in Burma. They were also charged with associating with outlawed organisations and illegally crossing an international boundary. Aung Than is an Honorary member of American PEN.

MAUNG MAUNG Zeya

Born in 1954, the poet, writer and political activist also worked as a video journalist for the Oslo-based Democratic Voice of Burma (DVB). He was arrested in 2010 and in 2011 was sentenced to 13 years in prison – five years under the Unlawful Associations Act, one year under the Immigration Act for allegedly crossing the Thai-Burmese border illegally, and seven years under the Electronics Act. He has published his poems and articles in a number of Burmese magazines and journals and is also a well-known painter.

MIN Ko Naing (aka Paw Oo Htun)

Born in 1963, the poet and political activist was arrested in 2007 and sentenced in 2008 to 65 years in prison for organizing, with others, peaceful protests against food prices. These protests led to widespread peaceful anti-government protests led by Buddhist monks known as the Saffron Revolution that were violently suppressed by the military authorities.



Min Ko Naing

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Writers in peril

PAKISTAN

Killed

SHAHZAD Syed Saleem
Bureau Chief of the *Asia Times Online* and author of the newly published *Inside Al-Qaeda and the Taliban: Beyond Bin Laden and 9/11*, he disappeared in May 2011, two days after writing an article for the *Asia Times Online* suggesting complicity between Al-Qaeda and the Pakistani Navy. His body was found on 31



Syed Saleem Shahzad

May 2011 in Sarai Alamgir, 150 kilometres southeast of Islamabad, bearing signs of torture. Early reports suggested that Shahzad was arrested and killed by the Pakistani's Directorate for Inter-Services Intelligence (ISI). According to reports, Shahzad had recently complained about being threatened by Pakistan's Inter-Services Intelligence (ISI) agency. The Pakistani Government has ordered an investigation.

VIETNAM

Imprisoned

TRẦN Anh Kim
Born in 1949, the Internet writer and



Tran Anh Kim

dissident, is a former army officer and author of more than 60 articles and essays focusing in human rights and social injustice, as well as being secretary of the banned Vietnamese Democratic Party and member of Bloc 8406. He was arrested in 2009 and sentenced to five and a half years in prison and three years' probationary detention for "conducting propaganda against the Socialist Republic of Viet Nam" under Article 88 of the Criminal Code. He was also convicted of the more serious charge of subversion for his pro-democracy activities in 2010. He was member of the editorial board of the underground journal *Fatherland*, and a recipient of the 2009 Hellman Hammet Award.

TRAN Huynh Duy Thuc (pen name: Tran Dong Chan)

Born in 1966, the businessman and Internet writer was arrested in 2009 and sentenced to 16 years in prison and three years of probationary detention for "conducting propaganda against the Socialist Republic of Viet Nam" under Article 88 of the Criminal Code and "activities aiming to overthrow the people's government" under article 79 of the Criminal Code through his writings. Tran is said to be the director general of the company One Connection Internet, and founder of the Studies Group for Improving and Promoting Vietnam. He has various web blogs, the most prominent being 'Change we need', where he publishes his articles on the social and political situation in Vietnam, as well as his poems.

Collated by Cassandra Byrnes

PEN Protesta ! condemns murder of Mexican journalists

The Mexican Government has increasingly come under pressure to take action to end the killings of journalists by the nation's powerful drug cartels. Mexico is one of the most dangerous countries in the world in which to be a writer. In the last five years, 38 print journalists, writers and bloggers have been murdered in connection with their work, and eight have disappeared; most of the dead were involved in reporting on corruption and organised crime. The vast majority of these killings have never been properly investigated; most of the perpetrators remain unpunished.

PEN International delegates and PEN Mexico staged a five-day mission in January – PEN Protesta! – to raise awareness of the crisis and condemn the lack of action by the Mexican Government. The event supported journalists and freedom of expression. The public demonstration demanded accountability for murders and disappearances of journalists.

PEN Protesta! was an unprecedented show of support from the international literary community in recognition of the courage and endurance of their Mexican colleagues. "Our presence in Mexico can be read in two ways," said author and essayist John Ralson Saul, President of the Pen International.

"For our colleagues here, this delegation is the physical embodiment of the sense of solidarity the global community of writers feels with them, and our tremendous admiration for their courage. For the Mexican Government, our presence should be seen as a sign of the terrible damage the killings of journalists is doing to Mexico's international standing.

"We will keep delivering both of these messages, louder and more persistently, until the killings stop," Dr Saul said.

According to Jennifer Clement, President of PEN Mexico, it was the first protest of its kind where Mexican journalists and writers joined with colleagues around the world "to lift their voices against the violence in Mexico and the danger this holds for freedom and Mexico's emerging democracy".

She spoke of the dehumanising effect on all Mexican citizens, saying that the words censorship, impunity, persecution, are worn out from overuse. "If out of fear we no longer publish the news, we lose not only our democracy and freedom, but our history," she said.

To coincide with the event, PEN published a full-page ad in *EL Universal* signed by 170 of the world's leading writers declaring solidarity with Mexican writers and journalists. Nobel Prize laureates J. M. Coetzee, Nadine Gordimer, Toni Morrison, Orhan Pamuk, and Wole Soyinka were joined by scores of other international literary luminaries including Margaret Atwood, Salman Rushdie, Jonathan Franzen, Claribel Alegria, Bei Dao, Victor Erofejev, Ariel Dorfman, A.B. Yehoshua, Hanif

Kureishi and Leonard Cohen to demand prosecution of those responsible for murdering journalists.

Hori Takeaki, Secretary of PEN International, made note of the unprecedented size of the PEN delegation, which included the entire executive of PEN International and representatives from all seven PEN centres in North America and the Japanese and English PEN centres.

Professor Takeaki called the historic mission "a clear, physical sign of the profound and urgent concern with which writers from countries as distant as Japan view the situation of their Mexican colleagues".

The crisis in Mexico is being closely watched by the international community, and organisations such as PEN, the UN, Reporters Sans Frontieres and Amnesty International are monitoring events.

John Ralston Saul has called the mounting death toll "an assault on the dignity and rights of all Mexicans and a blight on Mexico's reputation internationally".

Dr Saul has demanded Mexico take it one step further by ushering in legal changes. "The corruption that links crime to public life must be attacked. A normal, stable society can be created with the right laws and the right commitment from those with the power to act."

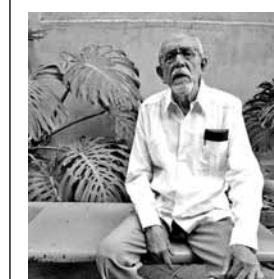
On March 14, the Mexican Government bowed to international pressure and the Senate approved an amendment to the law that would make all crimes against journalists, writers and bloggers federal crimes. However, the amendment has to be passed by the individual states before it becomes law.

Cassandra Byrnes

Poet murdered

The Writers in Prison Committee (WiPC) of PEN International is appalled by the killing on 31 March of the Mexican poet and translator Guillermo Fernández García. The 79-year-old writer was found dead at his home in Toluca, Mexico State. His murderers had bound his feet and hands before killing him with a blow to the head. The motive for the murder is unknown. The WiPC calls on the Mexican authorities to fully investigate Fernandez' murder and bring those responsible to justice.

Guillermo Fernández García was a noted poet and had published 12 volumes of poetry, including *Visitaciones* (1964), *La palabra a solas* (1965), *La hora y el sitio* (1973), *El reino de los ojos* (1983), and



Imágenes para una piedad (1991). He was also regarded as one of Mexico's finest translators of Italian literature and had translated works by Italo Calvino, Antonio Tabucchi, Cesare Pavese and Giuseppe Tomasi de Lampedusa.

Writer, poet and translator Guillermo Fernández García murdered in March

A voice for those silenced by persecution, exile or imprisonment

Sydney PEN defends freedom of expression and campaigns on behalf of writers in the Asia and Pacific region who have been silenced by persecution or imprisonment. This is the latest news of writers in the region.



Chen Wei

Writer Chen Wei sentenced to nine years in prison

Sydney PEN joins the Writers in Prison Committee (WiPC) of PEN International in condemning the imprisonment of the writer Chen Wei. An honorary member of the Independent Chinese PEN Centre and winner of the Liu Xiaobo Courage to Write award, Chen Wei was sentenced in December to nine years in prison for 'subversive writing'. The conviction is based on articles published on Chinese websites overseas. The WiPC calls for the immediate and unconditional release of Chen Wei.

Musician Win Maw and blogger Nay Phone Latt included in large scale amnesty

The Writers in Prison Committee welcomes the release of leading Burmese musician Win Maw and prominent blogger Nay Phone Latt, who were among 651 prisoners to be freed as part of a presidential amnesty announced in January. News is still emerging, and full details of all those included in the amnesty have yet to be confirmed. PEN hopes that all those who remain detained in Burma in violation of Article 19 of the United Nations Universal Declaration of Human Rights, protecting the right to freedom of expression, will soon be freed.

Win Maw was arrested in 2007 and sentenced to seven years in prison for 'threatening national security' for his song writing and reporting on the crackdown in Burma, which began in early September 2007 following demonstrations led by monks and pro-democracy activists.



Win Maw

Win Maw was beaten and tortured during the early years of his detention. In 2009 he was sentenced to a further 10 years in prison. He was previously imprisoned from 1997-2003 for writing songs in support

The PEN Charter affirms that:

1. Literature knows no frontiers and must remain common currency among people in spite of political or international upheavals.
2. In all circumstances, and particularly in time of war, works of art, the patrimony of humanity at large, should be left untouched by national or political passion.
3. Members of PEN should at all times use what influence they have in favour of good understanding and mutual respect between nations; they pledge themselves to do their utmost to dispel race, class and national hatreds, and to champion the ideal of one humanity living in peace in one world.
4. PEN stands for the principle of unhampered transmission of thought within each nation and between all nations, and members pledge themselves to oppose any form of suppression of freedom of expression in the country and community to which they belong, as well as throughout the world wherever this is possible. PEN declares for a free press and opposes arbitrary censorship in time of peace. It believes that the necessary advance of the world towards a more highly organised political and economic order renders a free criticism of governments, administrations and institutions imperative. And since freedom implies voluntary restraint, members pledge themselves to oppose such evils of a free press as mendacious publication, deliberate falsehood and distortion of facts for political and personal ends.

of Aung San Suu Kyi, leader of the opposition National League for Democracy (NLD).

Nay Phone Latt was arrested on 29 January, 2008, and sentenced to 20 years and six months in prison, reduced on appeal to 12 years, for critical writings published in his blog. He has continued to write poems in prison, and is an honorary member of American PEN.

Blogger Pham Minh Hoang released

French-Vietnamese university teacher and Internet writer Pham Minh Hoang was released from prison in January. PEN continues to call for the immediate and unconditional release of all other writers and journalists currently detained in Vietnam in violation of the International Cove-



Pham Minh Hoang

nant on Civil and Political Rights (ICCPR), to which Vietnam is a signatory.

Pham Minh Hoang (pen name Phan Kien Quoc), was arrested in August 2010 and was convicted a year later for his critical online writings. He was found guilty of "activities aimed at overthrowing the people's government" and was sentenced to three years in prison and three years of probationary detention.

Poet Mohammad Soleimani Nia arrested without charge

PEN is concerned about the welfare of Iranian literary translator and poet Mohammad Soleimani Nia, 39, who has been arrested and held without charge since 10 January 2012. The reason for his detention is not known. PEN is seeking further information about his well-being and any charges against him as a matter of urgency, and it calls for his immediate and unconditional release if held solely for the peaceful exercise of his right to freedom of expression as guaranteed by Article 19 of the International Covenant on Civil and Political Rights, to which Iran is a signatory.

Soleimani Nia has been under pressure since late November 2011, when he was questioned by security and intelligence officers and banned from leaving Iran last November. According to Iranian American writer Firoozeh Dumas, who worked closely with Soleimani Nia on the translation of her book *Funny in Farsi*, he had been developing a website designed to help Iranians find work.

At least 10 Iranian journalists have also been arrested this year, according to the Committee to Protect Journalists (CPJ).

Poet and blogger re-arrested; fears for safety

There is international concern for the safety of Syrian poet and blogger Dia'a Al-Abdullah, who was arrested at his home in February by the Air Forces secret services after writing an open letter to the Syrian President. Al-Abdullah remains detained incommunicado at an unknown location, and is considered to be at serious risk of torture and ill-treatment.

Al-Abdullah was previously detained and interrogated for his writing in June last year. He was held incommunicado until his release in January. After his release, Al-Abdullah reported that he was subjected to severe torture during his detention. He was also arrested in 1999 and held for one



Mohammad Soleimani Nia

year without trial or charge after publishing collection of poems. With the internet and media already severely curtailed in recent years, the Syrian authorities have imposed even greater restrictions on freedom of expression and assembly in reaction to recent events.

Poet and journalist remains detained without trial in Philippines

Poet, journalist and activist Ericson Acosta continues to be held without trial since his arrest in February 2011. PEN fears that he may be targeted for his legitimate human rights activities, and calls for his immediate and unconditional release if held solely for the peaceful exercise of his right to freedom of expression, as guaranteed under Article 19 of the International Covenant of Civil and Political Rights, ratified by the Philippines.

Ericson Acosta, 39, is a former editor of the student publication *Philippine Collegian*, and chairperson of the student cultural group Alay Sinin. He also worked as cultural writer for the *Manila Times*, and has acted in and directed a number of theatre plays. Acosta was arrested by the military on suspicion of being a member of the New People's Army (NPA), then later of being in the illegal possession of explosives. However, over one year after Acosta's arrest and arraignment, the prosecutor has yet to file a formal complaint to the court.

Nepalese writer under threat, fears for safety

Writer and journalist Kanak Mani Dixit is facing implicit death threats after being declared 'People's Enemies' by Nepal's ruling Maoist party. PEN is dismayed that journalists and writers continue to be targeted with apparent impunity in Nepal, and it reminds the Nepali authorities of their obligations to Article 19 of the International Covenant on Civil and Political Rights, to which Nepal is a signatory.

According to PEN's information, Kanak Mani Dixit is among three leading figures to have been declared 'people's enemies' in an article published in the 30 January 2012 edition of the monthly magazine *Lalrakshak* (Red Guards), the mouthpiece of the ruling Unified Communist Party of Nepal-Maoist (UCPN-Maoist). Also targeted are Kul Chandra Gautam, a former U.N. assistant secretary-general and a longstanding deputy executive director of the U.N. children's agency UNICEF, and human rights activist Subodh Raj Pyakurel, executive director of Informal Services Sector (INSEC), the largest non-governmental human rights organisation in Nepal. All three men are believed to be threatened for their outspoken criticism of the Chairman of the UCPN-Maoist, Pushpa Kamal Dahal 'Prachanda', in particular their calls for him and his party to renounce the use of violence.

In a letter to the Nepali Prime Minister Dr Baburam Bhattarai, the three men said the *Lalrakshak* article is "an incitement to violence, and part of an all-out attack that is underway against a broad range of civil society actors from the districts in the capital, including journalists, lawyers and rights activists".

The battle to raise Indigenous literacy

PEN emphasises the role of literature in mutual understanding and world culture, and promotes literature in various ways, including opposing restraints on freedom of expression and working to promote literacy itself. **Cassandra Byrnes** reports on the work of the Indigenous Literacy Foundation.

Indigenous Australians comprise the most disadvantaged group in Australia by almost all socio-economic indicators. By the age of 15, more than one-third of Australia's Indigenous students do not have adequate literacy skills. Life in remote Aboriginal communities reflects those in third world countries.

The Indigenous Literacy Foundation (ILF) grew from a literacy project within the Fred Hollows Foundation set up in 2004, and aims to improve the lives and opportunities of Indigenous Australians, raise awareness of Indigenous literacy issues and raise funds to equip Indigenous people living in remote and isolated areas with books and literacy support.

The ILF has only three full time employees, with one located in Darwin and two in Sydney.

Based in Darwin, program manager Debra Dank describes herself as "a bush girl".

"I'm Indigenous and I grew up in the bush. I'm happy and comfortable to be working in bush communities. I'm a teacher and I've been involved in education for 25 years," she says.

Ms Dank says that working with remote communities is a good fit for her.

"It gives me the opportunity to go bush and work with Indigenous people and books. It's a great to work in that area. I would struggle if I had to live in Sydney or Melbourne. It wouldn't fit."

Ms Dank fully appreciates the importance

of literacy and educational attainment for Indigenous Australians.

"Literacy is important because it gives Indigenous Australians the ability to make informed choices about what they want to do and what they want for their children. We are literate people within our own languages but our languages are not spoken across broader Australia.

"The broader Australian public does not have a national appreciation for the incidence and breadth of Indigenous languages. And I don't believe we have any great value of Indigenous languages and that makes it difficult for teachers to value those languages. So recognising Indigenous children as ESL (English as a Second Language) learners within a classroom context is very problematic for a good number of teachers.

"When we consider, say, a German child or a French speaking child arriving in Australia, as educators we put in place so many different supports. A non-English speaking child in Australia will often have access to a whole lot of other systems, processes and resources that will facilitate the learning of a new language. Importantly, the expectations and ways of interaction with that child are adjusted. Typically we don't do that for Indigenous children. I think that goes back to a broader lack of national respect and value for Indigenous languages. It's a tricky thing," Ms Dank says.



She points out that basic research across the world has argued and proven that "the more proficient you are in your own language, the greater chance and possibility of developing proficiency with a second language". She says this is one of the major reasons Indigenous literacy rates are so low.

Debra Dank runs three program areas as part of the Foundation's mandate to tackle illiteracy.

The first program, 'Book Supply', provides new books to over 300 community groups across Australia.

"We select books at the end of each year and they form the next year's book supply bundles. There are generally about 80 books broken into four different age categories from pre-school to adult, and then a general interest. There are 20 titles in each category. And because we are supplying to communities from the Torres Strait to the Central Desert

region, it is a very mixed bunch of books. Every book is considered very carefully before it makes the list. We are committed to supply titles that we believe will be of interest to the people who receive them. It's about providing quality literature."

The second program area, 'Buzz Books', has an early literacy development focus.

"Buzz means that, in an identified community, every child up to and including their first year of school will receive a bag of 10 board books. Generally they are Australian classic children's books. We ask schools and playgroups to include those titles in their early literacy programs," Ms Dank says.

The books include *The Very Hungry Caterpillar* by Eric Carle and *I Went Walking* by Sue Williams with illustrations by Julie Vivas, of *Possum Magic* and *Wilfred Gordon McDonald Partridge* fame.

The third program area consists of community-identified projects. Ms Dank explains "that's where communities come and say to us 'look we are really interested in developing this project or program within our community, we need your help with that'. So that's what we do.

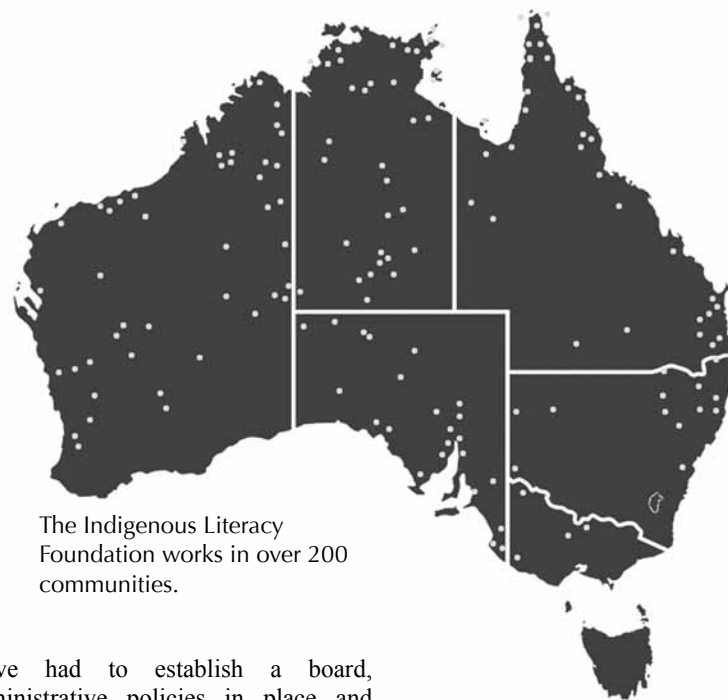
"We have a woman working in central Australia with communities with early readers, we're working with several communities across the Barkly Tableland to record their oral histories. So there is a broad range of project areas in the community identified projects."

Debra Dank says the Foundation has come a long way in gaining the trust and respect of many communities.

"There are whole groups of people who want to be involved, but involved in ways they have negotiated themselves. They know best what they need and what they want. It's a great thing to be able to work with communities to develop something that the community has identified as important."

Ms Dank says the past five years of first the project, and the Foundation, have been a great growing process.

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The Indigenous Literacy Foundation works in over 200 communities.

“We’ve had to establish a board, put administrative policies in place and infrastructure that allows the Foundation to function effectively. The past 12 months has been busy but we have been able to maintain the same level of practical work as our policies and procedures evolved and were implemented. That’s been great. Now we have 300 plus communities in ‘Book Supply’, four ‘Buzz’ sites and six different community-identified projects that are working really well. For such a small foundation we are rolling along.”

For Ms Dank, the growth of the Foundation is not the ultimate end goal. For her it is the communities’ response to the work that matters the most.

She shares a story from a ‘Book Supply’ community that sums up, for her, the importance of the ILF.

“I had a grandma who couldn’t believe the books were free and that we weren’t going to be coming back asking for the books to be returned. She couldn’t believe the books were provided by people she’d never meet. She was amazed that people cared enough to give her books.”

The ILF does not receive Government funding and relies on key support from the Australian book industry as well as fundraising and support from schools and individuals. “It’s always difficult to roll out new programs because sourcing funds is a constant and huge job,” Ms Dank says.

“We would love to get more funding, not necessarily to get bigger, but to allow us to work with more communities who approach us for support. Our aim is to provide the key support that communities seek from us and to

be able to continue our ongoing relationships with those with whom we are already working.

“It means we build up an element of trust and respect between us and community members so that our resources and programs work more effectively. A program grows within a community because of the community’s desire for it.”

Debra Dank’s upbringing as a “bush” girl and her 25 years in education have made her realise that what works in one remote community will not necessarily work in another.

“I have always seen different Indigenous communities as being distinct and separate.”

She says that third world living standards and isolation are compounded by the fact that Indigenous Australians have to constantly battle a breadth of negative stereotypes and that these poor expectations are further exacerbated by a shorter life expectancy in real terms.

Cassandra Byrnes

The Foundation’s key fund-raising focus is on Indigenous Literacy Day on September 5.

A watchdog sniffing out intrusions into media freedom



Mark Pearson

Mark Pearson is a man who wears many hats. He is a professor, educator, author, journalist and researcher. One special hat has the ‘Press’ label stuck in the band for Mark Pearson is the Australian correspondent for Reporters Without Borders (Reporters Sans Frontières) (RSF), the international non-government organisation that advocates freedom of the press and freedom of information.

Professor of Journalism at Bond University, Mark Pearson is a quiet watchdog who meticulously surveys weekly media events. He trawls through Australian newspapers, websites, and social media. He listens for alarm bells. His job as RSF correspondent is to “collect information about intrusions into media freedom,” he says.

The reports he has sent back to RSF headquarters in Paris have been treated seriously. According to RSF, Australia’s report card this year needs serious improvement. Our grades are slipping in both press and Internet freedom.

The 2011-2012 World Press Freedom Index has seen Australia fall 12 places from 18th to 30th out of the 179 countries ranked.

Professor Pearson explains how the index is not a zero sum game. “The RSF Press Freedom Index is not, or can ever be, a pure science. There are way too many variables. All it can ever be is a guide and a useful discussion point to show how some countries may have improved or eroded their free expression. As you’d understand with such a system, a country might not change at all but still drop five places, simply because the five countries below it have improved so much. That is why it can’t be perfect.”

He points to two reasons why Australia fell from press freedom grace. “Firstly, we have these inquiries into the media which are a good thing in some ways in that they cause excellent public debate and scrutiny of practice. But in other ways, they raise the spectre of new constraints.”

Professor Pearson says Australia’s ranking improved during the time the Federal Government set about reforming and improving freedom of information laws on a federal level, largely due to the work of Senator John Faulkner.

“It was a good thing; we have more transparency in the Government. For that short period, Australia improved.”

Appearing on the top of the list are the Scandinavian countries that RSF deem to have the best free press in the world.

“Scandinavian countries have much better constitutional and human rights guarantees for free expression and are extremely reluctant to use the media laws they do have available to them, because they see free expression as such an important value in society,” Mark Pearson says.

He says Australia does not have the constitutional safeguards Scandinavian countries have. According to Professor Pearson, this is the single biggest issue facing Australia as a democracy. “Australia does not have an explicit protection of free expression, or free press, in its constitution and it has no bill of rights protecting that. This is quite unusual among democratic countries. What this means is that many

a law gets proposed and passed without a focused and deliberate consideration of the free expression implications of the law, which normally happens in other democratic countries.”

RSF annually compiles a list of internet enemies and those whose behaviour is under surveillance. RSF want to bring the world’s attention to those countries that censor news and online information while also actively oppressing internet users.

Sadly Australia is under surveillance by RSF because of concerns about the Federal Government’s readiness to uphold a repressive internet filtering system. The grim reality of the situation becomes more apparent when one notes this country is keeping company with countries such as Egypt, France, Russia and the United Arab Emirates.

Mark Pearson says that this has been on the cards for several years.

“We are hopeful that Minister Conroy will end his commitment to the internet filtering in the next few weeks. A new report by classification review and the Australian Law Reform Commission is suggesting a less alarming restriction scheme. RSF was concerned Minister Conroy wanted to cast too wide a net to try catch child pornography, which we all object to. RFS felt it was too broad a message and would restrict other freedoms in the process.”

While the Federal Government has not yet achieved its goal of mandatory filtering, it has however bypassed this by initiating a voluntary system in July 2011. Members of the Internet Industry Association, which includes Telstra, Optus and Primus, have censored websites deemed unsuitable by Interpol rather than the Australian Communications and Media Authority (ACMA).

This has been a historic move in Australian internet history, as this is the first time technical providers have cooperated with the Federal Police to invoke section 313 of the Telecommunications act. This means that domain names and URLs deemed unsuitable by Interpol are being censored compulsorily.

Professor Pearson says that lists like the Press Freedom Index and Enemies of the Internet list apply pressure on Governments.

“Governments respond not only to pressure, but public perception. Governments don’t want to earn a reputation for clamping down on free expression. Countries that claim to be free and democratic are particularly concerned when international agencies such as RSF make announcements that express alarm or disappointment.”

Cassandra Byrnes

Reporters Without Borders: Press Freedom Index 2011-2012

Reporters Without Borders has fought for press freedom on a daily basis since it was founded in 1985. It defends journalists and media personnel imprisoned or persecuted for doing their job and exposes the mistreatment and torture of them in many countries. It fights against censorship and laws that undermine press freedom.

Each year, it publishes the Press Freedom Index, an annual ranking of countries based on Reporters Without Borders' assessment of their press freedom records. The report is based on a questionnaire sent to partner organisations (14 freedom of expression groups in five continents) and its 130 correspondents around the world, as well as to journalists, researchers, jurists and human rights activists.

The survey asks questions about direct attacks on journalists and the media as well as other indirect sources of pressure against the free press. Reporters Without Borders is careful to note that the index only deals with press freedom, and does not measure the quality of journalism. Due to the nature of the survey's methodology based on individual perceptions, there are often wide contrasts in a country's ranking from year to year.

Syria, Bahrain and Yemen get worst ever rankings

"This year's index sees many changes in the rankings, changes that reflect a year that was incredibly rich in developments, especially in the Arab world," Reporters Without Borders said when it released its 10th annual press freedom index. "Many media paid dearly for their coverage of democratic aspirations or opposition movements. Control of news and information continued to tempt governments and to be a question of survival for totalitarian and repressive regimes. The past year also highlighted the leading role played by netizens in producing and disseminating news.

"Crackdown was the word of the year in 2011. Never has freedom of information been so closely associated with democracy. Never have journalists, through their reporting, vexed the enemies of freedom so much. Never have acts of censorship and physical attacks on journalists seemed so numerous. The equation is simple: the absence or suppression of civil liberties leads necessarily to the suppression of media freedom. Dictatorships fear and ban information, especially when it may undermine them.

"It is no surprise that the same trio of countries, Eritrea, Turkmenistan and North Korea, absolute dictatorships that permit no civil liberties, again occupy the last three places in the index. This year, they are immediately preceded at

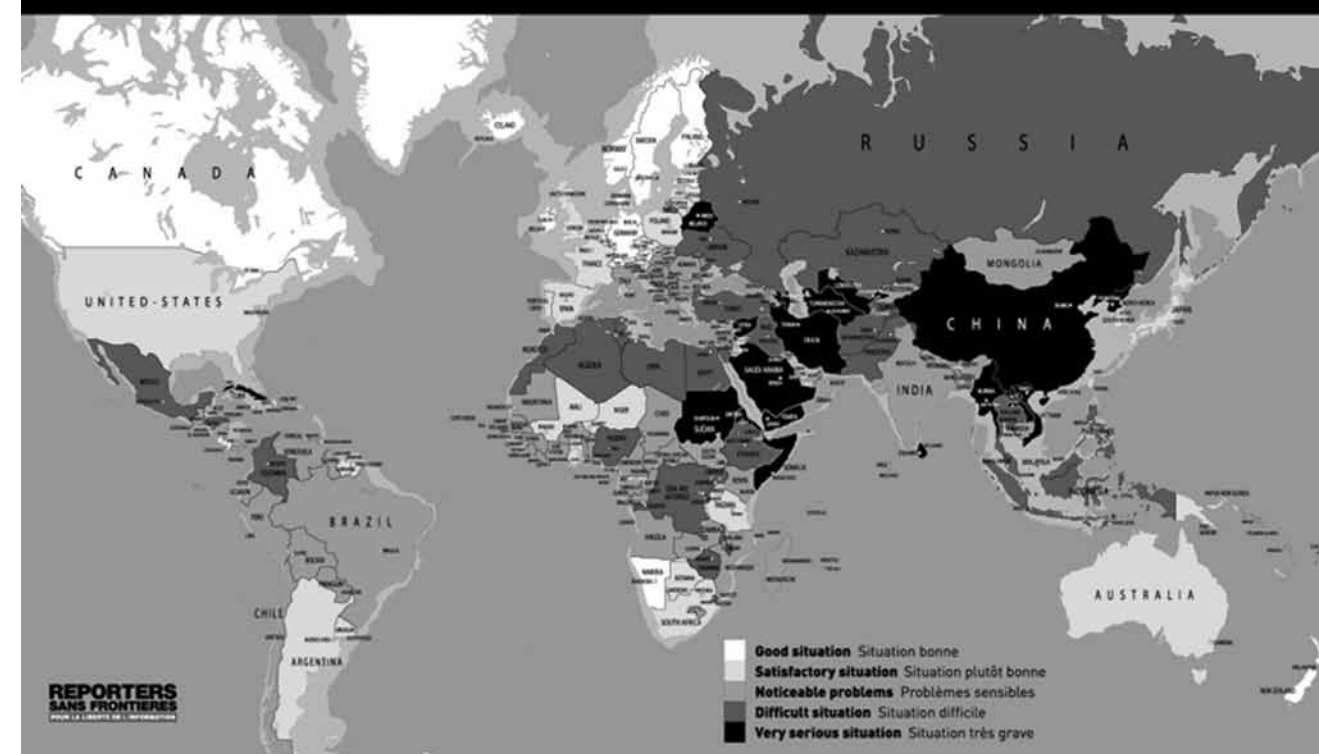
the bottom by Syria, Iran and China, three countries that seem to have lost contact with reality as they have been sucked into an insane spiral of terror, and by Bahrain and Vietnam, quintessential oppressive regimes. Other countries such as Uganda and Belarus have also become much more repressive.

"This year's index finds the same group of countries at its head, countries such as Finland, Norway and Netherlands that respect basic freedoms. This serves as a reminder that media independence can only be maintained in strong democracies and that democracy needs media freedom. It is worth noting the entry of Cape Verde and Namibia into the top 20, two African countries where no attempts to obstruct the media were reported in 2011."

Protest movements

The Arab world was the motor of history in 2011 but the Arab uprisings have had contrasting political outcomes so far, with Tunisia and Bahrain at opposite ends of the scale. Tunisia (134th) rose 30 places in index and, with much suffering, gave birth to a democratic regime that has not yet fully accepted a free and independent press. Bahrain (173rd) fell 29 places because of its relentless crackdown on pro-democracy movements, its trials of human rights

FREEDOM OF THE PRESS WORLDWIDE IN 2012



LA LIBERTÉ DE LA PRESSE DANS LE MONDE EN 2012

defenders and its suppression of all space for freedom.

While Libya (154th) turned the page on the Gaddafi era, Yemen succumbed to violence between President Ali Abdallah Saleh's opponents and supporters and languished in 171st position. The future of both of these countries remains uncertain, and the place they will allow the media is undecided. The same goes for Egypt, which fell 39 places to 166th because the Supreme Council of the Armed Forces, in power since February, dashed the hopes of democrats by continuing the Mubarak dictatorship's practices. There were three periods of exceptional violence for journalists: in February, November and December.

Already poorly ranked in 2010, Syria fell further in the index, to 176th position, because total censorship, widespread surveillance, indiscriminate violence and government manipulation made it impossible for journalists to work.

Elsewhere in the world, pro-democracy movements that tried to follow the Arab example were ruthlessly suppressed. Many arrests were made in Vietnam (172nd). In China (174th), the government responded to regional and local protests and to public impatience with scandals and acts of

injustice by feverishly reinforcing its system of controlling news and information, carrying out extrajudicial arrests and stepping up Internet censorship. There was a dramatic rise in the number of arrests in Azerbaijan (162nd), where Ilham Aliyev's autocratic government did not hesitate to jail netizens, abduct opposition journalists and bar foreign reporters in order to impose a news blackout on the unrest.

Led by President Yoweri Museveni, Uganda (139th) launched an unprecedented crackdown on opposition movements and independent media after the elections in February. Similarly, Chile (80th) fell 47 places because of its many freedom of information violations, committed very often by the security forces during student protests. The United States (47th) also owed its fall of 27 places to the many arrests of journalist covering Occupy Wall Street protests.

Several European countries fall far behind

The index has highlighted the divergence of some European countries from the rest of the continent. The crackdown on protests after President Lukashenko's reelection caused Belarus to fall 14 places to 168th. At a time when it is

» *Continued from 17*

portraying itself as a regional model, Turkey (148th) took a big step backwards and lost 10 places. Far from carrying out promised reforms, the judicial system launched a wave of arrests of journalists that was without precedent since the military dictatorship.

Within the European Union, the index reflects a continuation of the very marked distinction between countries such as Finland and Netherlands that have always had a good evaluation and countries such as Bulgaria (80th), Greece (70th) and Italy (61st) that fail to address the issue of their media freedom violations, above all because of a lack of political will. There was little progress from France, which went from 44th to 38th, or from Spain (39th) and Romania (47th). Media freedom is a challenge that needs addressing more than ever in the Balkans, which want to join the European Union but are suffering the negative effects of the economic crisis.

Endemic violence

Many countries are marked by a culture of violence towards the media that has taken a deep hold. It will be hard to reverse the trends in these countries without an effective fight against impunity. Mexico (149th) and Honduras (135th) are two cases in point. Pakistan (151st) was the world's deadliest country for journalists for the second year running. Somalia (164th), which has been at war for 20 years, shows no sign of finding a way out of the chaos in which journalists are paying a heavy price.

In Iran (175th), hounding and humiliating journalists has been part of officialdom's political culture for years. The regime feeds on persecution of the media. Iraq (152nd) fell back 22 places and is now worryingly approaching its 2008 position (158th).

Noteworthy changes

South Sudan, a new nation facing many challenges, has entered the index in a respectable position (111th) for what is a breakaway from one of the worst ranked countries, Sudan (170th). Burma (169th) has a slightly better position than in previous years as a result of political changes in recent months that have raised hopes but need to be confirmed. Niger (29th) achieved the biggest rise in a single year, 75 places, thanks to a successful political transition.

It was Africa that also saw the biggest falls in the index. Djibouti, a discreet little dictatorship in the Horn of Africa, fell 49 places to 159th. Malawi (146th) fell 67 places because of the totalitarian tendencies of its president, Bingu Wa Mutharika. Uganda, mentioned above, fell 43 places to 139th. Finally, Côte d'Ivoire fell 41 places to 159th because the media were badly hit by the fighting

between the supporters of rival presidents Laurent Gbagbo and Alassane Ouattara.

One of the biggest falls in Latin America was by Brazil, which plunged 41 places to 99th because the high level of violence resulted in the deaths of three journalists and bloggers.

Violence and censorship on the rise in Asia

Violence and impunity persist in Pakistan, Afghanistan and Philippines, more repression in Sri Lanka, Vietnam and China

In Afghanistan (150th) and Pakistan (151st), violence remained the main concern for journalists, who were under constant threat from the Taliban, religious extremists, separatist movements and political groups. With 10 deaths in 2011, Pakistan was the world's deadliest country for journalists for the second year in a row.

In the Philippines (140th), which rose again in the index after falling in 2010 as a result of the massacre of 32 journalists in Ampatuan in November 2009, paramilitary groups and private militias continued to attack media workers. The judicial investigation into the Ampatuan massacre made it clear that the response of the authorities was seriously inadequate.

Journalists continued to be exposed to violence in Bangladesh (129th) and Nepal (106th), although less than in the past. In Nepal, journalists were regularly subjected to threats from rival political groups and their supporters. In Bangladesh, opposition groups and the ruling Awami League took turns to attack and obstruct the press. Despite genuine media pluralism, the law allows the government to maintain excessive control over the media and the Internet.

In Nepal, a decline in attacks by Maoist groups in the south and greater efficiency on the part of the justice system account for the modest improvement in the country's ranking. However, press freedom was marred by threats and attacks by politicians and armed groups throughout the year.

Authoritarianism at the bottom of the index

Freedom of information worsened considerably in two Asian countries under authoritarian rule.

China, which has more journalists, bloggers and cyber-dissidents in prison than any other country, stepped up its censorship and propaganda in 2011 and tightened its control of the Internet, particularly the blogosphere. The first protest movements in Arab countries and the ensuing calls for democracy in China's main cities set off a wave of arrests with no end yet in sight.

In the autonomous regions of Tibet, Inner Mongolia and Xinjiang, protests by minorities regularly gave rise to a harsh crackdown by the authorities. In Beijing and



Shanghai, international correspondents were particular targets of the security forces and had to work under the continual threat of expulsion or having their visas withdrawn. Journalists were prevented from covering most of the events that threatened China's stability or might have given it a negative image.

Vietnam (172nd) appeared to follow China's repressive lead and fell seven places. Politically committed journalists and pro-democracy bloggers were harassed by the authorities while the courts continued to invoke state security to hand out prison sentences ranging from two to seven years. The blogger Pham Minh Hoang, for example, was sentenced to three years in prison and three years under house arrest on 10 August on a charge of trying to overthrow the government.

In Sri Lanka (163rd), the stranglehold of the Rajapakse clan forced the last few opposition journalists to flee the country. Any that stayed behind were regularly subjected to harassment and threats. Attacks were less common but impunity and official censorship of independent news sites put an end to pluralism and contributed more than ever to self-censorship by almost all media outlets.

Burma (169th) showed signs of beginning to carry out reforms including partial amnesties and a reduction in prior censorship, but it remained largely under the control of an authoritarian government run by former members of the military junta reinvented as civilian politicians. Less than 10 of its journalists remain in prison at the start of 2012.

In North Korea (178th), although news and information was able to move across its borders to a greater extent, no one knows whether this will continue under Kim Jong-un, the son and heir of Kim Jong-il. The dynastic succession, the dominance of the military machine and the government's desire for power give no grounds for optimism.

At the top, the good boys turn bad

Those who are traditionally good performers did not shine in 2011. With New Zealand's fall to 13th position, no country in the Asia-Pacific region figured among the top 10 in the index. Hong Kong (54th) saw a sharp deterioration in press freedom in 2011 and its ranking fell sharply. Arrests, assaults and harassment worsened working conditions for journalists to an extent not seen previously, a sign of a worrying change in government policy.

In Australia (30th), the media were subjected to investigations and criticism by the authorities, and were denied access to information, while in Japan (22nd) coverage of the tsunami and the Fukushima nuclear accident gave rise to excessive restrictions and exposed the limits of the pluralism of the country's press.

Causes for concern

In India (131st), journalists were exposed to violence stemming from the persistent conflicts in the states of Chhattisgarh and Jammu and Kashmir. The threat from mafia groups operating in the main cities of the country also contributed to self-censorship. However, the authorities were no better. In May, they unveiled the "Information Technology Rules 2011," which have dangerous implications for online freedom of expression. Foreign reporters saw their visa requests turned down or were pressured to provide positive coverage.

In Indonesia, an army crackdown in West Papua province, where at least two journalists were killed, five kidnapped and 18 assaulted in 2011, was the main reason for the country's fall to 146th position in the index. A corrupt judiciary that is too easily influenced by politicians and pressure groups and government attempts to control the media and Internet have prevented the development of a freer press.

Illegal detention and intimidation in Mongolia (100th) and the Maldives (73rd) showed up the weakness of press freedom there. A climate of religious intolerance prevailed in the Maldives, where media organizations were subjected to threats by the authorities and had to deal with an Islamic affairs ministry bent on imposing the Sharia to the detriment of free expression.

Collated by Cassandra Byrnes

How free speech is limited in Australia

Freedom of expression is the right to impart and receive ideas by any medium. It is a human right and is essential to a democracy. Its status as a human right is recognised under Article 19 of the Universal Declaration of Human Rights:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

In Australia, speech is limited by a number of laws. While any limitations on speech may be regarded as a danger to liberty, these limits represent a tension between competing rights.

Freedom of expression in Australia does not exist as an express right, although a series of High Court cases have established an 'implied freedom of political communication' which limits government's power to restrain free speech about political matters. This freedom emerges from the constitution itself, because without freedom of public discussion about political matters Australian citizens would be unable to exercise effectively their right to vote in elections.

A feature of Western liberal democracies is the tension between competing rights, often fought out in the courtroom. One example of this tension is the application of shield laws intended to protect the confidentiality of journalists' sources. The rationale behind shield laws is to protect the practice of whistle blowing and the dissemination of information in the public interest.

This is not a right that has ever been expressed at law in absolute terms. In deciding whether or not to allow the protection of sources, a judge gives consideration to the harm caused to the source in revealing the source's identity and 'the public interest in the communication of facts and opinion to the public by the news media and, accordingly also, in the ability of the news media to access sources of facts'.

On the other hand, the freedom of the press is expressly limited in how it can report on court proceedings. The publication of material in contravention of a suppression order or that jeopardises the conduct of a fair trial may constitute contempt of court, a criminal offence.

The right to freedom of speech is said to

compete with the rights of authors in their own works. Speech may be regarded as limited due to the restrictions placed on the copying and communication of copyright works without permission of the copyright owner. One might ask whether the copying and communication of other people's work is itself an act of expression. While this may (or may not) be the case, it is not at the heart of why we protect expression in the first place. A key purpose of the freedom is to protect the right of individuals to express their ideas. This means the correct attribution of original works to the author and respect for the author's copyright. Taking a broader social perspective, copyright provides a financial incentive for authors to create new works.

Should the right to freedom of expression extend beyond natural persons? Corporations are not human, are incapable of thought and have no need for dignity, self-expression or personal fulfilment. In the United States, this debate has focused on the funding of political parties by corporations and the question of whether this spending is protected by the First Amendment right to free speech. In 2010, the US Supreme Court affirmed that corporations do indeed have a right to free speech.

Defamation law provides a vivid example of competing rights. Defamation is private law where one person sues another because they have published matter that lowers their reputation in the eyes of the world. On the face of it, free speech and the right to reputation are in direct conflict. But from another perspective, these competing rights help to define each other.

A number of the core principles of free speech may be found in the defences for defamation.

Defence of honest opinion

Honest opinion is a defence (so long as the opinion is based on material that is substantially true and related to a matter of public interest). This defence has its origins in the common law defence of fair comment. This rationale is explained in by Lord Nicholls in *Reynolds v Times Newspaper Limited*:

Comment must be relevant to the facts to which it is addressed. It cannot be used a cloak for mere invective. But the basis of our public life is that the crank, the enthusiast, may say what

opinion, however exaggerated, obstinate and prejudiced, was honestly held by the person expressing.

This defence encapsulates the essence of free speech and it traverses the difficult territory between the honest expression of extreme views and thinly disguised abuse. A similar defence exists in the Racial Discrimination Act, which was the focus of attention in the recent decision in *Eatock v Bolt*.

Defence of justification

The defence of justification states that the truth is a defence to the publication of defamatory matter. From the perspective of law, the defamed person has merely been accorded the reputation they deserve. From the perspective of free speech, it is a core principle that the truth is more deserving of protection than falsity.

Absolute privilege

Absolute privilege exists for parliamentary proceedings in order to allow politicians to engage freely in political debate without fear of legal consequence. In this context, the ability to speak freely in parliament is held to be of higher value than other rights, in order to allow for the effective functioning of parliamentary democracy. One might argue that this privilege, being absolute, is open to abuse. Such was the criticism levelled against Senator Nick Xenophon last year for using parliamentary privilege in making allegations of paedophilia about a Catholic priest.

Defence of qualified privilege for provision of certain information

The defence of qualified privilege has its origins in the common law. While it is not specifically formulated to offer a defence for journalists and media organisations, it is they who are most likely to seek the protection of this defence. The defence allows for the publishing of information where the conduct of the defendant is 'reasonable in the circumstances'. In order to determine this, a court may take into account:

- (a) the extent to which the matter published is of public interest, and
- (b) the extent to which the matter published relates to the performance of the public functions or activities of the person, and
- (c) the seriousness of any defamatory imputation carried by the matter published, and

- (d) the extent to which the matter published distinguishes between suspicions, allegations and proven facts, and
- (e) whether it was in the public interest in the circumstances for the matter published to be published expeditiously, and
- (f) the nature of the business environment in which the defendant operates, and
- (g) the sources of the information in the matter published and the integrity of those sources, and
- (h) whether the matter published contained the substance of the person's side of the story and, if not, whether a reasonable attempt was made by the defendant to obtain and publish a response from the person, and
- (i) any other steps taken to verify the information in the matter published, and
- (j) any other circumstances that the court considers relevant.

These criteria create a complex balancing act. Some of these considerations pull in opposite directions: for instance *the seriousness of the defamatory imputations* should require the publisher to both show greater diligence in deciding whether to publish and oblige the publisher to publish on the basis of public interest. This is particularly the case where the allegations relate to an important public figure. The balance, as required by the statutory defence of qualified privilege, seems a difficult judicial task, but the rationale behind the defence is simple: to allow the freedom of the press in circumstances in which the quality of the journalism in question warrants that protection in order to protect the public interest in freedom of the press.

The sanctity of freedom of expression is the rallying cry against any move towards greater regulation of the media. The freedom to express one's views freely is however only one right amongst other fundamental rights. By looking at the law placing limitations on this freedom, we in fact gain more understanding of our rights which include freedom of expression as well as the interests of open justice and the right to a fair trial, protecting the truth and honestly held opinions, and the rights of intellectual property.

Michael Fraser

The truth-telling power of fiction

Author and academic Denise Leith, who received the Sydney PEN Award in 2009, has written two non-fiction books, *The Politics of Power*, an analysis of mining giant Freeport-McMoRan's presence in Indonesia, and *Bearing Witness: The Lives of War Correspondents and Photojournalists*. However, when it comes to truth-telling she has found fiction a greater weapon.



War correspondents and photojournalists who cover dangerous conflict are, according to Denise Leith, individuals who are deserving of our respect and appreciation for they risk their lives to bring the news to the world. Dr Leith remembers how her interest in their work developed – the trigger was just two photographs.

The first was the picture American photographer Eddie Adams took of a General Nguyen Ngoc Loan, national police chief of South Vietnam, executing a Vietcong prisoner, Nguyen Van Lem, on a Saigon street, on February 1, 1968, during the opening stages of the Tet Offensive. The second was the picture South African photojournalist Kevin Carter took during the 1993 famine in southern Sudan of a vulture hovering near a starving little girl.

Dr Leith says when she saw those pictures she wanted to know about the men who took those epoch-defining photographs.

"I discovered the story of Kevin Carter. He was a young struggling photographer and he knew that he had a great photograph when he took it. He won the Pulitzer Prize but there were a whole lot of problems in Kevin's life. After winning the Pulitzer, which is the ultimate thing really, he committed suicide."

She says that when Eddie Adams broke his silence on his photograph, he revealed that in the simple act of capturing a moment in time, he had destroyed someone's life; he felt he had destroyed the life of General Loan.

"I started to think about the people who document war and what it costs them." She says her second book, *Bearing Witness*

"became my journey of discovery of the war correspondent and the war photojournalist."

Bearing Witness documents the men and women who work behind the camera. They create powerful images that are forever embedded in our memories, yet the person with the camera may remain unknown. Denise Leith's book sought to change that fact.

She travelled around the world to interview famous war correspondents including Eddie Adams, who died of Lou Gehrig's disease in 2004, *Sunday Times* correspondent Marie Colvin who was killed in Syria in February along with photographer Remi Ochlik, Monica Attard, who was the ABC's correspondent in Russia from 1990 to 1994, and Robert Fisk, Middle East correspondent of *The Independent*, to find out what made them tick.

"I went overseas for months and did interviews. I came back and I felt I had this most extraordinary gift – they had been so honest with me. I had to tell this story with the upmost integrity and respect for them," she says.

However, despite critical acclaim, she says she "felt huge frustrations in writing non-fiction" and has found her fiction a more powerful medium.

"As an academic writing journalism, you can't be all emotional, you've just got to give the facts. And I found that I couldn't convey the horror in its full implications. With fiction, I found a freedom. I could bring powerful raw emotion into the story."

She says writing *What Remains* was an outpouring of things she couldn't say in *Bearing Witness*. She took four fictional



Two famous photographs that compelled Denise Leith to write *Bearing Witness* – Eddie Adams' picture of General Loan executing Vietcong prisoner, Nguyen Van Lem, in Saigon street, in 1968; and Kevin Carter's picture of a starving child followed by a vulture in Sudan in 1993.

characters and placed them in real life events. "That was an easy way for me to move from fiction to non-fiction. I felt very comfortable with that." The book tells the story of a young correspondent as she reports from war zones in the Arabian Peninsula, Palestine, South Africa, Bosnia, Rwanda, Chechnya and Iraq. It documents harrowing scenes of violence and destruction and the price of bearing witness to unspeakable calamity and cruelty.

Denise Leith says she found the news of the death of her friend Marie Colvin in Syria very painful. "When someone dies in such a tragic way – and she was so full of life and the will to live and she did such incredible work – I felt such a huge loss. I didn't know what to do."

She says she read over Colvin's chapter in *Bearing Witness* shortly after her death and realised there were stories from Colvin that had appeared in *What Remains*.

"I remember asking Marie what bravery was because I wanted to know and I wanted to

know what evil was. Marie told me the story of finding an old Chechen woman in a cellar with her husband who had been hit and his brain was leaking out. It was very clear that he was going to die and it was very clear the cellar was going to be bombed. And this old woman was not going to leave her husband. Marie said that's love but that's also bravery."

She says that she has used that to create a scene in her book. In *What Remains*, she has woven her knowledge and expertise in international relations with her own experiences and those war correspondents she interviewed. "I did mine the people I knew," she says.

Dr Leith says that despite her novel being about war, it is above all else about love.

"Love is the anecdote to war and pain and suffering. Simple acts of kindness and compassion are the things that keep me going with all the things I've seen. They are worth a lot."

Cassandra Byrnes

There's nothing funny about ban on Parliamentary satire

This essay by television and radio presenter **Craig Reucassel**, who is a founding member of the satirical team *The Chaser*, is part of Sydney PEN's 'Free Voices' lecture and essay program, running from 2012 to 2014 using funds granted by Copyright Agency Limited. The program is designed to build public awareness and concern about freedom of expression, and to galvanise a larger, broader demographic of supporters who will challenge human rights abuses and stand up for the freedom to write and read. It offers new and established writers the opportunity to raise or utilise their profile and express their commitment to freedom of expression in a contemporary context.

Australia's politicians are an approachable lot. No 10-car motorcades for them. Just a largish Holden and couple of Fords for security. Some even go walking in the mornings, or ride for hundreds of kilometres and occasionally even wander shopping malls so people can call them liars. During John Howard's years, my team mates and I at *The Chaser* approached him on his walk with a giant bus, dressed as rabbits, trying to hug him with a giant axe and a chainsaw and in a De Lorean car dressed like Doc from the movie, *Back to the Future*. At the time, I'm sure we were trying to make a valid point, although some of them evade me now.

Yet despite all this access, a far more important way to satirise a politician remains out of our or everyone else's reach. We can't show pictures or vision of our politicians speaking in Parliament. The publicly funded building where they are performing their legislative role and arguing over policy remains a black hole for us.

In Australia the regulations for Parliamentary broadcasts state:

2. Broadcasts may only be used for the purposes of fair and accurate reports of proceedings, and must not be used for:

(b) satire or ridicule;

This means that the footage of Question Time, parliamentary debates and committee hearings can not be used for satire or ridicule, even if used in a 'fair and accurate' way.

Why is this law in place?

The reason for this law is not entirely clear. There seems to have been very little debate of these provisions, either at the time of their inception, or since. They were included

in the very first trial of Parliamentary broadcasting for television in 1991.

At the end of the trial period, the Parliament held a review of the rules. Paul Bongiorno, from Channel 10, questioned the rule, noting: "There are such things in newspapers as cartoons which daily hold up to ridicule our leaders, our politicians and our church leaders at times. They make them look very silly and we all laugh at them.

"On television, if you are going to do, for example, a political satire or cartoon, naturally enough you are going to hold up the politicians or our leaders to some sort of ridicule."

The response of the House of Representative Select Committee on Televising was far from comprehensive. It said:

"The Committee views the medium of television as being a much more powerful medium than any other and therefore discounts any suggestion that televising of proceedings should be as unrestricted as publishing in newspapers and magazines."

While the assertion of comparative power may be questioned, the argument is intriguing – we don't mind being ridiculed as long as it isn't by a powerful medium.

The most common justification for the rule given to me has been "to protect the dignity of the house". If you have watched Question Time recently, where cat calls and guffawing pass the time before the daily call for the suspension of standing orders, such dignity may have evaded you. But even if it hasn't, such a principle is far closer to the notion of *lèse majesté* laws preventing one from offending the dignity of the monarch, than the more modern democratic principles of democratic representation.

A restriction of free speech?

Is this law actually a restriction on freedom of speech? As some may say, "Can't you just say it another way!"



Craig Reucassel

True free speech does not restrict the tone or type of speech. It does not say, you may discuss your government, but only in polite tones. It does not say, you may criticise your politicians, but only in a well researched op-ed piece.

As the US Supreme Court has accepted, the criticism of public figures "...inevitably, will not always be reasoned or moderate; public figures as well as public officials will be subject to "vehement, caustic, and sometimes unpleasantly sharp attacks."

If politicians were to limit criticism of their performance to toneless news article or op-ed pieces but rule out cartoons or comedic columns, there would be outrage. If base language or uneducated argument were ruled inappropriate, then large parts of the population may be limited in speaking their mind, and not just those on talk back radio.

To restrict a type of content, such as satire, also has an effect on the audience that is likely to engage in a discussion. A similar argument may appear in a broadsheet

opinion page, but the person who watches a satirical program may never read such a story. This is particularly the case with younger people, many of whom are getting news from comedic and satirical programs than in the past. Indeed, for years Channel 10's *The Project* did not play parliamentary footage despite being a major source of news for many Australians, because it had a mix of comedy and news and feared the application of this rule.

Indeed, we were faced with the ridiculous situation during the filming of *The Hamster Wheel* of having to ask permission from politicians whose words in Parliament we were seeking to satirise. They politely declined our generous request. Clearly letting politicians decide which bits of their speech are held up to scrutiny by a TV show is a restriction on free speech. And in the age of television, restricting the footage available can be an effective way of controlling a story.

What if I was to eat my ear wax?

The practical application of this law is also questionable. It does not prevent the news, current affairs programs and breakfast television from playing the embarrassing moments in Parliament. We have all seen vision of Kevin Rudd eating his ear wax. We have seen vision of politicians sleeping. We have seen Senator Mary Jo Fisher dancing The Time Warp and the hokey-pokey in her unique attack on the carbon tax. And when clips such as these are played on *Sunrise*, *Today* or *Insiders*, it is unlikely that the commentators' response is one of deferential respect for the dignity of the house.

The law has also not been enforced against the growing number of mash-ups and satirical edits of Parliament that are being posted on Youtube and similar sites. It is unlikely that many of the people making these clips are even aware that such a law exists.

What the law does prevent is satirical TV programs from critiquing politicians using the actual words they have said in the Parliament. This is a method that has been used to withering effect in the US by Jon Stewart on *The Daily Show* and Stephen Colbert of *The Colbert Report*, both of whom received Peabody Awards for their journalism, despite presenting such journalism using satire.

An example of satire being used to great effect was Jon Stewart's persistent critique of the US Congress' treatment of the September 11 Responders Bill. The bill sought to give healthcare to those emergency workers who first arrived at the World Trade Centre on September 11. The bill was being filibustered by Republicans because it raised the \$7 billion needed for the health care by cutting a tax loophole for foreign companies. Stewart was outraged by the situation and regularly contrasted the statements made by politicians in Congress who waxed lyrical in support

» Continued from 25

of September 11 victims while preventing the passage of the bill.

Perhaps because of the complexity of the situation, the issue was largely ignored in the mainstream press. One Fox News commentator covered it by saying: "I have no idea what they are talking about." Whereas Stewart, who was able to cover the issue with humour and satire, was actually better equipped to cover the complexity of the issue.

Which is not to say that changes to these laws would only see satirists covering parliamentary debate with Peabody Award winning legislative analysis. No doubt at times the coverage may tend towards lame jokes and *ad hominen* attacks. But then again, it does in all other aspects of political debate, including within the Parliament itself. So why make satire the only goody two-shoes.

Do as I say, not as I do

The Parliament's restrictions on use of its footage are even more hypocritical given that in 2006 it removed such protections from everyone else.

An amendment to the *Copyright Act* in 2006, initiated because of a Free Trade Agreement with the United States, included the following fair dealing provisions: "A fair dealing with a literary, dramatic, musical or artistic work, or with an adaptation of a literary, dramatic or musical work, does not constitute an infringement of the copyright in the work if it is for the purpose of parody or satire."

These provisions have meant that copyrighted material can now be used for satire and parody. This has been hugely liberating for satirists in Australia and were a surprising and much appreciated gift from the government of John Howard.

When he announced the laws, the then Attorney-General Phillip Ruddock justified the fair dealing provisions saying: "A further exception promotes free speech and Australia's fine tradition of satire by allowing our comedians and cartoonists to use copyright material for the purposes of parody or satire."

Ironically, as a satirical program on air at the time, we could not have played the vision of him saying those very words.

The legal protection of free speech

Around the time that Parliament was approving its rules for parliamentary broadcasts, a few hundred metres away the High Court of Australia was taking its first steps towards establishing the laws which make could make them unconstitutional.

In *Nationwide News* and *Australian Capital Television* in 1992 the Court first recognised there was an implied constitutional right to free speech in governmental and political affairs. The Court relied on the fact that the Australian Constitution establishes a representative and responsible government and reasoned that certain freedoms of political communication are intrinsic to such government. The freedom has placed a far higher barrier

to politicians wishing to sue for defamation, but has also seen council rules against preaching and passing out leaflets found invalid and led to laws restricting insulting language used against a Police officer being read down.

Since *Nationwide News* there have been many more cases which have refined the meaning and scope of the freedom. By no means is the protection absolute, nor does it have the sweeping symbolic power of the US First Amendment. However, by the *Lange* case in 1997, the Court had established criteria by which legislation or regulations restricting the implied right of political communication had to be judged.

"The first condition is that the object of the law is compatible with the maintenance of the constitutionally prescribed system of representative and responsible government or the procedure for submitting a proposed amendment to the Constitution to the informed decision of the people which the Constitution prescribes. The second is that the law is reasonably appropriate and adapted to achieving that legitimate object or end."

In light of this principle the restriction on using parliamentary footage for satire and ridicule would have to be justified as being compatible with the maintenance of representative and responsible government.

The desire for a parliamentarian not to be criticised or held to account with humour is not in the public interest. It is not a requirement of representative or responsible government - indeed it is contrary to this very principle.

The reasoning of the House of Representative Select Committee on Televising that TV is different because it is more powerful is unlikely to reach the threshold set down by the Court.

Although the definition of satire is hard to pin down, generally there is the notion that it exposes some vice, folly or hypocrisy. It is not solely humour and nor does all satire have to be humorous, but it does have to have a point. So a literal reading of Parliament's current rules would suggest that parliamentary footage could be used for humour, so long as that humour was not seeking to make a point. Surely such a law is not reasonably adapted to achieving a legitimate object of parliamentary democracy.

Indeed, Jeremy Kirk SC has even queried how the law could be applied when broadcasters play footage of politicians ridiculing others in Parliament. Ridicule is commonly used by politicians in Question Time and is often re-broadcast in news reports. Why do these broadcasts not fall foul of the law?

Even ridicule?

While satire's position in political debate is perhaps easier to justify the case can also be made that ridicule is a normal and accepted part of political communication. And that even it would be protected by the constitutional freedom. Indeed, Justice McHugh has noted in the High Court, that:

Insults are as much a part of communications concerning political and government matters as is irony, humour or acerbic criticism. Many of the most biting and offensive



political insults are as witty as they are insulting. When Lloyd George said that Sir John Simon had sat for so long on the fence that the iron had entered his soul, the statement was as insulting as it was witty, for it insinuated that Sir John was a political coward who failed to take sides on controversial issues.

He went on to note:

The use of insulting words is a common enough technique in political discussion and debates...insults are a legitimate part of the political discussion protected by the Constitution. An unqualified prohibition on their use cannot be justified as compatible with the constitutional freedom. Such a prohibition goes beyond anything that could be regarded as reasonably appropriate and adapted to maintaining the system of representative government.

Justice Kirby also noted the rigorous nature of political debate:

From its earliest history, Australian politics has regularly included insult and emotion, calumny and invective, in its armoury of persuasion. They are part and parcel of the struggle of ideas. Anyone in doubt should listen for an hour or two to the broadcasts that bring debates of the Federal Parliament to the living rooms of the nation. This is the way present and potential elected representatives have long campaigned in Australia for the votes of constituents and the support of their policies. It is unlikely to change. By protecting from legislative burdens governmental and political communications in Australia, the Constitution addresses the nation's representative government as it is practised. It does not protect only the whispered civilities of intellectual discourse.

In case the use of words like invective and insult are taken as something different from ridicule, Justice Kirby has also used that word directly when discussing the application of the freedom of political communication to a local councilor:

...satire and ridicule are, in Australia and elsewhere, a common means of conveying political opposition to proposals affecting individuals and their society and environment. In their most developed manifestations, satire and ridicule are frequently deployed in the

public media of Australia, in the form of cartoons, political puppets, popular commentaries and comedy programmes...In becoming involved in the world of local government, the appellant entered an environment where a robust attitude was necessary to lampooning, lobbying and banal humour. Ridicule and satire, gossip and factions are a commonplace of Australian politics at every level. It is not a place for the thin skinned.

In the United States, the jurisprudence of free speech is even more accepting that such freedom's can mean ridicule. Speaking of political cartooning the Supreme Court said:

"The appeal of the political cartoon or caricature is often based on exploitation of unfortunate physical traits or politically embarrassing events – an exploitation often calculated to injure the feelings of the subject of the portrayal. The art of the cartoonist is often not reasoned or even-handed, but slashing and one-sided."

The way forward or 'Please let use take the piss out of you'

Currently the Joint Committee on Broadcasting of Parliamentary Proceedings is undertaking a review of the existing broadcast laws. Chaser Broadcasting has put in a submission to the enquiry questioning the efficacy, principle and legality of the current restrictions on satire and parody.

Over the years many discussions with politicians have often revealed that even they are unaware of the existence of the restrictions. And in most cases politicians express an in-principle agreement that such laws shouldn't be there. They seem surprised that such a protection exists. However, once it comes to the act of actually changing the laws, those principled positions may become more shaky. After all, to some it amounts to us saying 'Please let us take the piss out of you just that little bit more'.

Protections would still remain for politicians if the changes we are suggesting were made. We are only asking for the removal of the "must not be used for satire and ridicule" element of the broadcast laws. This would leave the requirement that "Broadcasts may only be used for the purposes of fair and accurate reports of proceedings". This would apply to satirical programs as it applies to all other programs now. Fair and accurate does not mean you can't be harsh and critical, nor amusing. But fair and accurate coverage of politics is probably a higher standard than would be required generally by courts when discussing notions of free speech.

In the end, we hope it doesn't come to a court room to decide whether these laws are acceptable. While the High Court has been central to furthering a notion of protected freedom of speech in Australia you would hope that through the Parliament's own processes such a change could be made. Let's hope the politicians agree, because the alternative for them is being chased by a man in a chicken suit on their morning walk.

The carrot and stick approach

When it comes to making friends and influencing publishers, chair of the Australian Press Council, Julian Disney appears to be employing an interesting approach – using a combination of both the carrot and the stick.

The strategy, aimed at strengthening the powers of the Australian Press Council, was on display last night at a public forum run by the Australian Centre for Independent Journalism in Sydney.

During the one and half hour panel discussion, that involved a number of media luminaries, the debate traversed a wide number of issues, including the Finkelstein report into the regulation of the media which, alongside its recommendations, was heavily criticised.

But it was only in the last few minutes of the forum that Professor Disney decided to take out the stick and wave it at the publishers who fund his industry body.

“I see the council and I see myself as on three year’s notice,” Professor Disney declared.

“The council has got three years, and the people who support it, the publishers, have got to set themselves three years, to show that they can deliver,” Professor Disney told the forum.

“If we can’t deliver in that time, not perhaps having achieved fully satisfactory outcomes, but having shown that we really can, very substantially, get towards what is appropriate then something will have to get looked at.”

The Sydney Morning Herald’s editor-in-chief, Peter Fray was asked to comment on Professor Disney’s three year schedule and looked somewhat uncomfortable before quickly deflecting the timetable question.

“The Convergence Review is close to reporting and in the world we live in the Review is really where the action is at,” said Fray referencing how the Finkelstein report is to be folded into the government’s convergence review, which reports at the end of the month.

Fray’s guarded response was in stark

contrast to his lambasting of many of the recommendations of contained in the 468 report (which, by the way, he says he has read no less than three times).

He repeatedly attacked both the motivations and also the detail of the report, at one point even describing it as a “lawyer’s picnic”.

“We should not in this country forget why the Finkelstein Inquiry happened... the main reason it happen, and Finkelstein makes this clear, was a terrible scandal (in the UK) which has created this (attitude of) let’s get the media”, he said.

At various points throughout the night, in a room filled with journalists, students and academics, Professor Disney and Fray took turns to look uncomfortable with what the other side was saying.

During much of the discussion Professor Disney carried a morose and serious expression, especially when the publishers, who were at the far end of the table, argued that there was insufficient evidence to support the need for greater regulation.

While Fray, who is the Fairfax representative on the Press Council, appeared genuinely uncomfortable when the discussion turned to whether the publishers would increase the industry body’s funding, confirming only that talks were ongoing.

Also on the panel were *The Australian’s* editor-at-large, Paul Kelly, radio broadcaster Philip Clarke, who lectures in media law at the University of Technology, Sydney, and associate professor with the University of Sydney, Anne Dunn.

On the question of a three year timetable it was only Kelly who gave Professor Disney a direct response.

“I think it is inadvisable to put a particular time on it,” he declared.

“I agree with the spirit of what (Professor Disney) said and most of what he has said tonight but I think the answer is a more vigorous and constructive approach to the Press Council.”

Last night was significant in part because



The panel (l-r): Paul Kelly, editor-at-large, *The Australian*; Associate Professor Anne Dunn; Peter Fray, editor-in-chief of *The Sydney Morning Herald*; Associate Professor Tom Morton, director of the Australian Centre for Independent Journalism; Professor Julian Disney, chair of the Australian Press Council; and broadcaster Philip Clarke. (Picture: *The Australian*)

it, for the first time since the report was handed down, brought together many of leading players in a public forum.

A fact underlined by the fact in among crowd were senior journalists, many with an interest in the area, such as the Walkley Board Chairman and ABC broadcaster Quentin Dempster (who grilled Professor Disney over whether the Council was considering similar reform to those being proposed in the UK) and the *Sydney Morning Herald’s* reader’s editor Judy Prisk (whose role is referenced by Finkelstein in the report repeatedly).

Fray’s comments (or lack thereof) are significant in that this was the first time he has commented publicly on the recommendations and as Fairfax’s representative he will play an important role in any strengthening of the Press Council.

To this point the chair of the Press Council also used the carrot and expressed his support for working within the current regulatory system.

“My own view is that we really need to use the powers that we already have as well as we can, we need cooperation not obstruction from publishers, and if we try that and it fails then we have to think about other things,” said Professor Disney.

“But I believe a lot can be achieved from utilising our existing powers.”

This support does not come without strings. Professor Disney has made clear demands: include a doubling of the industry body’s budget \$2 million, enabling an increase from three staff to eight, and an increase in the Council’s powers in relation to complaint handling and the publication of adjudications.

Privately some media executives express concern about Professor Disney’s desire to “empire build” and indeed he walks a fine line.

On one hand he is trying to use the recommendations in the Finkelstein report to coerce a recalcitrant media into giving the self regulatory body greater powers.

But on the flip side: there is only so far that media companies will go.

Can Julian Disney use the stick to tame the media beast? Only time will tell.

Nic Christensen
Report courtesy of *The Australian*,
March 21

A video of the ACIJ’s public forum on the Finkelstein Report is available online:
<http://vimeo.com/user10941874/acij-finkelstein-forum>

An advocate for free speech

Dr Meredith Burgmann, author and academic, politician and political activist, examined the contemporary role of Australia's spy agencies while exposing the operations of the Australian Secret Intelligence Organisation (ASIO) and the NSW Police Special Branch during the 1960s and 1970s in the 2011 John Marsden Lecture she delivered for the NSW Council for Civil Liberties last November. In the context of a post-9/11 world of WikiLeaks, phone-hacking and online privacy concerns, Dr Burgmann considered important historical and contemporary issues that go straight to the heart of what Australians value in terms of personal and political freedoms.



Dr Meredith Burgmann

Meredith Burgmann is a self-confessed (former) civil disobedient, who has been arrested 21 times, gaoled for two months in 1971 over her objections to a racially selected Springboks team and once kept ASIO very busy.

"I don't regret anything," she says. The only thing that has changed is her ability to see the colour grey. "These days I see things as less black and white. As you get older, you do see the complexity in issues."

In Dr Burgmann's John Marsden Lecture she reveals just how busy ASIO was in the 60s and 70s keeping up with her, her friends and all the "leftie-do-gooders" in between. "They had thousands and thousands of files on Anglican ministers, school headmasters and little old ladies. It was crazy," she says.

Looking back on her files and the ASIO culture in the swinging 60s, Dr Burgmann says she is surprised ASIO had so little idea what was a threat to the State. "They totally confused a public order issue, which I certainly was, but that

is not a security issue to the State. They should have had some sort of process where they work out if someone was a serious threat to the State; as soon as they worked that out, they should have left us alone."

But they didn't.

Her ASIO file consisted of 342 pages, with glossy photographs, recorded telephone conversations, notes on her whereabouts, the whereabouts of her car and, to her outrage, her movements when she was a NSW Member of Parliament.

The MI5 even picked up where ASIO left off. In her Marsden lecture she told how she met her boyfriend and two other friends in London to travel to Ireland together. "I remember our car being stopped and my boyfriend being questioned as we approached the ferry, but until now had never put two and two together." She says she was monitored when she was in Papua New Guinea in 1975.

Did she know she was being followed?

"I had no idea at all I was being followed. I'm not a conspiracy theorist. I just didn't believe it."

Acquiring her files was surprisingly simple.

She says the \$400 she forked out for her file and the photographs was money well spent. She says sorting through her files was an extraordinary experience. "I felt like Faust seeing his youth in the bowl of time. I wasn't angry, it was too long ago."

Meredith Burgmann says her time at university was a defining moment.

"I think the fact I was at university in the late 60s is really important because coming out of a Christian background and realising your government was lying to you and killing in your name, I found that very confronting and that was what turned me into a socialist and made me very anti-Vietnam."

She says the political climate and her interventionist nature led to her political activism. She says she inherited the need to intervene from her mother. "My mother was an interventionist. If she saw something wrong, she'd have to try to fix it. I think there are some personalities that are interventionist and others that are more content to watch, others want to write and analyse it. My personality was that I just wanted to do something about it."

And intervene she did. It was at this time she realised just how important civil liberties are.

"Very early on, when I began being arrested as a teenager, the civil liberties lawyers worked for me, defended me. I realised that unless you had people prepared to fight for civil liberties and free expression then they disappeared."

Meredith Burgmann believes that Australians take their civil liberties for granted.

"I think until they personally come across a situation where their freedom, or their freedom to say something, until that happens they do take it a bit for granted."

She admits that she, too, took free speech for granted.

"I took that for granted; of course, there is no such thing as limited free speech. We all accept some form of defamation law. And personally I have supported incitement to anti-

racial hatred and incitement to anti-homosexual vilification laws. I know they are quite contested views but if speech can be used to bring harm to other human beings, then I would see that as part of where absolute freedom of speech shouldn't happen."

Dr Burgmann reflects that even her right to free speech may have hurt people in the past.

"I think it has probably hurt people, but I would hope that it was always people who deserved to be hurt. As a politician I was much more aware of what effect my speech would have on the person I was talking about."

From a young political activist to a NSW Parliamentarian, she has grappled with many of life's complex issues. Despite her past frustrations with ASIO, she concedes that there is a need for intelligence agencies.

"This is something I've struggled with a lot; as you get older you recognise that perhaps there is the need for an internal security organisation that can keep an eye on elements who want to do violence inside Australia."

However, while believing there is a societal need for intelligence, Dr Burgmann believes that ASIO should be scrutinised as much as any other Governmental department.

"There needs to be proper parliamentary scrutiny of the ASIO budget. And what it is doing with it. One would hope now ASIO is actually doing its job and is able to work out when there is a serious threat, a violent action inside Australia, like a bomb for instance. My view is that, given its history, it has not been able to distinguish a threat to the state and a threat to public order."

As a believer of a strong civil society and a strong independent media, she thanks journalists who are keeping their eyes on ASIO for a change.

"What we do know about ASIO today we have learnt from good journalism mainly in the print media."

Meredith Burgmann believes "good journalists are our best defence against the secret police".

Cassandra Byrnes

Meredith Burgmann: The 2011 Marsden Lecture excerpt

Secrets and Spies: ASIO and Civil Liberties

Given ASIO's long history of incompetent behaviour do we really trust them to protect us today? At a time of considerable expansion of their resources and powers, do we simply ignore their history and cross our fingers about the future.

I am presently editing a book for UNSW Press wherein well known Australians reflect on their ASIO files. Because of the 30 year rule, what we discover is ancient history but it should shine a light on the nature of secret police institutions. Can a leopard really change its spots?

I also intend to strip my own file to look at ASIO's

behaviour which I maintain is improper, incompetent, irrelevant, inappropriate and intrusive. One of the most concerning of these criticisms is that Australia's secret police have been used from time to time for party political objectives rather than national security concerns.

Respected ASIO commentator, David McKnight refers to a situation in 1970 when a Liberal Party functionary John Carrick asked ASIO, through Liberal Attorney General Tom Hughes, for a background paper on the radical student movement. Later the same year John Gorton asked ASIO for information on Jim Cairns' brushes with the law.

Allan Hardy, Frank's son, reveals in my book that after the jury in the 'Power Without Glory' criminal defamation trial returned a "not guilty" verdict, ASIO called for reports on all the jurors.

Similarly, also in 1970, the Director General of ASIO, Colonel Spry sends the Prime Minister's Department a report on my interjections at a meeting of the Australia Rhodesia Association, an extreme white supremacist group that was an international pariah. Spry, of course, paints the interjectors as the villains of the piece.

Another chilling fact is that the NSW Special Branch

which used to operate as a state branch of ASIO was following me around while I was a Member of Parliament.

My 'clandestine' activities recorded, while a Member of Parliament, included being involved in the launching of the *Broadside Weekly* in 1992 which took place in the Parliament House press conference room. Later in 1992 I was recorded as participating in a protest rally against killings in the Ciskei in South Africa, and the final report was in February 1994 about my attendance at a meeting held between the Consul General of Mexico and Amnesty International, to protest against human rights abuses in

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Mexico. What utterly mundane and MP-like activity!

Michael Kirby reveals that he first came to ASIO's notice at the age of about eight or nine when he was taken to the zoo by his left-leaning step-grandfather.

Anne Summers' file contained the words "capacity for violence – nil" which caused Anne some chagrin but which, of course, is the correct question and what they should have been asking about all of us. Once answered they should have closed the file and moved on.

When does dissent become subversion and when is spying on the citizens the legitimate role of government?

The young students, Christians, unionists of the anti-Vietnam movement, land rights campaigns, gay rights were never a danger to the government. We should have been dealt with as a public order issue not a threat to the state.

So let's look at my file.

When the huge box of papers and photos arrived on my desk, it was an extraordinary experience – my life of 30 years ago suddenly revealed. I felt like Faust seeing his youth in the bowl of time. All the conspiracy theories, all the stories we had told each other turned out to be true.

Our phones really were tapped. There really was an ASIO cameraman on the third floor of Woolworths overlooking the Sydney Town Hall steps during the Vietnam demonstrations. There it was, the perfect picture of me as a fresh-faced student standing on the Town Hall steps speaking at the September 1970 Moratorium, the angle just right for the third floor shot.

There were photos of friends I hardly remembered, photos of people whose faces were familiar but whose names now escape me. A chilling picture of my housemate, Helen Randerson and me walking through an unidentified door. Whose place was it that was being photographed in this mysterious way?

As I always joked, I didn't need to keep a diary, I always had the Special Branch to keep a record of my life.

One weird episode in my file occurs when I go overseas at the end of 1968 having only come to ASIO's attention six months earlier. I met up with my boyfriend and two other friends in London and together we had travelled through Wales to Ireland. It is at this stage that there is in my file a request from M15 wanting further information on our records. I remember our car being stopped and my boyfriend being questioned as we approached the ferry, but until now had never put two and two together. A heavily blacked out letter from Colonel Spry himself requests further details of my boyfriend, a totally apolitical New Zealand doctor, and actually alerts them to my suspicious activity such as protesting against the Russian invasion of Czechoslovakia.

One of these cables is sent to "Scorpion" in Melbourne, an address straight out of the Bourne Conspiracy. Another refers to Operation "Whip". These cables were also stamped "ENCRYPTED" in huge capitals across the pages.

However, much more disturbing is the story of my friend in the Navy. At a meeting in the MacCallum room at Sydney University, a spy in our midst had obviously sat beside me and had noted down a number of names that were in my diary. One of the names and phone numbers so obtained was that of an old family friend, Petty Officer Tom Williams.

The main problem for both ASIO and the Navy seems to have been that Tom was employed in the cryptography section of HMAS Kuttatubul, "Lieutenant Commander Evans also advised that Williams had been cleared to the intermediate level on 22/1/62 and also for crypto access. Lieutenant Commander Evans has simply been asked to play this rather 'close' but has not been told the reason for the enquiry." Later there is a postscript, "Understand that you will be reporting the incident to Headquarters. Would you please include a suggestion that the implications be considered by C Branch in relation to this case of PO Williams."

Imagine what (effect) these enquiries from Australia's Intelligence organisation had on Tom's future career in the Defence Forces.

Later the peek that the ASIO agent had of my notebook was compounded when I was arrested in Canberra on my way to give evidence at a friend's court case. Because I was arrested in my good court outfit and, in fact, flown down to Sydney and incarcerated in what was then Silverwater Gaol, they got access to my address book, and also had plenty of time to note its contents. This report is fascinating because it not only lists everyone in my address book of May 1970, but each name has listed beside it, the appropriate ASIO file number.

Almost everyone in my phone book had a file including Michael Kirby, David Kirby, Jim Spigelman, Peter Mason, Bob Connell, Aidan Foy, Paul Brennan, Dennis Harley, Rodney Henderson, Bruce Miles, Murray Sime, Peter Simpson, Nadia Wheatley and even my father, the Chairman of CSIRO. However, Geoff Robertson and Alan Cameron did not (at least at that stage).

The agents' reports vary from detailed in the extreme to slightly careless and inaccurate. Surprisingly there is no analysis of any pattern of activity, or of the differing political beliefs amongst the demonstrating fraternity. For instance I am continually reported (inaccurately) as having applied for membership of the Young Socialist League which was a Communist Party Youth organisation,



Surveillance photographs of Meredith Burgmann, one when she was speaking during a protest rally, the other conferring with her lawyers outside court

and yet they recorded me at the same time appearing at a May Day rally holding a banner saying 'Anarchists and Miscellaneous'.

Their reporting is completely humdrum. They followed me from meeting to meeting and from rally to rally. They had spies reporting on my activity in protests about nuclear tests in French Polynesia, against the South African Foreign Minister, protests involving Bougainville, the South African Tourist Bureau, the visit of US Vice President Spiro Agnew, Women's Lib, the Police Offences Act, Rhodesia, a Teachers Federation strike, the Gurindji, The Mataungans, a strike of metalworkers at Commonwealth Engineering, Black Power, Land Rights, Free Angela Davis, Newcastle Women's Day, the Greek Junta, Rent strike at Woodenbong, the Jack Munday Defence Campaign, Recognise Guinea Bissau, Free Kevin Gilbert, Prisoners Action Group, Women's Abortion Action, and meetings of the Builders Labourers about the Green Bans. I was obviously pretty busy. But so were they!

No issue was too trivial or parochial. There are also detailed reports about my opposition to corruption on Leichhardt Council and the famous Glebe Old Men's Home Affair. There were agents inside Leichhardt Town Hall reporting on Council meetings on at least three occasions. They describe in great detail my arrest for calling the Mayor a "silly old twit".

The agents' descriptions are surprisingly non-judgmental. They have obviously been trained only to describe and not to analyse. They rarely attempt to describe our philosophy, only our appearance.

The one time that comment about our political

direction takes place is when an agent lets fly at my great friend, Aboriginal activist Gary Foley. The agent who is sitting in a meeting with us reports, "Gary is a pest and appears to be a member of the Black Power Movement."

Of our many clashes with the Nazis in the early seventies, the agents take no side. They report our presence without identifying who were left wingers and who were Nazis. In fact, the agents were obviously following the Nazis too and on one occasion in March 1971 watched as they threw a brick through my window, daubed swastikas on my front fence and wrote "Red Rat" (which we later changed to Fred Rat because it sounded nicer) on the footpath outside the house. Yet they did not intervene to stop these activities.

I could make serious points about the totally ineffective nature of ASIO's interventions but others have already done this. They needlessly blighted some careers with their endless enquiries yet they remained incapable of protecting their own interests. For instance, a red wig and a false South African accent gained me entrance to the SCG at a time when known demonstrators were being excluded. This weak disguise allowed us to dash across the pitch and resulted in the only game stoppage in Sydney.

Whatever our views are about the need for a secret police agency, ASIO has never demonstrated that it is either proper or effective.

Meredith Burgmann

The annual John Marsden Lecture is hosted by the NSW Council for Civil Liberties: <http://www.nswccl.org.au>

Concern for welfare of respected Tibetan writer



Tashi Rabten

PEN is seriously concerned for the welfare of Tibetan writer and editor Tashi Rabten who was arrested in April 2010 and was sentenced to four years in prison in July 2011 for his articles on the suppression of the March 2008 protests in Lhasa and surrounding regions. He was the editor of banned literary magazine *Shar Dungri* (Eastern Snow Mountain) and author of a new collection of political articles entitled *Written in Blood*. Tashi Rabten is a student at the Northwest Minorities University in Lanzhou and was due to graduate in April 2010.

Tashi Rabten is from Dzoerge (Chinese: Ruo'ergai) county in Ngaba, Sichuan province in the Tibetan region of Kham. Regarded as an outstanding, brave young intellectual, he has won great respect and popularity among his fellow students, intellectuals and readers. *Written in Blood* consists of writings on democracy, freedom and equality. Tashi Rabten had been under surveillance for some time, with his activities strictly monitored, and copies of his book confiscated from the university.

In the introduction to *Written in Blood*, Rabten writes: "Given my (young) age and (lack of) qualifications, the appearance of this little book may be premature. After an

especially intense year of the usual soul-destroying events, something had to be said, and after pondering on whether to speak out, I finally produced this humble little book between 2008-09, shed like a drop of blood."

In March 2008, the Chinese authorities launched a crackdown in the Tibet Autonomous Region, after anti-government protests took place in Lhasa and other areas, with reports of arbitrary arrests and use of excessive force against dissidents. Tight restrictions remain in force on reporting from the Tibetan region, and arrests continue.

Following the hunger strikes of 17 March, 2011 in Barkham County, the students of the Northwest Minorities University were searched for possession of dissident material. Any textbooks or journals they had which weren't endorsed by the government were confiscated then burnt, including copies of *Shar Dungri*. The magazine, which consisted of political and social commentary in the Tibetan language, had circulated widely by that point, reaching cities in mainland China like Gansu and Qinghai.

Sydney PEN has publicised Tashi Rabten's case by featuring him at The Empty Chair installed in the City Campus Library of the University of Technology, Sydney.

Worldwide Day of Reading for Liu Xiaobo

Born in 1955, Liu Xiaobo is a prominent dissident writer, and former President and Board member of the Independent Chinese PEN Centre. He was awarded the Nobel Peace Prize in 2010. Arrested in December 2008, he was sentenced the following year to 11 years for "spreading rumors and defaming the government, aimed at subversion of the state and overthrowing the socialism system

in recent years". The charge is based on his endorsement of Charter 08 and over 20 articles published between 2001-2008. He will be released in June 2020.

Honorary President of Independent Chinese PEN Centre (ICPC), and Honorary Member of Scottish, German, American, Czech, Sydney, Iceland, English and Portuguese PEN Centres.



On March 20, more than 150 cultural institutions, schools, radio stations and other groups in 41 countries around the world participated in a worldwide reading of prose and poems by imprisoned Chinese writer Liu Xiaobo.

The worldwide reading, organised by the International Literature Festival Berlin, shared Liu Xiaobo's works with a broader readership and formed part of the international protest that a humanist, a freedom fighter, an outstanding writer and Nobel Peace Prize winner is still in Chinese prison simply for expressing his views.

ABC Radio National's Books and Arts Daily program broadcast a reading by Australian poet and Sydney PEN Writers' Advisory Panel Member, John

Tranter, of Liu Xiaobo's poem, *You Wait for Me With Dust* on Wednesday, March 20. A podcast of this broadcast is available at:

<http://www.abc.net.au/radionational/programs/booksandartsdaily/liu-xiaobo-and-the-worldwide-reading-day/3888904>

Sydney community station 2SER 107.3FM also broadcast a reading of the poem by Sydney PEN Vice-President, Debra Adelaide, on its books program Final Draft.

An copy of Charter 08, the famous human rights manifesto co-authored by Liu Xiaobo and signed by more than 350 prominent Chinese writers and intellectuals in 2008 is available on the Sydney PEN website:

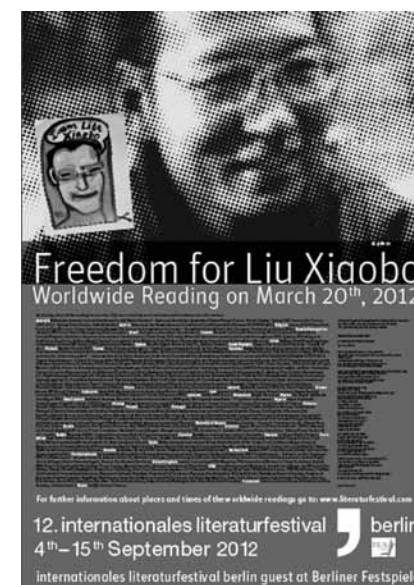
<http://pen.org.au/>

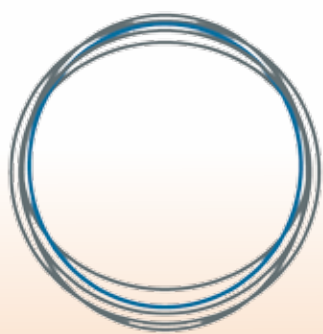
You Wait for Me with Dust

- for my wife, who waits every day

Liu Xiaobo

nothing remains in your name, nothing
but to wait for me, together with the dust of our home
those layers
amassed, overflowing, in every corner
you're unwilling to pull apart the curtains
and let the light disturb their stillness
over the bookshelf, the handwritten label is covered in dust
on the carpet the pattern inhales the dust
when you are writing a letter to me
and love that the nib's tipped with dust
my eyes are stabbed with pain
you sit there all day long
not daring to move
for fear that your footsteps will trample the dust
you try to control your breathing
using silence to write a story.
At times like this
the suffocating dust
offers the only loyalty
your vision, breath and time





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Sydney PEN needs you!

By joining Sydney PEN you will be showing your commitment to reading and writing as human rights to be undertaken in the spirit of freedom.
Go to: pen.org.au/ to join.

Sydney PEN also needs
a Writers in Prison Campaign Officer to join its Management Committee!

If you have the time and commitment to work on campaigns to draw attention to the plight of persecuted writers, contact us on: sydney@pen.org.au

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