

HUMAN  
RIGHTS  
WATCH

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# WORLD REPORT

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**2005**

EVENTS OF 2004

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## Human Rights Watch

350 Fifth Avenue, 34th floor

New York, NY 10118-3299 USA

Tel: 1-(212) 290-4700, Fax: 1-(212) 736-1300

hrwnyc@hrw.org

1630 Connecticut Avenue, N.W., Suite 500

Washington, DC 20009 USA

Tel: 1-(202) 612-4321, Fax: 1-(202) 612-4333

hrwdc@hrw.org

2nd Floor, 2-12 Pentonville Road

London N1 9HF, UK

Tel: 44 20 7713 1995, Fax: 44 20 7713 1800

hrwuk@hrw.org

Rue Van Campenhout 15,

1000 Brussels, Belgium

Tel: 32 (2) 732-2009, Fax: 32 (2) 732-0471

hrwatcheu@skynet.be

9 rue de Cornavin

1201 Geneva, Switzerland

Tel: +41 22 738 04 81, Fax: +41 22 738 17 91

hrwgva@hrw.org

Web Site Address: <http://www.hrw.org>

Listserv address: To receive Human Rights Watch news releases by email, subscribe to the HRW news listserv of your choice by visiting

<http://hrw.org/act/subscribe-mlists/subscribe.htm>

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We stand with victims and activists to prevent discrimination, to uphold political freedom, to protect people from inhumane conduct in wartime, and to bring offenders to justice.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those who hold power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

## **HUMAN RIGHTS WATCH**

**Human Rights Watch conducts regular, systematic investigations of human rights abuses in some seventy countries around the world. Our reputation for timely, reliable disclosures has made us an essential source of information for those concerned with human rights. We address the human rights practices of governments of all political stripes, of all geopolitical alignments, and of all ethnic and religious persuasions. Human Rights Watch defends freedom of thought and expression, due process and equal protection of the law, and a vigorous civil society; we document and denounce murders, disappearances, torture, arbitrary imprisonment, discrimination, and other abuses of internationally recognized human rights. Our goal is to hold governments accountable if they transgress the rights of their people.**

**Human Rights Watch began in 1978 with the founding of its Europe and Central Asia division (then known as Helsinki Watch). Today, it also includes divisions covering Africa, the Americas, Asia, and the Middle East. In addition, it includes three thematic divisions on arms, children's rights, and women's rights. It maintains offices in Brussels, Geneva, London, Los Angeles, Moscow, New York, San Francisco, Tashkent, Toronto, and Washington. Human Rights Watch is an independent, nongovernmental organization, supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly.**

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The division directors of Human Rights Watch are Brad Adams, Asia; Holly Cartner, Europe and Central Asia; Richard Dicker, International Justice; Jamie Fellner, United States; Arvind Ganesan, Business and Human Rights; Diane Goodman, Refugees; Steve Goose, Arms; LaShawn R. Jefferson, Women's Rights; Scott Long, Lesbian, Gay Bisexual and Transgender Rights; Peter Takirambudde, Africa; José Miguel Vivanco, Americas; Lois Whitman, Children's Rights; and Sarah Leah Whitson, Middle East and North Africa.

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Brad Adams, Christopher Albin-Lackey, Kristina Alessi, Fatima Ayub, Natasha Bakht, Jo Becker, Lyudmilla Belova, Mike Bochenek, Carlo Boehm, Carroll Bogert, Matilda Bogner, Sebastian Brett, Yelena Brodkorb, Reed Brody, Widney Brown, Corinne Carey, Holly Cartner, Ximena Casas, Julie Chadbourne, Michael Clough, Jonathan Cohen, Sara Colm, Gilbert Colon, Zama Coursen-Neff, Meg Davis, Rachel Denber, Alison Des Forges, Katherine Desormeau, Richard Dicker, Corinne Dufka, Victoria Elman, Alison Epting, Jamie Fellner, Karina Frayter, Loubna Freih, Georgette Gagnon, Jessica Galeria, Nicholas Galletti, Arvind Ganesan, Meenakshi Ganguly, Sobeira Genao, Hadi Ghaemi, Allison Gill, Eric Goldstein, Diane Goodman, Laura Gosa, Isabella Gourgenian-Bollerup, Hannah Gronborg, Julia Hall, Dan Hardy, Ali Hasan, Fitzroy Hepkins, Leila Hull, Romanita Iordache, Bogdan Ivanisevic, Magdalena Jurkowiecka, Tiseke Kasambala, Elise Keppler, Juliane Kippenberg, Vanessa Kogan, Neza Kogovsek, Manu Krishnan, Sergio Latorre, Lance Lattig, Leslie Lefkow, Veronika Leila Szent Goldston, Diederik Lohman, Emily Letts, Iain Levine, Scott Long, Erin Mahoney, Lucy Mair, Sonya Maldar, Anjana Malhotra, Tom Malinowski, Joanne Mariner, Jose Martinez, Jean-Paul Marthoz, M. d. Pilar Mayoral, Nobuntu Mbelle, Maria McFarland, Lisa Misol, Charmain Mohamed, Marianne Mollman, Alex Moorehead, Hania Mufti, Sahr Muhammedally, Jennifer Nagle, Binaifer Nowrojee, Alison Parker, Wendy Patten, Sasha Petrov, Sunai Phasuk, Suzannah Phillips, Carol Pier, Dinah Pokempner, Vitalii Ponomarev, Lutz Prager, Jo-Anne Prud'homme, Dorit Radzin, Tarek Radwan, Keramet Reiter, Yolanda Revilla, Jemera Rone, James Ross, Rebecca Schleifer, Jeff Scott, Caroline Sculier, Kay Seok, Acacia Shields, Veena Siddharth, John Sifton, Anna Sinelnikova, Dana Sommers, Tim Sowula, Mickey Spiegel, Karen Stauss, Joe Stork, Jonathan Sugden, Peter Takirambudde, Tony Tate, Wilder Tayler, Louise Taylor, Carina Tertsakian, Tejshree Thapa, Jennifer Trahan, Anneke Van Woudenberg, Nisha Varia, José Miguel Vivanco, Ben Ward, Sarah Wells, Joanna Weschler, Lois Whitman, Sarah Leah Whitson, Daniel Wilkinson, Sam Zarifi.

Joe Saunders edited the report, with substantial assistance from Widney Brown and Iain Levine. Layout and production were coordinated by Andrea Holley and Manu Krishnan, with assistance from John Emerson, Veronica Matushaj, Amha Mogus, Jagdish Parikh, and Elijah Zarwan.

Victoria Elman, Nicholas Galletti, Leila Hull, Vanessa Kogan, Erin Mahoney, Jennifer Nagle, Jo-anne Prud'homme, Keramet Reiter, Yolanda Revilla, Jeff Scott, Kay Seok, Anna Sinelnikova, Dana Sommers, and Tim Sowula proofread the report.

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## PREFACE

This report is Human Rights Watch's fifteenth annual review of human rights practices around the globe. It summarizes key human rights issues in sixty-four countries, drawing on events through November 2004.

Each country entry identifies significant human rights issues, examines the freedom of local human rights defenders to conduct their work, and surveys the response of key international actors, such as the United Nations, European Union, Japan, the United States, and various regional and international organizations and institutions.

The volume begins with four essays addressing human rights developments of global concern in 2004. The lead essay examines far-reaching threats to human rights that emerged during the year: large-scale ethnic cleansing in Darfur in western Sudan, and detainee abuse at Abu Ghraib prison in Iraq, symptomatic of a broader problem of torture and mistreatment of detainees by U.S. forces. It argues that the vitality of human rights defense worldwide depends on a firm response to both of these threats.

International indifference and inaction in the face of continuing atrocities in Darfur have cost the lives of tens of thousands of people and damaged the human rights principle that sovereignty should not stand in the way of protecting people from mass atrocities. The U.S. government's use of torture at Abu Ghraib, though affecting far fewer people directly, reflects a larger pattern of disregard for human rights law and standards by the world's sole superpower.

While the lead essay focuses on Abu Ghraib and its repercussions, the second essay, a companion piece to the first, details what has taken place in Darfur and the continuing reluctance of the U.N. Security Council and other powerful international actors to mount a decisive response.

The third and fourth essays address two of the most controversial issues of the year: evidence of growing conflicts between religious communities and the human rights movement, and the global backlash against movements for the rights of lesbian, gay, bisexual, and transgender people. While the essays call for stringent protection of religious freedom, both argue that rights groups should oppose efforts in the name of religion, tradition, or morals to censor expression or limit the behavior of others when the only “offense” is in the mind of the person seeking to impose their views.

This report reflects extensive investigative work undertaken in 2004 by the Human Rights Watch research staff, usually in close partnership with human rights activists in the country in question. It also reflects the work of our advocacy team, which monitors policy developments and strives to persuade governments and international institutions to curb abuses and promote human rights. Human Rights Watch publications, issued throughout the year, contain more detailed accounts of many of the issues addressed in the brief summaries collected in this volume. They can be found on the Human Rights Watch website, [www.hrw.org](http://www.hrw.org).

As in past years, this report does not include a chapter on every country where Human Rights Watch works, nor does it discuss every issue of importance. The failure to include a particular country or issue often reflects no more than staffing limitations and should not be taken as commentary on the significance of the problem. There are many serious human rights violations that Human Rights Watch simply lacks the capacity to address.

The factors we considered in determining the focus of our work in 2004 (and hence the content of this volume) include the number of people affected and severity of abuse, access to the country and the availability of information about it, the susceptibility of abusive forces to influence,

and the importance of addressing certain thematic concerns and of reinforcing the work of local rights organizations.

This year's World Report does not have separate chapters addressing our thematic work but instead incorporates such material directly into the country entries. Please consult the Human Rights Watch website for more detailed treatment of our work on children's rights, women's rights, arms, academic freedom, business and human rights, HIV/AIDS and human rights, international justice, refugees and displaced people, and lesbian, gay, bisexual, and transgender people's rights, and for information about our international film festival.





## **DARFUR AND ABU GHRAIB**

by Kenneth Roth

Among the myriad human rights challenges of 2004, two pose fundamental threats to human rights: the ethnic cleansing in Darfur and the torture of detainees at Abu Ghraib. No one would equate the two, yet each, in its own way, has had an insidious effect. One involves indifference in the face of the worst imaginable atrocities, the other is emblematic of a powerful government flouting a most basic prohibition. One presents a crisis that threatens many lives, the other a case of exceptionalism that threatens the most fundamental rules. The vitality of the global defense of human rights depends on a firm response to each—on stopping the Sudanese government’s slaughter in Darfur and on changing the policy decisions behind the U.S. government’s torture and mistreatment of detainees.

In Darfur, the western region of Sudan, massive ethnic cleansing has sparked much international hand-wringing and denunciation but little effective action. The systematic violence against civilians by Sudanese government forces and government-backed militia constitutes crimes against humanity and has even been described by some as genocide, yet the international response has been little more than to condemn the atrocities, feed the victims, and send a handful of poorly equipped African forces to try, largely in vain, to stop the slaughter. No serious pressure has been put on the Sudanese government to halt its murderous campaign. No meaningful protective force has been deployed. Coming a decade after the Rwandan genocide, the mass murder in Darfur mocks the vows of “never again.” How can governments honestly mouth those words when their actions fall so shamefully short?

Immediate action is needed to save the people of Darfur. The U.N. Security Council—or, failing action by that body, any responsible group of governments—must deploy a large force capable of protecting the

civilian population, prosecute the killers and their commanders, disband and disarm the Sudanese government's militia, and create secure conditions so displaced people can return home safely. Continued inaction risks undermining a fundamental human rights principle—that the nations of the world will never let sovereignty stand in the way of their responsibility to protect people from mass atrocities.

The U.S. government's use of torture at Abu Ghraib prison in Iraq poses a different kind of challenge: not because the scale of the abuse is as large as Darfur, but because the abuser is so powerful. When most governments breach international human rights and humanitarian law, they commit a violation. The breach is condemned or prosecuted, but the rule remains firm. Yet when a government as dominant and influential as the United States openly defies that law and seeks to justify its defiance, it also undermines the law itself and invites others to do the same. The U.S. government's deliberate and continuing use of "coercive interrogation"—its acceptance and deployment of torture and other cruel, inhuman, or degrading treatment—has had this insidious effect, well beyond the consequences of an ordinary abuser. That unlawful conduct has also undermined Washington's much-needed credibility as a proponent of human rights and a leader of the campaign against terrorism. In the midst of a seeming epidemic of suicide bombings, beheadings, and other attacks on civilians and noncombatants—all affronts to the most basic human rights values—Washington's weakened moral authority is felt acutely.

As the Bush administration begins its second term, its challenge is to make human rights a guiding force for U.S. conduct and to establish America's credibility as a defender of human rights. As a first step, President Bush and the U.S. Congress should establish a fully independent investigative commission—similar to the one created to examine the attacks of September 11, 2001—to determine what went wrong in the administration's interrogation practices and to prescribe remedial steps. Washington should also acknowledge and reverse the policy deci-

sions behind its torture and mistreatment of detainees, hold accountable those responsible at all levels of government for the mistreatment of detainees, and publicly commit to ending all forms of coercive interrogation.

## ***Darfur***

Many reasons can be cited for the world's callous disregard for the death of an estimated 70,000 people and the displacement of some 1.6 million more in Darfur. The second essay of this volume describes several of these reasons. None, however, justifies this cruel indifference. Once more, the U.N. Security Council has been hampered by its permanent members' threatened parochial use of their veto—a veto that, as recommended by the U.N.'s high-level panel on global threats, should never be exercised “in cases of genocide and large-scale human rights abuses.” This time, China has been the primary problem, demonstrating more concern for preserving its lucrative oil contracts in Sudan than for saving thousands of lives. Russia, protecting its own valuable arms sales to Khartoum, has seconded this cold-hearted unresponsiveness.

The non-permanent members also share culpability. Algeria and Pakistan have been models of Islamic solidarity, so long as that is defined as fealty to an Islamic government rather than commitment to the lives of Muslim victims. Other African members of the council, Angola and Benin, placed a premium on loyalty to a fellow African government. In the U.N. General Assembly, scores of governments, hostile to any human rights criticism because of their own poor records, opposed even discussing Sudan's murderous campaign, let alone condemning it.

Even the champions of human rights in Darfur—Washington foremost among them— have seemed more focused on limiting their obligation to the people of Darfur than on ending the killing. A large U.N.-authorized military force is clearly needed to protect Darfur residents

and to create conditions of security that might allow them to return home safely. But the United States and its Western allies have handed the problem to the African Union, a new institution with few resources and no experience with military operations of the scale needed. The situation cries out for involvement by the major military powers, but they have chosen to be unavailable. The United States, the United Kingdom, and Australia are bogged down in Iraq, with the United States going so far as to say that “no new action is dictated” by its determination that the killing in Darfur amounts to genocide; France is committed elsewhere in Africa; Canada, despite promoting the “responsibility to protect,” is cutting back its peacekeeping commitments; NATO is preoccupied in Afghanistan; the European Union is deploying forces in Bosnia. Everyone has something more important to do than to save the people of Darfur from inhuman brutality at the hands of the Sudanese government and its militia.

Another key step for ending the ethnic cleansing is to ensure that those responsible for murder, rape, and other atrocities—and their commanders—face their day in court. The Sudanese government has done nothing real to see justice done. International prosecution is needed to silence the smug denials of responsibility emanating from Khartoum and to signal to the people of Darfur that the world no longer considers their demise and dislocation acceptable. Just as impunity invited Khartoum to extend its murderous ways from the killing fields of southern Sudan to Darfur, so prosecution would demonstrate a refusal to tolerate in Darfur the kinds of government-sponsored atrocities that have plagued southern Sudan for over two decades.

To its credit, the Security Council established an international commission of inquiry for Darfur—a possible prelude to prosecution. When the commission reports back at the end of January, the council will have to decide whether to refer the situation to the International Criminal Court. Will China see past its oil contracts to allow the referral to go forward? Will the United States overcome its antipathy for the court to

allow prosecution of crimes it calls genocide? Or, as the people of Darfur suffer and die, will it insist on wasting time setting up a separate tribunal? The Security Council's many professions of concern will ring hollow if its answer to the desperate pleas from Darfur is, through delay or inaction, to let impunity reign.

Darfur today stands as testament to a profound failure of will to prevent and redress the most heinous human rights crimes. Despite countless denunciations and endless professions of concern, little has been done to protect the people of Darfur. A failure of this magnitude challenges the fundamental human rights principle that the governments of the world will not turn their backs on people facing mass atrocities. For if the nations of the world cannot act here, when will they act? How, ten years after the Rwandan genocide, can the gap between concern and action remain so wide? How, when the worst of human cruelty is on display, can the world remain so indifferent? As the death toll rises and the charade of feigned protection becomes painfully obvious to all, we must insist that the nations of the world finally rescue the people of Darfur. Either that or vow "never again" to say "never again."

### ***Coercive Interrogation***

The U.S. government's systematic and continuing use of coercive interrogation jeopardizes a pillar of international human rights law—a centuries-old proscription, reaffirmed unconditionally in numerous widely ratified human rights treaties, that governments should never subject detainees to torture or other cruel, inhuman, or degrading treatment. Yet in fighting terrorism, the U.S. government has treated this cornerstone obligation as merely hortatory—a matter of choice, not duty.

This disdain for so fundamental a principle has done enormous damage to the global system for protecting human rights. Broad public condemnation has certainly greeted the U.S. government's use of torture and other abusive techniques. To some extent that outrage has reinforced

the rules that Washington violated—but not enough. Washington’s lawless example is so powerful, its influence so singular, that its deliberate breach threatens to overshadow the condemnations and leave human rights law significantly weakened. If even so basic a rule as the ban on torture can be flouted, other rights are inevitably undermined as well.

To make matters worse, the Bush administration has developed outrageous legal theories to try to justify many of its coercive techniques. Whether defining torture so narrowly as to render its prohibition meaningless, suggesting bogus legal defenses for torturers, or claiming that the president has inherent power to order torture, the administration and its lawyers have directly challenged the absolute ban on abusing detainees.

The problem is compounded by the weakening of one of the most important governmental voices for human rights. Washington’s record of promoting human rights has always been mixed. For every offender that it berated for human rights transgressions, there was another whose abuses it ignored, excused, or even supported. Yet despite this inconsistency, the United States historically has played a key role in defending human rights. Its embrace of coercive interrogation—part of a broader betrayal of human rights principles in the name of combating terrorism—has significantly impaired its ability to mount that defense.

Governments facing human rights pressure from the United States now find it increasingly easy to turn the tables, to challenge Washington’s standing to uphold principles that it violates itself. Whether it is Egypt defending renewal of its emergency law by reference to U.S. anti-terror legislation, Malaysia justifying administrative detention by invoking Guantánamo, Russia citing Abu Ghraib to blame abuses in Chechnya solely on low-level soldiers, or Cuba claiming the Bush administration had “no moral authority to accuse” it of human rights violations, repressive governments find it easier to deflect U.S. pressure because of Washington’s own sorry post-September 11 record on human rights.

Indeed, when asked by Human Rights Watch to protest administrative detention in Malaysia and prolonged incommunicado detention in Uganda, State Department officials demurred, explaining, in the words of one, “with what we are doing in Guantánamo, we’re on thin ice to push this.”

Similarly, many human rights defenders, particularly in the Middle East and North Africa, now cringe when the United States comes to their defense. They may crave a powerful ally, but identifying too closely with a government that so brazenly ignores international law, whether in Iraq, Israel and the occupied territories, or the campaign against terrorism, has become a sure route to disrepute. To his credit, President Bush, in a November 2003 speech, deplored “sixty years of Western nations excusing and accommodating the lack of freedom” in the Arab world. Recalling U.S. efforts to roll back Communist dictatorships in Eastern Europe, President Bush committed the United States to a new “forward strategy of freedom.” Yet because of animosity toward Washington’s policies, the close collaboration with civil society that characterized U.S. pro-democracy efforts in Eastern Europe is now more difficult in the Middle East and North Africa. This animosity is not anti-Americanism, as it is often misconstrued in an effort to dismiss it, but anti-American policyism.

Washington’s loss of credibility has not been for lack of rhetorical support for concepts that are closely related to human rights, but the embrace of explicit human rights language seems to have been calculatedly rare. The Bush administration speaks often of its devotion to “freedom,” its opposition to “tyranny” and “terrorism,” but rarely its commitment to human rights. The distinction has enormous significance. It is one thing to pronounce oneself on the side of the “free,” quite another to be bound by the full array of human rights standards that are the foundation of freedom. It is one thing to declare oneself opposed to terrorism, quite another to embrace the body of international human rights and humanitarian law that enshrines the values that reject terror-

ism. This linguistic sleight of hand—this refusal to accept the legal obligations embraced by rights-respecting states—has facilitated Washington’s use of coercive interrogation.

What has been particularly frustrating about Washington’s disregard for international standards is how senseless, even counterproductive, it has been—especially in the Middle East and North Africa, where counterterrorism efforts have focused. Open and responsive political systems are the best way to encourage people to pursue their grievances peacefully. But when the most vocal governmental advocate of democracy deliberately violates human rights, it undermines democratically inclined reformers and strengthens the appeal of those who preach more radical visions.

Moreover, because deliberately attacking civilians is an affront to the most basic human rights values, an effective defense against terrorism requires not only traditional security measures but also reinforcement of a human rights culture. The communities that are most influential with potential terrorists must themselves be persuaded that violence against civilians is never justified, regardless of the cause. But when the United States disregards human rights, it undermines that human rights culture and thus sabotages one of the most important tools for dissuading potential terrorists. Instead, U.S. abuses have provided a new rallying cry for terrorist recruiters, and the pictures from Abu Ghraib have become the recruiting posters for Terrorism, Inc. Many militants need no additional incentive to attack civilians, but if a weakened human rights culture eases even only a few fence-sitters toward the path of violence, the consequences can be dire.

And for what? To vent frustration, to exact revenge—perhaps, but not because torture and mistreatment are needed for protection. Respect for the Geneva Conventions does not preclude vigorously interrogating detainees about a limitless range of topics. The U.S. Army’s interrogation manual makes clear that abuse undermines the quest for reliable



information. The U.S. military command in Iraq says that Iraqi detainees are providing more useful intelligence when they are not subjected to coercion. In the words of Craig Murray, the United Kingdom's former ambassador to Uzbekistan who was speaking of the U.K.'s reliance on torture-extracted testimony, "We are selling our souls for dross."

None of this is to say that the United States is the worst human rights abuser. Perusal of this year's annual Human Rights Watch World Report will show many more serious contenders for that notorious title. But the sad truth is that Washington's unmatched influence has made its contribution to the degradation of human rights standards unique.

It is not enough to argue, as its defenders undoubtedly will, that the Bush administration is well intentioned—that it is the "good guy," in the words of the *Wall Street Journal*. A society ordered on intentions rather than law is a lawless society. Nor does it excuse the administration's human rights record, as its defenders have tried to do, to note that it removed two tyrannical governments—the Taliban in Afghanistan and the Ba'ath Party in Iraq. Attacks on repressive regimes cannot justify attacks on the body of principles that makes their repression illegal.

To redeem its credibility as a proponent of human rights and an effective leader of the campaign against terrorism, the Bush administration needs urgently to reaffirm its commitment to human rights. For reasons of principle and pragmatism, it must, as noted, allow an independent, September 11-style investigative commission to examine completely its interrogation practices. The administration must then acknowledge the wrongfulness of its conduct, hold accountable all those responsible (not just a small group of privates and sergeants), and publicly commit itself to ending all forms of coercive interrogation.

## ***Cover-up and Self-investigation***

When the photos from Abu Ghraib became public, the Bush administration reacted like many abusive governments that are caught red-handed: it went into damage-control mode. It agreed that the torture and abuse featured in the photographs were wrong, but sought to minimize the problem. The abusers, it claimed, were a handful of errant soldiers, a few “bad apples” at the bottom of the barrel. The problem, it argued, was contained, both geographically (one section of Abu Ghraib prison) and structurally (only low-level soldiers, not more senior commanders). The abuse photographed at Abu Ghraib and broadcast around the world, it maintained, had nothing to do with the decisions and policies of more senior officials. President Bush vowed that “wrongdoers will be brought to justice,” but as of early December 2004, no one above the rank of sergeant is facing prosecution.

Key to this damage control was a series of carefully limited investigations—ten so far. Most of the investigations, such as those conducted by Maj. Gen. George Fay and Lt. Gen. Anthony Jones, involved uniformed military officials examining the conduct of their subordinates; these officers lacked the authority to scrutinize senior Pentagon officials. The one investigation with the theoretical capacity to examine the conduct of Defense Secretary Donald Rumsfeld and his top aides—the inquiry led by former Defense Secretary James Schlesinger—was appointed by Rumsfeld himself and seemed to go out of its way to distance him from the problem. (At the press conference releasing the investigative report, Schlesinger said that Rumsfeld’s resignation “would be a boon to all America’s enemies.”) The Schlesinger investigation lacked the independence of, for example, the September 11 Commission, which was established with the active involvement of the U.S. Congress. As for the Central Intelligence Agency—the branch of the U.S. government believed to hold the most important terrorist suspects—it has apparently escaped scrutiny by anyone other than its own

inspector general. Meanwhile, no one seems to be looking at the role of President Bush and other senior administration officials.

When an unidentified government official retaliated against a critic of the Bush administration by revealing his wife to be a CIA agent—a serious crime because it could endanger her—the administration agreed, under pressure, to appoint a special prosecutor who has been promised independence from administration direction. Yet the administration has refused to appoint a special prosecutor to determine whether senior officials authorized torture and other forms of coercive interrogation – a far more serious and systematic offense. As a result, no criminal inquiry that the administration itself does not control is being conducted into the U.S. government’s abusive interrogation methods. The flurry of self-investigations cannot obscure the lack of any genuinely independent one.

### ***The Policies behind Abu Ghraib***

The abuses of Abu Ghraib did not erupt spontaneously at the lowest levels of the military chain of command. They were not merely a “management” failure, as the Schlesinger investigation suggested. They were the direct product of an environment of lawlessness, an environment created by policy decisions taken at the highest levels of the Bush administration, many long before the start of the Iraq war. They reflect a determination to fight terrorism unconstrained by fundamental principles of international human rights and humanitarian law—even though the United States and governments around the world have committed to respect those principles even in time of war and severe security threats. The Bush administration’s decisions received important support in the United States from a chorus of partisan pundits and academics who, claiming that an unprecedented security threat justified unprecedented measures, were all too eager to abandon the fundamental principles on which their nation had been founded. Those decisions included:

- The decision not to apply the Geneva Conventions to detainees in U.S. custody at Guantánamo, even though the conventions apply to all people picked up on the battlefield of Afghanistan. Senior Bush officials vowed that all detainees would be treated “humanely,” but that vow seems never to have been seriously implemented and at times was qualified by a self-created exception for “military necessity.” Meanwhile, the effective shredding of the Geneva Conventions sent U.S. interrogators the signal that, in the words of one leading counterterrorist official, “the gloves came off.”
- The decision not to clarify for nearly two years that, regardless of the applicability of the Geneva Conventions, all detainees in U.S. custody were protected by the parallel requirements of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Even when, at the urging of human rights groups, a senior Pentagon official belatedly reaffirmed, in June 2003, that the convention prohibited not only torture but also other forms of ill treatment, that announcement was communicated to interrogators, if at all, in a way that had no discernible impact on their behavior.
- The decision to interpret the prohibition of cruel, inhuman, or degrading treatment narrowly, to permit certain forms of coercive interrogation—that is, certain efforts to ratchet up a suspect’s pain, suffering, and humiliation to make him talk. Not surprisingly, those methods became more coercive as they “migrated,” in the words of two Pentagon inquiries, from the controlled setting of Guantánamo to the battlefields of Afghanistan and Iraq.
- The decision to hold some suspects—eleven known and probably many more—in unacknowledged incommunicado detention, beyond the reach of even the International Committee of the Red Cross. Victims of such “disappearances” are at the greatest risk of

torture and other mistreatment. For example, U.S. forces continue to maintain closed detention sites in Afghanistan, where beatings, threats, and sexual humiliation are still reported. Since late 2001, six persons arrested by U.S. forces in Afghanistan have died in custody—one as recently as September 2004.

- The refusal for over two years to prosecute soldiers implicated in the deaths of two suspects in U.S. custody in Afghanistan in December 2002, deaths ruled “homicides” by U.S. Army pathologists. Instead, the interrogators were reportedly sent to Iraq, where some were allegedly involved in more abuse.
- The approval by Defense Secretary Rumsfeld of some interrogation methods for Guantánamo that violated, at the very least, the prohibition of cruel, inhuman, or degrading treatment and possibly the ban on torture. These techniques included placing detainees in painful stress positions, hooding them, stripping them of their clothes, and scaring them with guard dogs. That approval was later rescinded, but it contributed to the environment in which America’s legal obligations were seen as dispensable.
- The reported approval by an unidentified senior Bush administration official, and use, of “water boarding”—known as the “submarine” in Latin America—a torture technique in which the victim is made to believe he will drown, and in practice sometimes does.
- The sending of suspects to governments such as Syria, Uzbekistan, and Egypt that practice systematic torture. Sometimes diplomatic assurances have been sought that the suspects would not be mistreated, but if, as in these cases, the receiving government routinely flouts its legal obligation under the Convention against Torture, it was wrong to expect better compliance with the non-binding word of a diplomat.

- The decision (adopted from the Bush administration's earliest days) to oppose and undermine the International Criminal Court, in part out of fear that it might compel the United States to prosecute U.S. personnel implicated in war crimes or other comparable offenses that the administration would prefer to ignore. That signaled a determination to protect U.S. personnel from external accountability for human rights offenses that the U.S. government might authorize.
- The decision by the Justice Department, the Defense Department, and the White House counsel to concoct dubious legal theories to justify torture. Despite objections from the State Department and professional military attorneys, these government departments, under the direction of politically appointed lawyers, offered such absurd interpretations of the law as that President Bush has "commander-in-chief authority" to order torture. By that theory, Slobodan Milosevic and Saddam Hussein may as well be given the keys to their jail cells, since they, too, presumably would have had "commander-in-chief authority" to authorize the atrocities they directed.

These policy decisions, taken not by low-level soldiers but by senior officials of the Bush administration, created an "anything goes" atmosphere, an environment in which the ends were assumed to justify the means. Sometimes the mistreatment of detainees was merely tolerated, other times it was actively encouraged or even ordered. In those circumstances, when the demand came from on high for "actionable intelligence"—intelligence that would help respond to the steady stream of U.S. casualties at the hands of extraordinarily brutal Iraqi insurgents—it was hardly surprising that interrogators saw no obstacle in the legal prohibition of torture and mistreatment.

To this day, the Bush administration has failed to repudiate many of these decisions. It continues to refuse to apply the Geneva Conventions

to any of the more than five hundred detainees held at Guantánamo (despite a U.S. court ruling rejecting its position) and to many others detained in Iraq and Afghanistan. It continues to “disappear” detainees, despite ample proof that these “ghost detainees” are extraordinarily vulnerable to torture. It refuses to disown the practice of “rendering” suspects to governments that torture. It continues its vendetta against the International Criminal Court. It refuses to reject in anything but vague and general terms the many specious arguments for torture contained in the administration lawyers’ notorious “torture memos.” And it still refuses to disavow all forms of coercive interrogation or to adopt a clear policy forbidding it. Indeed, it reportedly continued as late as June 2004—long after the Abu Ghraib mistreatment became public—to subject Guantánamo detainees to beatings, prolonged isolation, sexual humiliation, extreme temperatures, and painful stress positioning – practices the International Committee of the Red Cross reportedly called “tantamount to torture.”

As the Bush administration assembles its cabinet for a second presidential term, President Bush seems to have ruled out even informal accountability. Secretary of State Colin Powell, the cabinet official who most forcefully opposed the administration’s disavowal of the Geneva Conventions, is leaving. Defense Secretary Donald Rumsfeld, who ordered abusive interrogation techniques in violation of international law, is staying. White House Counsel Alberto Gonzales, who sought production of the memos justifying torture and who himself wrote that the fight against terrorism renders “obsolete” and “quaint” the Geneva Conventions’ limitations on interrogation and the treatment of prisoners, has been rewarded with nomination as Attorney General. As for the broader Bush administration, the November elections seem to have reinforced its traditional disinclination to serious self-examination. Apparently seeing the election results as a complete vindication, it refuses to admit its role in Abu Ghraib and other interrogation abuses.

## ***The Twisted Logic of Torture***

A warped and dangerous logic lies behind the Bush administration's refusal to reject coercive interrogation. Many American security officials seem to believe that coercive interrogation is necessary to protect Americans and their allies from a catastrophic terrorist attack. Torture and inhumane treatment may be wrong, they contend, but mass murder is worse, so the lesser evil must be tolerated to prevent the greater one. Yet, aware of how fundamental the prohibition of torture is to modern civilization, even proponents of a hard-line approach to counter-terrorism are reluctant to prescribe systematic torture. Instead, they purport to create a rare exception to the rule against torture by invoking the "ticking bomb" scenario, a situation in which interrogators are said to learn that a terrorist suspect in custody knows where a ticking bomb has been planted and must force that information from him to save lives.

The ticking bomb scenario makes for great philosophical discussion, but it rarely arises in real life—at least not in a way that avoids opening the door to pervasive torture. In fact, interrogators hardly ever learn that a suspect in custody knows of a particular, imminent terrorist bombing. Intelligence is rarely if ever good enough to provide such specific, advance warning. Instead, the ticking bomb scenario is a dangerously expansive metaphor capable of embracing anyone who might have knowledge of unspecified future terrorist attacks. After all, why are the victims of only an imminent terrorist attack deserving of protection by torture? Why not also use torture to prevent a terrorist attack tomorrow or next week or next year? And once the taboo against torture is broken, why stop with the alleged terrorists themselves? Why not also torture their families or associates—anyone who might provide life-saving information? The slope is very slippery.

Israel provides an instructive example of how dangerously elastic the ticking-bomb rationale can become. In 1987, the Landau Commission in Israel authorized the use of "moderate physical pressure" in ticking-



bomb situations. A practice initially justified as rare and exceptional, taken only when necessary to save lives, gradually became standard procedure. Soon, some 80 to 90 percent of Palestinian security detainees were being tortured—until, in 1999, the Israeli Supreme Court curtailed the practice.

Other schemes have also been suggested to allow only exceptional torture. Judges might be asked to approve torture. Consent of the highest levels of the executive branch might be required. Yet in the end, any effort to regulate torture ends up legitimizing it and inviting its repetition. “Never” cannot be redeemed if allowed to be read as “sometimes.” Regulation too easily becomes license.

The Bush administration tried to allow just limited coercion through close regulation, but that, predictably, led to more expansive use. Once a government allows interrogators to ratchet up the level of pain, suffering, and humiliation, severe abuse will not be far behind. That’s because a hardened terrorist is unlikely to be moved by minor discomfort or modest levels of pain. Once coercion is permitted, interrogators will be tempted to intensify the mistreatment until the suspect cracks. And so, cruel, inhuman or degrading treatment gives way to torture.

As most professional interrogators explain, and as the U.S. army’s interrogation manual confirms, coercive interrogation is far less likely to produce reliable information than the time-tested methods of careful questioning, probing, cross-checking, and gaining the confidence of the detainee. A person facing severe pain is likely to say whatever he thinks will stop the torture. But a skilled interrogator can often extract accurate information from the toughest suspect without resorting to coercion.

Moreover, once the norm against torture is breached, it is difficult to limit the consequences. Those who face increased risk of torture are not only “terrorist suspects” but anyone who finds himself in custody any-

where in the world—including, of course, Americans. After all, how can the United States protest others' mistreatment of its troops when their jailors do no more than what Washington does to its own detainees?

In addition, a compromised prohibition of torture undermines other human rights. That endangers us all, in part because of the dangerous implications for the campaign against terrorism. Why, after all, is it acceptable to breach the fundamental prohibition of torture but not acceptable to breach the fundamental prohibition against attacking civilians? The torturer may justify his conduct by appeal to a higher good, but so do most terrorists. In neither case should the end be allowed to justify the means.

### ***The European Union***

As U.S. credibility on human rights wanes, there is an urgent need for others to assume the mantle of leadership. The European Union is an obvious candidate, but its performance has been inconsistent at best. At a formal level, the E.U. has embraced a rules-based order by holding that “establishing the rule of law and protecting human rights are the best means of strengthening the international order.” It has also repeatedly affirmed that all measures against terrorism must comply fully with international human rights and humanitarian law. And it has been a firm supporter of the emerging international system of justice.

Yet European governments themselves have been willing to violate basic human rights standards—even those involving torture. Sweden, for example, sent two terrorist suspects to Egypt, a government with an established record of systematic torture. Stockholm tried to hide behind the fig leaf of diplomatic assurances from Cairo that the men would not be mistreated, but those assurances were predictably ignored. Germany, the Netherlands, Austria, and the United Kingdom have also returned or attempted to return terrorist or security suspects to places where they were at risk of torture. The United Kingdom refuses to rule out

using information extracted from torture in court proceedings; its fig leaf is that it does not commission the torture itself, but merely passively receives its fruits, even though its ongoing relationship with intelligence partners ends up encouraging more torture.

A similar erosion of human rights standards governing the fight against terrorism can be found in certain E.U. members' detention practices. The U.K. government suspended core human rights obligations to allow it to detain indefinitely without charge or trial foreign nationals who were suspected of terrorist activity. In Spain, terrorism suspects can be held virtually incommunicado for up to thirteen days, with no ability to confer in private with an attorney. France asserts the right to detain for up to three years without charge the French nationals released from Guantánamo.

These abusive practices compromise the European Union's ability to fill the leadership void left by Washington's embrace of coercive interrogation. At a moment that calls for distance from misguided American practices, the European Union seems to be opting for emulation. A clear recommitment to human rights principle is immediately needed if the European Union is to serve as an effective counterweight to Washington's insidious influence on human rights standards.

### ***The Way Forward***

The strength of governments' commitment to human rights will be measured in large part by the response to two current challenges. Faced with Sudanese government-sponsored atrocities in Darfur, will the world continue to watch ethnic cleansing unfold, or will it respond meaningfully to end the murder, rape, arson, and forced displacement, and to force the Sudanese government to create secure conditions so the displaced can return home safely? The answer will determine whether the world can credibly argue that there are limits to the horrors it will allow a government to visit upon its people.

Faced with substantial evidence showing that the abuses at Abu Ghraib and elsewhere were caused in large part by official government policies, will the United States continue to treat the torture of detainees as the spontaneous misconduct of a few low-level soldiers, or will it permit a fully independent, September 11-style investigative commission—the first step toward acknowledging the policy dimensions of the problem, punishing those responsible, and committing the United States to ending all coercive interrogation? These steps are necessary to reaffirm the prohibition of torture and ill-treatment, to redeem Washington's voice as a credible proponent of human rights, and to restore the effectiveness of a U.S.-led campaign against terrorism.

In neither case will the proper response be easy. Saving the people of Darfur will require a significant commitment of international forces and resources. Acknowledging the depth of the problem at Abu Ghraib will be politically embarrassing. Yet both steps are necessary. It is time to look beyond the convenient excuses and rationalizations to reaffirm what should be the guiding human rights principles for every nation.

*Kenneth Roth is executive director of Human Rights Watch.*

## **DARFUR: WHOSE RESPONSIBILITY TO PROTECT?**

by Michael Clough

In early 2004, mounting evidence of massive human rights abuses in the Darfur region of Sudan tested anew the international community's will and capacity to halt ethnic cleansing and protect civilians. The United Nations and member states responded with a flurry of missions, humanitarian assistance, calls for negotiations, demands for action by the government of Sudan, veiled threats of sanctions, support for African Union (A.U.) peacekeepers, and a commission of inquiry. By year's end, however, the pallid steps taken by the U.N. Security Council at a special session on Sudan held in Nairobi, Kenya, had called into question the commitment of Security Council members to follow through on their earlier resolutions—and no end to the catastrophic suffering of the people of Darfur was in sight.

The final act in the tragedy of Darfur is yet to be written. But enough of the story has already unfolded to conclude that the world's political leaders have failed to deliver on the promises made in the wake of the genocide in Rwanda in 1994 that they would “never again” dither in the face of a possible genocide.

In the decade after Hutu *genocidaires* slaughtered eight hundred thousand in Rwanda, the United Nations, governments, think tanks, and other groups around the world undertook a host of initiatives such as the International Commission on Intervention and State Sovereignty to identify ways to prevent armed conflict, strengthen U.N. peacekeeping, and protect civilians, especially children. The result has been a plethora of new principles, U.N. resolutions, recommendations, proposals, commitments, and the development of the “human security agenda.” In December 2004, the U.N. Secretary-General's High Level Panel on Threats, Challenges and Change (High Level Panel on Threats) acknowledged the failure of the U.N. to prevent atrocities against civil-

ians and recommended reforms to enhance the U.N.'s capacity to carry out its collective security mandate. The High Level Panel also strongly endorsed the emerging norm that there is an international responsibility to protect civilians in situations where governments are powerless or unwilling to do so. So far, however, these initiatives have afforded no protection to the people of Darfur.

Between early 2003 and late 2004, the Sudanese government and government-backed Arab militias destroyed hundreds of African villages, killed and raped thousands of their inhabitants, and displaced more than a million and a half others. By December 2004, more than 70,000 people had died directly or indirectly as a result of the government's military campaign, hundreds of thousands more were at risk of death from starvation and disease, and security conditions throughout the countryside were still deteriorating.

To understand and learn from the still unfolding tragedy of Darfur, the international community must go beyond "never again" rhetoric and ask hard questions about why the U.N. has been unable to translate its post-Rwanda commitments into effective practice. International policymakers must confront the assumptions and interests that hobble the Security Council's ability to respond quickly and decisively to human rights crises in Africa and elsewhere. The United Nations must find ways to deter potential human rights abusers and act on early warning signs to protect civilians before the death toll begins to mount. Security Council members must address the yawning gap that exists between the peacekeeping challenge that they are asking the African Union to assume in Darfur and the capacity of that nascent organization to meet that challenge.

### ***The Harrowing of Darfur***

Public understanding of Darfur has been muddied by the understandable tendency of those who do not know Sudan to view this territory in

the west of the country through the lens of the much more publicized civil war in the south. But unlike the decades-long struggle between successive Arab regimes in Khartoum and rebels drawn from predominantly non-Muslim African communities in the south, the fighting in Darfur is of more recent origin—and all of the combatants and their victims are followers of Islam.

At first glance, the fighting in Greater Darfur, which includes the three states of North, South, and West Darfur, appears to be an ethnic clash. It pits an Arab-dominated government in Khartoum, aligned with ethnic militias drawn from some Arab nomadic groups that have long roamed freely across Darfur's forbidding desert and fertile farmland, against rebel groups drawn largely from three main African groups, two of which are traditionally settled agriculturalists or semi-pastoralists. But the reality is more complex. Until the mid-1980s, Arab herders and African farmers occasionally clashed, but mostly co-existed peacefully. In fact, despite the ethnic polarization that now exists, there has been considerable ethnic fluidity and intermarriage.

The seeds of the conflict in Darfur were sown by decades of government exploitation, manipulation, and neglect; recurrent episodes of drought and increasing desertification leading to competition for ever-diminishing resources; a flow of arms and people caused by earlier wars in Chad; and the failure of the international community to hold the government of Sudan accountable for the human rights abuses committed over two decades in other regions of the country. Paradoxically, however, the immediate spark may have been progress in negotiations to end the twenty-one-year-long north-south conflict, which created fears among Darfurians that they might be excluded from the power-and wealth-sharing formula being negotiated by the government and the Sudan People's Liberation Movement/Army (SPLM/A), the rebel group that has waged a civil war in the south since 1983.

In February 2003, the Darfur rebels of the Sudan Liberation Army shocked Khartoum by successfully assaulting government military forces in Fashir, the capital of North Darfur, and achieving a string of military successes. In response, the Bashir government launched a vicious counter-insurgency campaign in Darfur, patterned after earlier campaigns it had conducted in southern Sudan and the Nuba Mountains, using a proxy militia force, the so-called Janjaweed, made up of members of nomadic Arab tribes.

The first loud warnings of an impending human rights catastrophe came in October-November 2003, when U.N. agencies reported that villages had been burned and Amnesty International reported that Sudanese refugees in camps in Chad were describing “how militias armed with Kalashnikovs and other weapons . . . often dressed in green army uniforms, raided villages, burnt houses and crops and killed people and cattle.” Shortly thereafter, Jan Egeland, United Nations under-secretary for humanitarian affairs and emergency relief, warned that the humanitarian situation in Darfur had become “one of the worst in the world.” In December 2003, as Khartoum imposed tight restrictions on access to the region and launched a new offensive, U.N. Secretary-General Kofi Annan echoed Egeland’s concern.

In April 2004, reporting by U.N. agencies, humanitarian nongovernmental organizations (NGOs), human rights groups, and the media started to reveal the enormity and nature of what was happening—and, on April 7, Kofi Annan, addressing the Commission on Human Rights on the 10<sup>th</sup> anniversary of the Rwanda genocide, called attention to the human rights abuses and growing humanitarian crisis in Darfur and called on the international community to be prepared to take swift and appropriate action.

Based on its investigations in Darfur and refugee camps in Chad at that time, Human Rights Watch found “credible evidence that the government of Sudan has purposefully sought to remove by violent means the



Masalit and Fur population from large parts of Darfur in operations that amount to ethnic cleansing.” As a result of the mounting evidence that massive human rights abuses and crimes against humanity were being committed, the Security Council began—slowly and hesitantly—to pay attention to Darfur.

### ***The United Nations and Darfur***

For more than a year, from early 2003 until mid-2004, while the conflict in Darfur was escalating, the U.N. Security Council’s priority in Sudan was negotiations in Naivasha, Kenya to end the north-south civil war. Initially, false optimism that those negotiations would lead to a quick settlement that would change the overall political situation in Sudan may have caused some member states to discount the warning signs of a growing crisis in Darfur. Later, as it became increasingly impossible to ignore the evidence of serious violence and human rights abuse, the Security Council may have tried to keep Darfur off of its agenda out of fear that a discussion of Darfur would cause the government in Khartoum to pull out of the Naivasha talks. As a result, even in June 2004, when the Security Council passed Resolution 1547, which established a U.N. mission in Sudan to prepare to monitor implementation of a final agreement between the government of Sudan and the SPLM/A, Darfur was barely mentioned.

Before late July 2004, the Security Council’s only action on Darfur was a May 25, 2004 statement by the Council president calling on the government of Sudan to disarm the Janjaweed militias. This statement came after the council was briefed on the findings of two U.N. missions of massive human rights violations and grave humanitarian need, and after months of insisting that Darfur was not “on its agenda.” Two months later, after repeated appeals by a growing number of humanitarian and human rights groups, and visits to Darfur by Secretary-General Annan and many foreign ministers from Europe and the United States, the U.N. Security Council passed Resolution 1556, which demanded

that the Sudanese government disarm the Janjaweed and bring to justice those leaders who had incited and carried out human rights abuses. The Security Council threatened to consider further sanctions if the government failed to comply. It also endorsed the deployment of an African Union force to monitor the April 2004 ceasefire agreement between the government and the rebels, which was already underway; and imposed a ban on the sale of arms to all “non-governmental entities and individuals” in Darfur—in other words the rebels and the Janjaweed militias, but not the government that organizes, finances, directs, and supplies the Janjaweed. Resolution 1556 was approved by a 13-0 vote, with China and Pakistan abstaining.

For the Security Council, Resolution 1556, despite its obvious weaknesses, was a significant step forward. In the eyes of most observers, however, it was yet another example of the council’s abrogation of its responsibilities. By the time the resolution was passed, the gravity of the human rights abuses then still occurring in Darfur was already widely acknowledged. In late June, for example, Secretary-General Annan told reporters, “We all agree that serious crimes are being committed.” Moreover, there were also already numerous, well documented reports of direct Sudanese government involvement in the perpetration of massive human rights violations in Darfur, including eyewitness accounts of joint ground attacks on civilians by government troops and the Janjaweed, and official documents containing orders for additional recruitment and military supply of ethnic militia groups. By July 2004, stronger measures directed at the government were justified and necessary, but they weren’t adopted because at least one permanent member—China—and possibly another—Russia—presumably would have vetoed any resolution that included sanctions against the government or authorized direct U.N. intervention.

On September 18, 2004, after nearly two more months in which security and humanitarian conditions worsened and the government failed to protect civilians or fulfill its commitment to disarm the Janjaweed and

prosecute perpetrators, the Security Council passed Resolution 1564. Declaring its “grave concern” that the government of Sudan had not fully met its obligations, the Security Council reiterated its call for the government “to end the climate of impunity in Darfur” by identifying and bringing to justice those responsible for the widespread human rights abuses. In addition, it called for an expansion of the African Union monitoring mission in Darfur and established a commission of inquiry to investigate reports of violations of international humanitarian law and human rights law and to determine also whether or not acts of genocide had occurred. Finally, it threatened, if the government failed to comply with this resolution and Resolution 1556, additional measures, “such as actions to affect Sudan’s petroleum sector and the Government of Sudan or individual members of the Government of Sudan.” Resolution 1564 passed by an 11-0 vote, with Algeria, China, Pakistan, and Russia abstaining. Thus, five months after receiving substantial evidence of government commission of massive human rights abuses, Security Council action was still largely limited to entreaties, investigations, veiled threats, and support for an A.U. force.

On November 18-19, 2004 the United Nations Security Council held a special session on Sudan in Nairobi, Kenya. The main purpose of the session was to put pressure on the government of Sudan and the SPLA/M to finalize the Naivasha agreement. In the process of trying to promote a north-south settlement, the Security Council watered down its earlier commitment to end the suffering of civilians in Darfur. Resolution 1574, which passed unanimously, failed to include any specific criticism of the government of Sudan for failing to meet the demands to disarm and bring to justice the Janjaweed, which were in the Resolution 1556 and 1564, and it replaced the mild threats of sanctions in those resolutions with a vague warning that, in the future, it might consider taking “appropriate action against any party failing to fulfill its commitments.” In addition, it called on the U.N. and the World Bank to provide development aid, including debt relief to a gov-

ernment which, just months earlier, had been labeled genocidal by the United States and others.

Despite enormous developments in the institutions, standards, and policies that set out to protect civilians in conflict, the United Nations is still an association of sovereign states committed to traditional principles of international order and constrained by the ability of the five permanent members of the Security Council to veto collective action. As the Security Council reaffirmed in all three of the resolutions on Darfur, the U.N. is committed to preserving the sovereignty, unity, independence, and territorial unity of its member states. In fact, for the majority of U.N. members, when there is a conflict, the principle of state sovereignty still trumps all other principles and norms. The continuing force of this traditional principle was affirmed by the recent report of the High Level Panel on Threats, which declared that the starting point for any “new security consensus” must be an understanding “that the front-line actors in dealing with all the threats we face, new and old, continue to be individual sovereign States, whose role and responsibilities, and right to be respected, are fully recognized in the Charter of the United Nations.”

The norm of non-intervention in the “internal affairs” of a sovereign state flows directly from the principle of state sovereignty—and few norms are more fiercely defended by most U.N. member states than this norm. Many governments, especially those in Africa, Asia, and Latin America, understandably regard it as one of their few defenses against threats and pressures from wealthier and more powerful international actors seeking to promote their own economic and political interests. But the non-interference norm has also been used by barely legitimate governments to block international efforts to end gross abuses of their citizenry. That is what happened in the case of Darfur: Khartoum used sovereignty, first, as a veil to hide its brutal campaign against African villagers; and, later, as a shield to fend off calls for international action to protect its victims.

In addition, the veto power of the permanent members of the Security Council gives those five countries—the United States, Russia, the United Kingdom, France, and China—a unique power to protect and promote their national interests at the expense of global interests. In the case of Darfur, the main impediment to stronger action by the Security Council has been China, which owns a 40 percent share of Sudan’s main oil producing field. At the council’s special November 2004 session in Nairobi, China, and possibly Russia, which is thought to be the main arms supplier to the Sudanese government, used the threat of a veto to pressure other members to water down Resolution 1574. But, as discussed below, even without the threat of a Chinese veto, it is doubtful that the council would have passed a resolution containing a serious threat of sanctions against Khartoum.

Thus even in the shadow of Rwanda, the Security Council in 2004 failed to muster the collective will necessary to act quickly and decisively to end the humanitarian catastrophe in Darfur and hold accountable those who are responsible for creating it. This is not likely to change unless and until the United Nations accepts the principle, as recommended by the International Commission on Intervention and State Sovereignty and the High Level Panel on Threats, that all states have a “responsibility to protect” civilians faced with avoidable catastrophes, including mass murder and rape, ethnic cleansing by forcible expulsion and terror, and deliberate starvation and exposure to disease. Recognizing the responsibility to protect would provide the Security Council with the basis it needs to act in the face of a determined refusal by a sovereign state to protect its own citizens.

### ***The United States and Darfur***

In 1994, the Clinton administration initially used fine semantic distinctions to avoid calling the genocide in Rwanda by its true name—and it led the Security Council coalition against intervention. In 2004, the Bush Administration was the first and only Security Council member to

declare that the abuses committed in Darfur constituted genocide—and it initially led the push for the Security Council to act. But U.S. leadership on Darfur was a mixed blessing.

In 2001-2002, the Bush administration had made ending the Sudanese civil war one of its top foreign policy priorities in Africa. Correctly or not, many observers believe it did so mainly because of pressure from conservative religious activists who have long campaigned against Khartoum's Islamist government for its gross human rights abuses in the non-Muslim south. When the rebel attacks and government counter-offensive began in Darfur, Washington was among those governments that were reluctant to criticize Khartoum for fear that doing so might derail the North-South peace initiative. On April 7, 2004, however, with a bipartisan handful of U.S. Congressmen calling for sanctions, President Bush condemned the "atrocities" in Sudan. In midsummer, Secretary of State Colin Powell traveled to Darfur. Then, on September 9, 2004, Secretary Powell told the U.S. Congress that the State Department had concluded that genocide had been committed and that the Sudanese government and the Janjaweed bore responsibility.

However, the fact that the Bush administration was waging a globally unpopular war in Iraq without a U.N. mandate, inevitably affected how other U.N. member states responded, particularly once the graphic images of U.S. soldiers abusing Iraqi prisoners in Abu Ghraib were broadcast around the world. Khartoum seized the opportunity by portraying U.S. accusations on Darfur as part of a global American assault on Islam and Arabs. But the most disturbing aspect of U.S. policy toward Darfur is the striking inconsistency between Secretary of State Powell's finding in September 2004 that the government of Sudan and the Janjaweed had committed genocide and the administration's apparent decision in November 2004 to return to its earlier policy of trying to use carrots to induce Khartoum to sign the Naivasha accords. It was that shift, and not just the threat of a Chinese veto, that was responsible

for the Security Council's failure to even debate the need to take stronger action to halt continuing human rights abuses in Darfur.

### ***The African Union and Darfur***

The idea of African solutions for African conflicts is an old one. Unfortunately, policymakers in the United States and other major powers have often used it as an excuse for their own inaction. In Darfur, the U.N. has sought to place most of the burden of carrying out the goals contained in Security Council resolutions 1556 and 1564 on the shoulders of the nascent African Union. Initially, the A.U. role was limited to providing a small force of military observers to monitor the April 2004 ceasefire agreement between the Sudanese government and two Darfurian rebel groups. In October, the A.U. agreed to expand its force to include more than 3,500 monitors, peacekeepers, and civilian police. Despite its limited mandate, much of the world is looking to the A.U. to provide the means to halt the human rights abuses in Darfur and restore security.

The decision to rely on A.U. monitors, peacekeepers, and police had broad support. Officials in the United States and Europe saw it as a way to avoid the risk that their military forces would become embroiled in another Mogadishu-like disaster, where U.S. forces acting under a U.N. mandate were drawn into a deadly conflict with local warlords. African leaders viewed it as an opportunity to establish the A.U.'s bona fides as the dominant political-military institution in Africa. And the Sudanese government apparently decided that the A.U. force was the best alternative to avoid the possibility of sanctions or U.S. or European intervention.

The ability of the A.U. force to help bring security and justice to Darfur will depend largely on the commitment of the United States and Europe to ensure that the A.U. force has the equipment, training, and logistical support necessary to carry out its mission. But it will also

depend on the commitment of the A.U. Peace and Security Council. Most crucially, the A.U. needs a clear mandate to protect civilians from attacks. Without such a mandate, the A.U. force could be put in the position of watching helplessly while civilians are slaughtered.

The A.U. experiment in Darfur is a critical test of Africa's ability to assume responsibility for regional crises. If it succeeds, it could substantially enhance the international community's ability to halt future human rights catastrophes in Africa. If it fails, it could set the stage for a long series of bitter and divisive debates over the necessity for and legitimacy of international humanitarian intervention on the continent.

### ***Preventing Future Darfurs***

Over the past two decades, countless reports and studies have declared the need to develop more effective early warning and conflict prevention mechanisms. The International Commission on Intervention and State Sovereignty, for example, recently declared that "prevention is the single most important dimension of the duty to protect." Yet, while the last decade has seen many initiatives in this area, the atrocities in Darfur provide stark evidence that the international community has not yet found a way to translate theories of preventive action into effective practices.

Justice is the most powerful deterrent to future injustice. Justice requires holding the perpetrators of human rights abuses accountable and ensuring that the effects of their injustice are reversed.

In the case of Darfur, the Sudanese government's brutal counterinsurgency tactics—including promoting ethnic militias, scorched earth warfare, aerial bombardment, massive forced displacement, and the blocking of humanitarian aid to the victims—are the same tactics it used to combat rebels in other parts of the country. If the international community had held Sudanese government officials and the militia leaders it



backed in its other counterinsurgency wars accountable for the abuses they committed in those earlier campaigns, Khartoum might have been deterred from unleashing the Janjaweed in Darfur. But the gross abuses in southern Sudan's twenty-one year war never made it onto the Security Council agenda. These abuses are almost entirely ignored in the draft North-South peace accords. Similarly, if the international community had taken steps to ensure that previous exercises in ethnic cleansing were reversed, Khartoum would have had less reason to believe that it would succeed in using force to effect lasting changes in the map of Darfur.

It is for these reasons that the results of the U.N. commission of inquiry's investigations will be very important. By documenting the crimes that have been committed, identifying perpetrators, and recommending the best means to ensure that the perpetrators are prosecuted, the commission of inquiry can help not just to bring justice to Darfur, but also to deter future Darfurs. But it will be equally important for the international community to ensure that the victims' of Khartoum's ethnic cleansing strategy are returned to their lands and provided help to re-establish their lives. Their villages must be restored. Their cattle and property must be returned or replaced. And they must be compensated for their loss of family members.

Early action to protect civilian populations against emerging threats is an equally important international imperative. As the Commission on International Intervention and State Sovereignty noted, preventing conflicts from escalating and endangering civilian populations requires three things: early warning, a preventive action toolbox, and political will. In the case of Darfur, all three were lacking, but especially the last two.

There were early warning signs in Darfur. But mere warnings, even if combined with reports of scattered attacks on civilian populations, are rarely enough to prompt the international community to act. The prob-

lem is two-fold. Global policymakers are reluctant to intervene in “internal matters” unless and until localized conflicts escalate beyond some indeterminable magic threshold that makes them obviously legitimate matters of international concern; and the global public seldom begins to demand action until it is presented with graphic evidence of large-scale suffering. Therefore, even if the ravaging of a few villages by government forces and ethnic militias is recognized as an early warning sign, it is almost never sufficient to set in motion early preventive actions.

The real key to preventing future Darfurs, as noted above, is legitimizing the idea of early action to protect civilian populations, and then creating the tools necessary to provide protection. That will require efforts by both the international institutions and national governments. Paradoxically, inviting and facilitating early small-scale civilian protection efforts is the best option a government has to avoid the possibility of later, much more threatening, calls for international sanctions and intervention. If, for example, instead of attacking African villages in Darfur, the government of Sudan had quickly engaged the international community in efforts to protect villagers from the effects of fighting between the government and rebels, it would have almost certainly gained substantial international credibility. This would have obviated the need for international recriminations and threats against the government—and, at the same time, it would have almost certainly enhanced Khartoum’s bargaining position in negotiations with the Darfur rebels.

The continuing failure of national governments facing the prospect of deadly domestic conflicts to accept the need for early action to protect civilian populations presents the international community with a difficult choice. When conflicts begin to unfold, it can continue, as in Darfur, to wait for civilian suffering to become so widespread and evident that global outrage makes international action unavoidable. Alternatively, it can embrace the idea of an international responsibility

to protect—and begin to develop the means necessary to act on that responsibility before its only options are after-the-fact sanctions and military intervention.

## **Conclusion**

The failure to prevent atrocities in Darfur is almost certain to lead to more international hand-wringing. But the victims of massive human rights abuse do not need another chorus of “never again” or new rhetorical commitments by the U.N. Security Council. Instead, they need a determined effort by the United Nations and its member states to confront the underlying reasons for their failure to deliver on the commitments they have already made to prevent armed conflict, protect civilians, and ensure justice.

*Michael Clough is currently serving as Africa advocacy director at Human Rights Watch. Africa Division colleagues Georgette Gagnon, Leslie Lefkow, and Jemera Rone contributed to the preparation of this essay, as did Iain Levine, program director at Human Rights Watch.*

## **RELIGION AND THE HUMAN RIGHTS MOVEMENT**

**by Jean-Paul Marthoz and Joseph Saunders**

Is there a schism between the human rights movement and religious communities? Essential disagreements appear increasingly to pit secular human rights activists against individuals and groups acting from religious motives. The list of contentious issues is growing: on issues such as reproductive rights, gay marriage, the fight against HIV/AIDS, and blasphemy laws, human rights activists and religious groups often find themselves on opposing sides. As illustrated by the Muslim headscarf debate in France and Turkey, controversies linked to religion also have confused many in the human rights movement and even led some activists to express strong reservations about certain public expressions of religious conscience.

Western Europe, the most secularized continent in the world, has been in the eye of the storm. The controversy that hit the European Union in October 2004 around the proposed appointment to the European Commission of Italian conservative Catholic Rocco Buttiglione illustrates some of the issues at stake. Unperturbed by the furor he was arousing, the candidate for Commissioner on Justice, Freedom, and Security—who in that function would have been in charge of fighting discrimination—affirmed in front of bewildered members of the European Parliament that “homosexuality is a sin” and that “the family exists to allow women to have children and be protected by their husbands.” Although he insisted that he would nonetheless uphold the equality of all citizens, he was invited to withdraw his candidacy by the Commission’s president-elect.

In November 2004 the religiously inspired murder of Theo Van Gogh, a well-known Dutch journalist and filmmaker who two months earlier had released a controversial film on violence against women in Islamic societies, triggered an infamous cycle of violence, leading to the burn-

ing of mosques and Christian churches. These traumatic events in a country that prides itself for its tolerance placed the issue of religion, and more particularly Islam, in the center of public controversy. While many Dutch people of all faiths and communities demonstrated against revenge attacks and discrimination, one prominent official responded with a suggestion to revive, in the name of coexistence, a 1932 blasphemy law.

### ***The Challenge***

“Fifty years after its proclamation,” writes Michael Ignatieff, “the Universal Declaration of Human Rights has become the sacred text of what Elie Wiesel has called a ‘worldwide secular religion.’”<sup>1</sup> The growth of the human rights movement has given it the confidence to take on controversial issues and extend the promise of the Universal Declaration on Human Rights (UDHR) in areas that it had previously neglected.

This “new frontier,” however, is colliding with the “return of the religious” in many societies, with what French political scientist Gilles Kepel has called “God’s Revenge,”<sup>2</sup> featuring the reassertion of more dogmatic or conservative forms of beliefs inside and outside of mainstream religious denominations.

While it would be inappropriate for the human rights community to advocate for or against any system of religious belief or ideology and wrong to judge or interpret the principles of any religion or faith, it would be equally mistaken for the human rights groups to turn away from human rights violations or appeals for discrimination made in the name of religious principle or law.

Defining how to engage with religious communities thus has become one of the major challenges for the human rights movement. To paraphrase Ignatieff, human rights cannot truly go global unless it goes

deeply local, unless it addresses plural philosophies and beliefs that sometimes collide with or appear to resist its appeal to universal norms. If international human rights standards have a claim to universality their relevance must be demonstrated in all contexts, and especially where religion determines state behavior.

This essay argues that the human rights movement needs to be able to provide clearer answers to the hard questions presented by the demands of believers and by religious organizations seeking direct political influence.

On the one hand, rights activists should more aggressively stand up for religious freedom and the rights of believers in secular and religious societies alike; on the other, they should directly oppose pressures from religious groups that seek to dilute or eliminate rights protections—for women, sexual minorities, atheists, religious dissenters, and so on—that such religious groups view as inconsistent with fundamental religious teachings and deeply held beliefs. Human rights groups should oppose efforts in the name of religion to impose a moral view on others when there is no harm to third parties and the only “offense” is in the mind of the person who feels that the other is acting immorally.<sup>3</sup>

### ***A Global Phenomenon***

Questions of how the human rights movement should engage with religious communities are particularly difficult because they occur in a highly volatile context marked by the rise of “fundamentalism,” religious extremism, the fusion between religion and ethnic identity in many armed conflicts,<sup>4</sup> and the worldwide impact of terrorism in the name of God and responses to it.

The rolling news flows in the global village have given these phenomena increased visibility and potency. Attacks against Christians in Pakistan or against Muslims in India, new incidents of anti-Semitism in

Western Europe, and hate crimes against Muslims in the U.S. or Europe immediately take on a global dimension. The worldwide ripples of the “headscarf” controversy in France—street demonstrations in Arab countries, diplomatic disavowal, and even crude pressure through the abduction in Iraq of two French journalists<sup>5</sup>—have vividly underscored the sensitivity of religious issues in the global village.

Religion indeed plays a pervasive and often powerful role in global affairs. Problems of a religious nature often implicate international security as much as they do human rights. In a trend reminiscent of King Louis XIV’s 1649 proclamation declaring French protection of the Maronite community in Lebanon, or of the 19<sup>th</sup> century European powers’ “humanitarian interventions” against the Ottoman Empire to “protect persecuted Christians,” religious freedom and the fate of religious minorities have assumed an increasingly prominent place in international diplomacy.

In 1998, under pressure from Christian groups and representatives of a number of other faiths, the U.S. Congress passed the International Religious Freedom Act. The law established an Office of International Religious Freedom in the State Department and an independent, bipartisan Commission on International Religious Freedom, and tasked them with monitoring and reporting on the incidence of religious persecution around the world. Based on the annual reporting of these bodies, the U.S. president can take diplomatic and economic measures against “countries of particular concern,” making one particular right—freedom of religion—a unique yardstick of foreign relations.

The religious/human rights equation and its role in global politics are made still more complex due to major differences among democracies concerning the place of religion in public life. The gap between a “post-religious Europe” and the United States is particularly significant and not without consequences for the priorities and approaches of the international human rights movement. A 2002 survey by the Pew Forum on

Religion and Public Life concluded that, among wealthy nations, the United States stands alone in its embrace of religion. Fifty-nine percent of the U.S. population surveyed stated that religion played an important role in their life, against 30 percent in Canada, 33 percent in Great Britain, 21 percent in Germany, and 11 percent in France.<sup>6</sup>

The differences extend to the very definition of religion itself. In France, Belgium, Germany, and Argentina, for example, some religious groups that are considered legitimate religious denominations in the United States have been denounced as “sects” or “psychological cults,” as a threat to the foundations of democratic freedom, and, as a result, subjected to what the groups see as unwarranted discrimination or harassment. Such differences, mostly raised within the context of OSCE (Organization for Security and Cooperation in Europe) meetings, have been approached with great unease by the various components of the international human rights movement.

## **History**

Some in secular circles would suggest that history has come full circle. To them, the human rights movement is the product of the Enlightenment and, as such, part of a determined attempt at reducing the power of religion over state and society. Today, however, it is resurgent religious movements that are challenging the place of human rights.

In some countries, in France in particular, the history of the human rights movement is intimately linked to *laïcité* (secularism), to the roll back of the Catholic Church and the separation between church and state. The Dreyfus affair at the end of the 19<sup>th</sup> century was the symbol of this clash and the founding moment for the French League of Human Rights (Ligue des Droits de l’Homme, LDH). The controversy around the role of the official Church in supporting Petainism<sup>7</sup> during the Second World War deepened this mutual suspicion. In Spain, the



ideological marriage between the Catholic Church and the Franco dictatorship generally led, until the early sixties, to a chasm between the democratic opposition and Catholicism.

History, however, also tells another story. In other countries religion was the prime mover behind campaigns for human rights. The role of U.S. and English Protestant churches in the anti-slavery campaigns, in the Congo reform movement,<sup>8</sup> and in solidarity with Armenian victims in the late days of the Ottoman Empire belong to the best chapters of the history of the human rights movement.<sup>9</sup> The “social teachings” of the Catholic Church in the late 19<sup>th</sup> century also created a context that allowed committed Christians to press actively for social justice and contributed to the development of strong labor unions and mutual help associations that fought for social and economic rights.

In South Asia, Hinduism was the inspiration of Mahatma Gandhi’s long march for the liberation of India. Since the occupation of Tibet by China in 1949-51, a religious figure—the Dalai Lama—has been guiding the Tibetans’ struggle for freedom, pushing for a democratic, self-governing Tibet “in association with” China.

In the 1950s and 1960s the human rights movement grew in part thanks to the involvement of leading religious groups and individuals. Although the Church took a cautionary approach, Catholic intellectuals (first among them Catholic writer *par excellence* François Mauriac), journalists, and activists played a prophetic role in the fight against the use of torture and “disappearances” by the French army in the Algerian war of independence, invoking their faith to combat what they considered brutal attacks against human dignity.

The civil rights movement in the United States was powerfully inspired by religious figures, among whom Martin Luther King, Jr., stands as an icon, and was in many cases supported by mainstream Christian and Jewish denominations.

After the 1964 military coup in Brazil a significant part of the Catholic Church, centered around Bishop Dom Helder Camara, inspired by the teachings of the Second Vatican Council (1962-1965) and of mainstream Protestant denominations, became a vibrant defender of human rights. Political coups in Bolivia, Chile, and Uruguay in the 1970s and civil wars in Central America in the 1980s often placed the official Church, or at least some of its most powerful voices, on the side of the human rights movement. The Servicio Paz y Justicia founded in 1974 in Argentina by 1980 Nobel Peace Prize laureate Adolfo Perez Esquivel, the Vicaria de Solidaridad in Chile, and the Tutela Legal in El Salvador were focal points of the human rights struggle.

San Salvador Archbishop Oscar Arnulfo Romero's last sermon in March 1980, with his passionate plea to the army and National Guard to "disobey an immoral law"—"Brothers, you come from your own people. You are killing your own brother peasants when any human order to kill must be subordinate to the law of God which says, 'Thou shalt not kill'"—stands out as one of the most powerful documents of the Latin American human rights struggle.

In the 1980s in the Philippines, the Catholic Church was one of the major actors in the overthrow of the Marcos dictatorship. In Eastern Europe, particularly in Poland with its strong Catholic Church and in East Germany with the Lutheran Church's support of independent pacifists and dissidents, religious organizations joined in the fight against state authoritarianism and repression. In the 1970s, in the wake of the ratification of the Helsinki Accords,<sup>10</sup> Jewish organizations and individuals in particular played a decisive role in Eastern Europe and the USSR in the defense of dissidents and fundamental freedoms of expression, belief, and movement.<sup>11</sup>

In the 1980s and 1990s, in South Africa, Jews, Christians, and Muslims fought apartheid, in alliance with secular or even Marxist-inspired

organizations such as the South African Communist Party and the African National Congress.

During all these decades of struggle and “speaking truth to power,” the international human rights movement was also strongly inspired by religious figures, like Joe Eldridge, of the Methodist church, director of the Washington Office on Latin America (WOLA): “My father always said that we were children of God,” he confided. “My motivation fundamentally emerges from a religious perspective. Having been given life, I believe that we are called to do things that edify life.”<sup>12</sup>

### ***Convergence***

In the 1970s and 1980s, religious and human rights groups shared many objectives, reflecting a common conviction of the universality of the human rights message and its grounding in the traditions of most religions, philosophies, and civilizations. Religion-based traditionalism seemed on the wane and “culturalism,” the black-boxing of cultures as exclusivist identity-referents,<sup>13</sup> was not allowed to tyrannize human rights.

Conferences sponsored by UNESCO in the early 1990s on the theme of inter-religious dialogue<sup>14</sup> and, to a great extent, the 1993 U.N.-sponsored World Conference on Human Rights in Vienna—its recognition of the universal character of human rights—were high points of this convergence between the human rights movement and mainstream religious communities. Most in the secular human rights movement agreed that there was indeed a faith-based commitment to human rights.

This convergence was also helped by the priorities imposed on the human rights movement by the brutality of government repression. In Latin America in particular, civil and political rights were an immediate question of life and death while issues more likely to separate rights and

religious communities were confined to the sidelines: most opted for a “coexistence of differences” on flash points like sexuality or abortion. In Mexico, for instance, the bishop of the state of Chiapas, Mgr. Samuel Ruiz, could join with secular human rights activists on civil and political rights issues, and even on social justice concerns implicating rights to health and housing, while retaining his more traditionalist positions on issues like sexuality and reproductive rights.

### ***Clouds***

Some clouds, however, were already looming over this human rights euphoria. There was always, of course, some underlying tension. As human rights scholar Louis Henkin has phrased it: “The world of religion and the world of human rights have not always coexisted comfortably. Religion, and some particular religions, have not been comfortable with human rights as an autonomous ideology that is not necessarily rooted in religion. The human rights ideology, on the other hand, has resisted the claims of some religions to disregard the claims of other religions. Some religions have invoked religious dogma to justify distinctions based on religion, gender, or sexual orientations, distinctions that may be contrary to the human rights idea.”<sup>15</sup>

Throughout the “human rights decades,” moreover, churches were not always unanimous in their human rights commitment and there were always factions that fought back or hindered the rise of the human rights movement, sided with military or authoritarian regimes, or were otherwise complicit in human rights abuse. Most of these factions were politically and ideologically conservative and they were dogmatically doctrinaire. They stuck to an interpretation of religious teachings especially in matters of individual morality and social mores at odds with the trajectory of the human rights movement. They were seen as adversaries by all members—secular and religious—of the human rights movement.

Terrorism in the name of Islam, the Dutch Reformed Church's support for the apartheid regime in South Africa, the Argentinean Catholic hierarchy's passivity or tacit support for brutal military regimes in the 1970s, the killing of Yitzhak Rabin by a Jewish religious militant, and the support provided by some right wing evangelical churches to leaders of Latin American most brutal regimes—like former Guatemalan president Efraín Ríos Montt, an ordained minister of the Gospel Outreach/Verbo evangelical church—are among the most prominent examples of the use, or misuse, of religion to justify flagrant human rights abuses.

### **Religious “Blowback”**

In the 1960s, when secularism was seen by many as inevitable, part of the unstoppable march of progress, and organized religious communities appeared to be sidelined as a political force, especially in the Western world, French writer and minister of Culture André Malraux challenged that orthodoxy, declaring in oracular fashion that “the twenty-first century will be either religious or not be” (*“le 21e siècle sera religieux ou ne sera pas”*).

Malraux's view seems to have been confirmed in much of the world today: Western Europe excepted, religion has made a strong comeback. “The reemergence of religious discourse,” writes Sara Maitland, “seems to have caught many of us on the hop: baffled, irritated and uncomprehending. For over 250 years, Western democratic thinking has argued, and even fought for, the secularization of the public domain and the political arena... By the second half of the last century, indeed, one might have thought the battle was won... What I see instead is a faltering, a loss of faith, in the whole Enlightenment project.”<sup>16</sup>

While some have welcomed this development as a necessary counterbalance to the excesses of materialism and individualism, others have warned that this religious revival would subvert universal values, sow

particularist and divisive attachments, and trigger a broader backlash. Many people have responded, in short, with the same alarm with which they greeted Samuel Huntington's controversial thesis on the lasting power of and inevitable "clash" between the world's major civilizations.

The reasons for this religious comeback are manifold. It expresses both renewed individual quests for meaning in a secularized, materialistic world and a more collective search for identity in a world engaged in the uncertainties and insecurities of globalization and diversity.

In some instances, the reemergence of religion also reflects in part the failure of the states, especially in the developing world, to provide and guarantee fundamental human rights for the majority of their populations. As political scientist Vali Nasr has phrased it: "There is a direct correlation between the scope and nature of religious activism and the decline of the secular state as a functioning political system and as an intellectual construct.... In Kemalist Turkey, Pahlavi Iran... secularism never permeated deep into society... and with little to show in the form of veritable development, the values that sustained these states came under attack."<sup>17</sup>

The growing political influence of religious communities also has been linked to the "theologization" of state power. In some countries, ruling elites have used particular religious interpretations to shore up their power and maintain the social and political status quo. Saudi Arabia and Iran are prominent examples.

When religion is merged with the state, human rights suffer. Asma Jahangir writes that, in Pakistan, "the judicial institutionalization of Islam has taken a particularly heavy toll on the rights of women and religious minorities, and critics of discriminatory laws are branded un-Islamic or traitorous.... The creed of National Islamization has been used as a stick to beat all emancipatory and human rights movements."<sup>18</sup>

In Uzbekistan, the government has claimed a monopoly on the interpretation of Islam and has jailed those who diverge from its version of Islam on charges that such “independent” Muslims are attempting to subvert or overthrow the constitutional order. Although the government has used the pretext that such individuals are colluding with terrorism, in the vast majority of cases the suspects have not been charged with terrorism or any other form of violence.<sup>19</sup>

In Egypt, the government—citing the contrary dictates of Islamic law—has made reservations to both the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the International Covenant on Civil and Political Rights (ICCPR), evading its obligation to protect women’s rights.<sup>20</sup>

In Nigeria, twelve state governments in the north have added criminal law to the jurisdiction of Shari’a (Islamic law) courts since 2000,<sup>21</sup> raising a number of serious rights concerns and stirring controversy in a country where religious divisions run deep and where the federal constitution specifies that there is no state religion. Shari’a has been in force for many years in the north, where the majority of the population is Muslim, but, until 2000, its scope was limited to personal status and civil law. Human rights concerns arising in application of religious law in those contexts have been exacerbated by the turn to Shari’a in criminal law matters.

Human Rights Watch research confirms that Shari’a in Nigeria has been manipulated for political purposes, and that this politicization of religion has led to human rights violations.<sup>22</sup> Application of Shari’a in criminal cases in the twelve states has been accompanied by amputation, floggings, the death penalty, discrimination against women, and systemic due process failures. Since 2000, at least ten people have been sentenced to death; dozens have been sentenced to amputation; and floggings are a regular occurrence in many locations in the north. These issues were given world wide prominence through the highly

publicized cases of two women, Safiya Hussaini and Amina Lawal, who were condemned by Shari'a courts to death by stoning for alleged adultery. Although the death sentences eventually were overturned, the cases highlighted how Shari'a could be used to justify flagrant human rights violations.

### ***The Threat to Free Speech***

Religious authorities have long tried to “discipline” free speech when it runs counter to religious teachings or dogmas. The paradigm case in recent years is the Salman Rushdie case. On February 14, 1989, following the 1988 publication of Rushdie's book *The Satanic Verses*, the political and spiritual leader of Iran, the Ayatollah Khomeini, issued a religious edict calling on “all zealous Muslims to execute the author of the book as well as those publishers who were aware of its contents, so that no one will dare to insult Islam again.” The case illustrates the difficulty some religious communities have in reconciling their deeply held beliefs with the right to freedom of expression, which “is applicable not only to ‘information’ or ‘ideas’ that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population.”<sup>23</sup>

Although the call for murder was rejected by many mainstream Islamic religious leaders, who condemned it as violating Islamic teachings of mercy, most of these same leaders did not defend Rushdie's right to freedom of expression and asked for the banning of the book. Others, of course, supported the fatwa.

The Rushdie case demonstrated the resonance of the accusation of blasphemy inside of Islam. The responses of leaders of other religions, however, were hardly exemplary. Although they strongly condemned the call for murder, many expressed some sympathy for the Muslim world's indignation, forming what French philosopher Alain Finkielkraut called “the Holy Alliance of Clergies.”<sup>24</sup>



The conflict between free speech and religion, indeed, is not limited to Islam. Two years before the Rushdie case, with far less publicity, an Austrian court acting on a complaint submitted by the Catholic diocese of Innsbruck had prohibited the Otto Preminger Institut from showing the film *The Council of Love*, based on Oskar Panizza's controversial (and allegedly strongly anti-Catholic) theater play. The judges referred to article 108 of the Austrian Penal Code banning "religious denigration." In 1994, to the profound dismay of free speech defenders, the sentence was endorsed by the European Court of Human Rights, relying on a provision of the European Convention on the "rights of others." The ECHR has tended indeed to show far more deference to state interference in freedom of expression where the speech has a religious or moral content than is the case with political or other forms of speech.

The Catholic Church has strongly expressed its hostility toward other books, plays, and films that it considers "collective defamation." In September 2004, Dan Brown's best selling novel *The Da Vinci Code* was banned in Lebanon after complaints from Catholic leaders that it was "offensive to Christianity." "There are paragraphs that touch the very roots of the Christian religion, said the president of Lebanon's Catholic Information Center. They say that Jesus Christ had a sexual relationship with Mary Magdalene... Christianity is not about forgiveness to the point of insulting Jesus Christ."<sup>25</sup>

Political correctness in the name of protecting religious sensitivities can have a similarly chilling effect on free speech. In response to the murder of filmmaker Theo van Gogh by a Muslim Dutch citizen of Moroccan origin, the Dutch justice minister, Piet Hein Donner, proposed enforcing a 1932 law banning "scornful blasphemy." In a parliamentary address said to have "horrified Holland's free-thinking intelligentsia,"<sup>26</sup> the minister said that the law was needed to curb "hateful comments" that were destabilizing the country. As Brussels Free University professor Guy Haarscher has written in another context, "Instead of protecting individuals in their right to adhere to different conceptions of the

Good, [a] society [that caters to political correctness] incurs the risk of depending increasingly on organized groups capable of imposing hypocrisy and the domination of the most conventional ‘thought.’”<sup>27</sup>

### **“Religious Wars”**

Religion has been a part of bloody conflicts that have engulfed dozens of countries in the last fifteen years. In Ireland, Cyprus, the Balkans, Rwanda, Burma, Sri Lanka, Nigeria, Sudan, Israel/Palestine, the Philippines (Mindanao), and Indonesia, individuals acting in the name of religion have played an important role in crystallizing group hatred and violence.<sup>28</sup>

Human Rights Watch has insisted that religion is more properly seen as a tool used by those seeking power than a “root cause” of conflict in such cases,<sup>29</sup> and analysts have pointed out that “despite the perception that religion is always a complicating factor in disputes, religion also includes the tools that may be necessary to break the cycle of conflict.”<sup>30</sup> Others counter, however, that in some particularly intractable confrontations “it is the religious factor, not the conflict of interests, that threatens to prevent a settlement,” leading to the continuation of the cycle of violence and human rights abuses.

Religion also has been thrown into the maelstrom of terrorism in national and international contexts, from attacks against abortion clinics in the United States to religiously justified suicide bombings in Israel.<sup>31</sup> After 9/11 in particular, politically motivated “fundamentalist” fervor and terror seem to go hand in hand on a global scale and immediately evoke images of suicide bombings, hostage takings, and beheadings.

While such extreme or violent expressions of religious beliefs do not in themselves create particular dilemmas—mainstream religious groups typically join rights groups in denouncing such attacks on civilians as crimes against humanity—they can exacerbate tensions between human

rights and religious groups, as has occurred in the abortion debate in the United States, in Israel following suicide bombings, and between some rights groups and Islamist organizations after 9/11.

### ***Tensions Today***

Many common issues continue to be defended together by secular human rights groups and religious groups. In Western Europe and in the United States, the resolute defence of the rights of asylum seekers and economic refugees by mainstream churches as well as their advocacy in favor of global justice continue to offer wide spaces for cooperation. In the global South, in actions complementing the work of secular NGOs, many religious organizations are moving to the forefront of social and economic rights by providing social services to the poor as a response to local government retrenchment and insufficient international development assistance.

However, on other issues at the crossroads of religious dogma and human rights ideology, of personal moral conviction and public health, the points of divergence are growing. The attention given by the secular human rights movement to issues linked to freedom of speech, gender, and sexuality and sexual orientation—always inherent in the human rights ideal, but of growing prominence today—increasingly clashes with the positions taken by many religious groups. Religious humanitarian organizations and secular human rights groups can, however, be on the same wave length when they denounce ethnic cleansing in Darfur and demonstrate together in front of Sudanese embassies.

The question of women's reproductive rights is a case in point. As Georgina Ashworth has summed up the issue: "Religious fundamentalists, whether in the United States or the Islamic and Hindu worlds, now constitute enormous political forces ranged against women's enjoyment of their human rights, especially their reproductive rights. Not only do they persecute and make outcasts of proponents of toleration, they also

threaten the livelihoods and even the security of anyone courageous enough to stand up for women's self determination."<sup>32</sup>

Another case in point is the use of condoms in HIV/AIDS prevention. In the Philippines, the Catholic Church, which, as noted above, played an important role in ousting Marcos, has become increasingly hostile to the human rights movement when it advocates for sexual education and condom distribution in AIDS prevention campaigns. The Philippines government has relayed these positions by actively impeding measures that would prevent this deadly disease, chiefly by hampering access to condoms and to scientifically-based information on HIV/AIDS. The Bush administration, following the opinions of U.S.-based conservative religious congregations, has stopped funding the donation of condoms or other contraceptive supplies to the country, preferring instead programs emphasizing abstinence and marital fidelity.

These policies clash with international human rights standards. The International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by the Philippines, obliges state parties to take steps "necessary for... the prevention, treatment and control of epidemic... diseases," including HIV/AIDS, which is deemed to include access to condoms and complete HIV/AIDS information. The ICCPR establishes the right to information and all major human rights treaties recognize the right to life, which is implicated by policies that interfere with access to life-saving technologies.<sup>33</sup>

The growing tensions between religious and rights communities also have led religious leaders at times to subdue their antagonisms and rivalries to defend common approaches on what they consider shared tenets of faith. The coalition between the Holy See and the International Islamic Conference, for example, has been evident in U.N. conferences on population issues<sup>34</sup> and women's rights.<sup>35</sup> This new prominence of so-called "ethical issues" has created an at times impious convergence among representatives of some mainstream reli-

gions; states that are serious human rights abusers, like Saudi Arabia, Iran, or Sudan; and, in many cases, the Bush administration.

### ***Working with “Fundamentalists”?***

While the human rights movement has an obligation to oppose efforts aimed at using religion to justify laws and public policies that contravene rights standards, it is also critical for the movement to recognize that religious fundamentalism does not always collide with secular human rights standards. Many fundamentalist movements, for example, are deeply involved in helping people’s access to food, housing, health care, and other social services. “Such commitments position many militant religious movements ambiguously, and positively from a human rights standpoint, in relation to social and economic human rights.”<sup>36</sup> On foreign policy issues, although often displaying selective outrage, Christian evangelicals have been active in generating support for victims in conflicts such as those in southern Sudan and Darfur.

These examples challenge the human rights movement to define policies and strategies on how to associate with groups that are sometimes part of the same campaigns and sometimes actively hostile to human rights principles, depending on the issue or the context.

Within significant parts of the secular liberal movement there is a clear dividing line: on the one hand, those who echo French revolutionary Danton’s (in)famous phrase, “No liberty for the enemies of liberty” and want to restrict the civil and political rights (including freedom of expression, association, and assembly) of members of religious groups believed to pose a threat to a rights-respecting political order; on the other hand, those who in the name of freedom of religion and free speech have chosen to defend, like Voltaire, “the right of every man to profess, unmolested, what religion he chooses.” While human rights groups have generally sided with the latter position, some have been

tempted to make an exception when it comes to religious movements seen as intrinsically hostile to the liberal political order.

Terrorism in the name of God has exacerbated these debates. In the 1990s, when violent Islamic movements seemed bent on overthrowing secular governments in Algeria or Egypt, and more generally after the terrorist attacks of September 11, 2001 in the United States, October 12, 2002 in Bali, and March 11, 2004 in Spain, the commitment to protect the rights of everyone, including alleged terrorists, not to be tortured or “disappeared” has been under heavy attack, even from quarters usually associated with the human rights community.

Suddenly human rights groups advocating for consistent standards on human rights are being accused by some secular groups, with whom they cooperated on press freedom or gender issues, of “being soft” on religious extremism and of risking sacrificing other rights, especially women’s rights, and even democracy, by standing up for the rights of terror suspects. Human rights groups need to respond forcefully that the choice is not one between, on the one hand, an “anything goes” approach to terror in which civil liberties are among the first victims and, on the other, the creation of an archipelago of fundamentalist Islamic states that systemically violate women’s and other basic rights. The real challenge is finding ways to preserve basic rights in efforts to combat terror in order to strengthen the appeal of liberal, rights-respecting societies.

### ***The “Headscarf” Battles***

The law banning “conspicuous religious signs” in public schools adopted in France in 2004, as well as the prohibition of headscarves for academics and students in Turkish public universities, illustrate many of the tensions described above. In both countries, the battle of the veil has divided the human rights movement, especially advocates of women’s rights. How to defend freedom of belief, women’s autonomy,

and the right to education without promoting an often politicized agenda and the undermining of a broader range of rights by religious groups is indeed a challenging question for the human rights movement.

In France, the debate on “religious conspicuous signs”—coming on the heels of tense controversies around migration, Islamophobia, anti-Semitism, and terrorism—has polarized public opinion and cut across traditional political alignments. The headscarf controversy raises the crucial issue of the place of Islam in the French Republic. This is not only because France’s growing Muslim communities are seen as diverging from the mainstream on thorny questions like religious conversion, homosexuality, or divorce, but also because their very existence seems to call into question the long accepted tenet that life in a Western democracy will increasingly secularize adherents of all faiths.

The intensity of the debate, however, has expressed much more than hostility toward Islam. Supported by many other denominations and most significantly by the Catholic Church, the headscarf has been seen as a direct challenge to the founding principles of the French Republican model born in the French Revolution and forged through the merciless church/secular battles of the 19<sup>th</sup> century that led to the strict separation between state and religion, the privatization of faith, and the proclaimed “preeminence of Reason.” The “headscarf issue” thus has forced French authorities to confront the very nature of the Republic and to reconsider the concept of *laïcité* (secularism) and to ponder over its adequacy and relevance in an increasingly multicultural society.

In its assessment of the legislation shortly before its passage, Human Rights Watch concluded that the law infringed the internationally recognized right to freedom of religion, but identified the need to reconcile seemingly contradictory concerns. “Human Rights Watch recognizes the legitimacy of public institutions seeking not to promote any religion via their conduct or statements, but the French government has

taken this a step further by suggesting that the state is undermining secularism if it allows students to wear religious symbols.” As we concluded: “[P]rotecting the right of all students to religious freedom does not undermine secularism in schools. On the contrary, it demonstrates respect for religious diversity, a position fully consistent with maintaining the strict separation of public institutions from any particular religious message.”

### ***The Turkish Case***

Some interesting lessons on an issue whose complexity should be duly recognized by the human rights movement can be gleaned from the less publicized example of Turkey.<sup>37</sup> In that country, women wearing the headscarf are not permitted to register as university students, enter university campuses, or enter examination rooms. Those observed wearing the headscarf in class are warned about their behavior, and if they persist in wearing it are suspended or expelled.

In recent interviews, many women told Human Rights Watch they were heartbroken that their hopes for a career in medicine, science, teaching, or the arts were permanently blighted. Women have also been detained, humiliated, ill-treated, and prosecuted. The authorities say that the scarf is a flag of aggressive political Islam that threatens the secular order of Turkey and the rights and freedoms of other Turkish women, but most women affected by the ban say that they wear the scarf as an expression of Islamic religious piety.

Modern Turkey’s legislation on the subject of clothing began with a 1923 decree on dress, signed by Mustafa Kemal Atatürk, founder of the republic. Those who see themselves as Atatürk’s most faithful heirs seek to bar women from education because of their choice of dress, but Atatürk himself took a relaxed position on the headscarf. He was frequently photographed on public business with his first wife, who covered her head. He wrote: “The religious covering of women will not



cause difficulty.... This simple style [of headcovering] is not in conflict with the morals and manners of our society.”

Students denied access to education have been unable to secure a remedy through the Turkish courts. And the June 29, 2004 decision of the European Court of Human Rights (ECtHR) in *Leyla Sabin v. Turkey* has only made matters worse. The court’s judgment reflects the same fears expressed by those who support the headscarf ban: that recognizing the rights of devout Muslims threatens the rights of others. But Turkish society is moving ahead of this zero-sum philosophy of despair—in the day-to-day tolerance of difference that you can see on the street, and in the solidarity shown when civil society organizations with a largely Muslim membership stand up for non-Muslim rights (as Mazlum-Der has done) and organizations with a largely secular membership stand up for the right to wear the headscarf (as the Turkish Human Rights Association has done).

Various political groupings have exploited the headscarf issue in order to curry support from their respective devout or secular constituencies. Pinar Ilkkaracan, coordinator of a local non-governmental organization working on women’s rights, told Human Rights Watch in 2003 that this is an issue open to easy political manipulation: “We as Women for Women’s Human Rights (WWHR) are against any attempt that aims at imposing restrictions and regulations on women’s dress code. Therefore, WWHR has made a number of statements condemning the ban on the [headscarf] at the universities, which violates the human right of female students for education. But this issue is being exploited by the political parties on both sides of the question.... Men in power should not use women’s bodies for a battlefield—and that is what is happening in many parts of the globe.”

It is not a condition of fundamental rights that those who enjoy them must hold tolerant and liberal opinions, but it is a fact that much of the resistance to the headscarf is inspired by a fear of what might happen if

the tables were turned, and an outright Islamist regime were making the rules. A fairly widespread suspicion among Turkey's secular population is that the religious parties have a master plan of eliminating secularism by "salami tactics," and that the headscarf is the first slice. They fear that tolerance shown on this issue will be followed by a ramping up of demands, and they quote the proverb, "If you give the devil the little finger, he will soon take the whole hand." The alarm felt by those who see the headscarf as the thin end of a dangerous wedge has been aggravated by a catalogue of attacks by Islamic extremists directed specifically at people who have criticized the wearing of the headscarf at universities.

Human rights groups working on the headscarf issue must address these threats. Human Rights Watch did so in 2004 by calling on Turkish authorities to acknowledge the long and sorry history of state failure to protect women from gender-based violence and discrimination, and commit itself to programs to remedy continuing shortcomings in that protection. We also recommended that any new legislation on higher education include provisions to offer reassurance to those who feel their rights could be put at risk by a change of policy with regard to the headscarf. Such provisions might be legislative or regulatory safeguards for the rights of women who choose not to wear the headscarf, as well as strong public endorsements of women's freedom to dress according to their own free choice. But the most important gesture the government could make would be actively to seek out civil society groups representing women and gather their views through the broadest possible consultation before changing the headscarf law.

A convincing consultation would give opponents of the headscarf an opportunity to express their strong reservations and to suggest safeguards or undertakings that the government could make to protect society against the erosion of civil liberties—and in particular, women's civil liberties—that the opponents fear would result from a lifting of the headscarf ban. By listening to the concerns of women from all sides of

the argument, the government may be able to break away from the pessimistic zero-sum game and move toward a genuine pluralism that allows women to make their own free choice whether to wear the headscarf or not.

### ***Combating, Convincing, or “Integrating”***

The secular human rights movement sometimes sees conservative religious movements as an artifact of history and itself as contemporary, ahead on the “infinite road of human progress and modernity.” Some suggest that it runs the risk, echoing “culturalist” approaches purporting to establish a hierarchy between societies and philosophies, of seeing itself as superior and antagonistic to other cultures and norms. Rather than trying to enshrine the human rights project into different faiths and cultures, of trying to legitimize human rights norms within religions and not alongside or against them, human rights activists might be tempted to dismiss such faiths and cultures as obstacles to economic or human rights modernity.

Is the “liberal” human rights movement in fact implicitly imperialistic, striving “to replace existing religious traditions with some of ‘new faith?’”<sup>38</sup> “Secular humanists, like religious believers,” warns Professor Diane Orentlicher, “must take care lest a worshipful faith in human sanctity blind them to their own capacity for fallibility. Even a secular humanism is susceptible to harmful immoderation if unchecked by critical self scrutiny.”<sup>39</sup>

Such “arrogance,” where it exists, can reflect a desire to sidestep the complexities of some issues. The headscarf issue is in this context a “wake up call” for a human rights movement comfortably embedded, especially in continental Europe, within secularism; the different facets of the controversy test its capacity to understand complex societal processes and individual quests. A woman (re)veiling herself does not necessarily equate with submission. If based on affirmative and free

choice, it can be an expression of liberation and self-assertion. Ignoring or despising traditional cultures and religious beliefs can cripple the best-intentioned attempts at promoting political reform and respect for fundamental human rights.

Similarly the human rights movement must examine why fundamentalism has been raising expectations in so many parts of the world. Political authoritarianism, economic prostration, social inequities, cultural alienation, and unresolved international conflicts all call for renewed action on civil and political as well as economic, social, and cultural rights.

### ***The Way Forward***

Understanding and engaging does not mean retreating into a more conventional and consensual mode. Confronted with a growing assertion of religion in private life, the increased political power of religions, and the rise or revival of religious conservatism, the human rights community must step up with a clear message and a distinctive voice. To paraphrase Edward Saïd, it must be “someone whose place it is publicly to raise embarrassing questions, to confront orthodoxy and dogma (rather than to produce them) and whose *raison d’être* is to represent all those people and issues that are routinely forgotten or swept under the rug.”<sup>40</sup>

There is still space for convergence and coalitions between human rights and religious communities. On some basic freedoms and rights this is already a reality: most secular human rights groups and religious groups have united in combating hate crimes and discrimination against Muslims in the wake of the September 11 attacks and the ensuing war on terror. Most have reasserted the absolute duty to protect civilians in armed conflicts.

These alliances should not be sacrificed lightly. In recognition of the importance of religious conscience for many people, the human rights

movement should do more to defend religious freedom. In that spirit Human Rights Watch has been defending the fundamental rights of independent Muslims in Uzbekistan, Christians in Iraq, Jews in Iran, Jehovah's witnesses in Georgia, and Mennonites in Vietnam. Such commitment should include the defense of the rights of "fundamentalists," i.e., including those who would threaten liberal conceptions of rights if they were in power, so long as they do not physically attack or otherwise impinge on the rights of non-believers.

At the same time, however, the human rights movement should not sacrifice its most valued principles and objectives in order to protect its good relations with religious communities. Human rights defenders should not shirk in particular from insisting on a distinction between private religious morality and religiously motivated public policy that infringes rights. Public expression and political mobilization of religious groups or believers on matters of rights are legitimate. When private religious morality imposes itself on society and threatens to change public policy in a way detrimental to rights, however, the human rights movement should speak out and draw the line.

*Jean-Paul Marthoz is international media director at Human Rights Watch; Joseph Saunders is deputy program director.*

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<sup>1</sup> Michael Ignatieff, *Human Rights as Politics and Idolatry* (Princeton: Princeton University Press, 2001), p. 53.

<sup>2</sup> Gilles Kepel, *La Revanche de Dieu. Chrétiens, juifs et musulmans à la reconquête du monde* (Paris: Le Seuil, 1991).

<sup>3</sup> As emphasized in the next essay in this volume, defense of the same basic principle is essential to safeguarding the dignity and humanity of lesbian, gay, bisexual, and transgender people, whether efforts to restrict their rights are made in the name of religion or of tradition, culture, or societal values.

<sup>4</sup> See Harold R. Isaacs, *Idols of the Tribe, Group Identity and Political Change* (Cambridge, Massachusetts: Harvard University Press, 1989).

<sup>5</sup> The group that abducted Georges Malbrunot, Christian Chesnot, and their Syrian driver initially sought repeal of the French law on conspicuous religious signs.

<sup>6</sup> “Among Wealthy Nations...U.S. Stands Alone in its Embrace of Religion,” The Pew Research Center for the People & the Press, December 19, 2002, p. 2.

<sup>7</sup> Maréchal Pétain, a former First World War hero, ruled France during the German occupation. His government, based on an ultra conservative Catholic ideology, collaborated with the enemy and in the deportation of Jews. Although many Catholics took part in the Résistance and the Catholic hierarchy protested the deportations, especially after the July 16 round-up of 12,884 Jews at the Velodrome d’Hiver, the image of the Church was tainted in many liberal circles.

<sup>8</sup> Adam Hochschild, *King Leopold’s Ghost* (Boston: Houghton Mifflin Co., 1998).

<sup>9</sup> Suzanne Moranian, “The Armenian Genocide and American Missionary Relief Efforts,” in Jay Winter. ed., *America and the Armenian Genocide of 1915* (Cambridge (U.K.): Cambridge University Press, 2004), pp. 185-213.

<sup>10</sup> The Helsinki Accords were the result of the final act of the Conference on Security and Cooperation in Europe held in Helsinki (Finland) in 1975 between the NATO Countries and the Soviet bloc. The civil rights section of the agreement, the so-called third basket, committed the participating states to respect human rights and fundamental freedoms.

<sup>11</sup> See Jeri Laber, *The Courage of Strangers: Coming of Age with the Human Rights Movement* (New York: Public Affairs, 2002).

<sup>12</sup> Margaret E. Keck and Kathryn Sikkink, *Activists beyond Borders* (Ithaca, New York: Cornell University Press, 1998), p. 91.

<sup>13</sup> Ken Booth, “Three Tyrannies,” in Tim Dunne and Nicholas J. Heeler, eds., *Human Rights in Global Politics* (Cambridge (U.K.): Cambridge University Press, 1999), p. 33.

<sup>14</sup> In particular the conference organized by UNESCO on the contribution of religions to the “culture of peace,” held in Barcelona in December 1994.

<sup>15</sup> Louis Henkin, "Human Rights: Ideology and Aspiration, Reality and Prospect," in Samantha Power and Graham Allison, eds., *Realizing Human Rights: Moving from Inspiration to Impact*, (New York: St. Martin's Press, 2000), p. 29. Ironically, some religious groups have resisted freedom of conscience—religious or otherwise—in some contexts. Prominent examples include refusal to respect the rights to reject religious orthodoxy, to change one's religion, to become atheist, or to proselytise. Such rights are protected by a number of human rights provisions, including article 18 of the UDHR. "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practise, worship and observance."

<sup>16</sup> Sara Maitland, "In Place of Enlightenment," *Index on Censorship*, April 2004, p. 8.

<sup>17</sup> Vali NASR, "Religion and Global Affairs: Secular States and Religious Oppositions," SAIS Review, Summer-Fall 1998. Volume XVIII, Number Two, The Paul H. Nitze School of Advanced International Studies, The John Hopkins University, Washington, pp. 34-5.

<sup>18</sup> Asma Jahangir, "Human Rights in Pakistan: A System in the Making," in S. Power and G. Allison, eds., *Realizing Human Rights*, pp. 168-9.

<sup>19</sup> Human Rights Watch, "Creating Enemies of the State: Religious Persecution in Uzbekistan" New York: Human Rights Watch, 2004.

<sup>20</sup> Human Rights Watch, "Divorced from Justice: Women's Unequal Access to Divorce in Egypt," December 2004.

<sup>21</sup> Human Rights Watch, "'Political Shari'a'?", Human Rights and Islamic Law in Northern Nigeria," September 2004. Human Rights Watch does not advocate for or against Shari'a per se, or any other system of religious belief or ideology, and takes no position on what constitutes "proper Shari'a."

<sup>22</sup> Human Rights Watch research in northern Nigeria also revealed patterns of fundamental human rights violations which are not peculiar to Shari'a but typify the human rights situation in Nigeria as a whole. For example, systematic torture by the police, prolonged detention without trial, corruption in the judiciary, political interference in the course of justice, and impunity for those responsible for abuses occur not only in the context of Shari'a cases, but are widespread in cases handled by the parallel common law system.

- <sup>23</sup> European Court of Human Rights, *Handyside against United Kingdom*, December 7, 1976.
- <sup>24</sup> Cited in *Le Monde*, October 25, 1989.
- <sup>25</sup> “Da Vinci Code banned in Lebanon,” BBC News online, September 16, 2004.
- <sup>26</sup> Ambrose Evans-Pritchard, “Blasphemy law revival upsets the Dutch elite,” *The Daily Telegraph*, November 18, 2004.
- <sup>27</sup> Guy Haarscher, *La laïcité* (Paris: Presses Universitaires de France, Collection Que sais-je?, 2004), p. 93.
- <sup>28</sup> Malise Ruthven, *Fundamentalism: The Search for Meaning* (Oxford (U.K.): Oxford University Press, 2004), p. 3.
- <sup>29</sup> Human Rights Watch, *Slaughter Among Neighbors: The Political Origins of Communal Violence*, (New Haven: Yale University Press, 1995).
- <sup>30</sup> “The Power of Religion,” *The Fletcher Forum of World Affairs*, Winter/Spring 1996, Medford, MA, p. vii.
- <sup>31</sup> Human Rights Watch, *Erased In A Moment: Suicide Bombing Attack Against Israeli Civilians* (New York: Human Rights Watch, 2002).
- <sup>32</sup> Georgina Ashworth, “The Silencing of Women,” in Tim Dunne and Nicholas J. Wheeler, eds., *Human Rights in Global Politics* (Cambridge (UK): Cambridge University Press, 1999), p. 273.
- <sup>33</sup> Human Rights Watch, “The Philippines: Unprotected, Sex, Condoms, and the Human Right to Health,” May 2004.
- <sup>34</sup> Mark Herstgaard, “The Holy War against Birth Control,” *Mother Jones*, March/April 2003.
- <sup>35</sup> G. Ashworth, “The Silencing of Women,” p. 268.
- <sup>36</sup> John Kelsay and Sumner B. Twiss, eds., *Religion and Human Rights* (New York: The Project on Religion and Human Rights, 1994), p. 27.
- <sup>37</sup> Much of the discussion of the case of Turkey that follows is a slightly revised version of text written by Jonathan Sugden, Human Rights Watch Turkey researcher. It first appeared in “*Memorandum to the Turkish Government with Regard to Academic Freedom in Higher Education, and Access to Higher Education for Women who Wear the Headscarf*,” Human Rights Watch, June 29, 2004.



<sup>38</sup> John Kelsay and Sumner B. Twist (Ed), *Religion and Human Rights*, The Project on Religion and Human Rights, 1994, New York, p.119.

<sup>39</sup> Diane Orentlicher, "Relativism and Religion," in M. Ignatieff, *Human Rights as Politics and Idolatry* (Princeton: Princeton University Press, 2001), p.147.

<sup>40</sup> Edward Said, *Representations of the Intellectual* (New York: Pantheon Books, 1994), p. 11.

## **ANATOMY OF A BACKLASH: SEXUALITY AND THE “CULTURAL” WAR ON HUMAN RIGHTS**

by Scott Long

*What is at issue in cultural terms is a conflict of interest between the whole body, which is the Zimbabwean community, and part of that body represented by individuals or groups of individuals. The whole body is more important than any single dispensable part. When your finger starts festering and becomes a danger to the body, you cut it off—the homosexuals are the festering finger.*

STATEMENT IN A PARLIAMENTARY DEBATE IN ZIMBABWE, 1995<sup>1</sup>

A tale of one city: Cairo, in 1994, hosted the U.N. World Conference on Population and Development. The meeting marked a major advance in recognizing women’s sexual autonomy. Its final declaration linked sexuality, health, and human rights, affirming that reproductive health “implies that people are able to have a satisfying and safe sex life”—in effect, that control over the enjoyment of one’s own sexuality was essential to the well-being of both women and men.

Much the same affirmation was made the next year, at the U.N. World Conference on Women in Beijing. The impact on local activists was considerable. The Cairo conference, for instance, gave strength to campaigns against female genital mutilation—in Egypt and elsewhere. But other, more sinister notes were struck. The Kenyan press, for instance, paid leering attention to lesbian activists marching at the Beijing meeting, leading then President Moi to declare: “The government rejects the immoral culture of homosexuality and lesbianism raised during the... women’s conference.”<sup>2</sup>

Switch to Cairo seven years later. Police seized dozens of men in raids on cruising areas and a discotheque where men who have sex with men were believed to gather. The press accused them of staging a “homosexual wedding” service. Prosecutors charged them with “debauchery,” the

language for sex between men in Egyptian law, and alleged they belonged to a blasphemous, “Satanist” cult assaulting culture and religion. Their sensational trial inaugurated a massive, national crackdown on homosexual conduct, in which hundreds of men have been seized and tortured—as well as a moral panic about sexual “deviance” escaping state control. Local human rights groups that tried to intervene have been smeared as agents of perversion.<sup>3</sup>

A spectre is stalking the arenas where human rights activists work. Its avatars range from politicians in Zimbabwe to policymakers in the United States. It might be called an alliance of fundamentalisms, though not all its agents embrace the term. The forces in question define themselves most often by what they claim to defend—and that shifts from time to time and territory to territory: “culture,” “tradition,” “values,” or “religion.” What they share is a common target: sexual rights and sexual freedoms. These are most often represented by women’s reproductive rights, the assault on which continues. The most vividly drawn and violently reviled enemy typically is homosexuality. “Gay and lesbian rights,” the dignity of people with different desires, the basic principle of non-discrimination based on sexual orientation: all these are painted as incompatible with fundamental values, even with humanity itself.

The target is chosen with passion, but also precision and care. Movements for the rights of lesbian, gay, bisexual, or transgender people, along with movements that assert sexual rights more generally, are arguably the most vulnerable edge of the human rights movement. In country after country they are easy to defame and discredit. But the attack on them also opens space for attacking human rights principles themselves—as not universal but “foreign,” as not protectors of diversity but threats to sovereignty, and as carriers of cultural perversion.

In many countries, forces opposed to universal rights standards have found their strongest stance is to declare themselves defenders of “authentic” (though often invented) cultural tradition.<sup>4</sup> “Culture talk”

increasingly opposes itself to “rights talk.” Rights are treated as invaders. Sexuality has turned into a key battleground in the conflict. The “cultural” argument against sexual rights sees itself as striking the exposed flank of rights protections. The onslaught also has devastating effects on public health—as essential measures to prevent HIV/AIDS are scrapped in the name of “morals,” and as vulnerable people are driven into the shadows.

Fundamentalism not only pits “culture” against rights, it paints a somber picture of society in which sexuality—and, implicitly, a range of other human experiences—demands continual and restrictive state scrutiny and control. Against this bleak and onerous vision, rights activists must reassert basic principles of personal freedom; but they must also affirm that human beings require the autonomous enjoyment of their sexualities to lead satisfying, fulfilled, fully human lives.

The standard articulated in the preceding essay in this volume—that rights groups must oppose efforts to legislate morality where the only “offense” is in the mind of the person who feels someone else believes or behaves “immorally”—applies not only when the motive is religious but more generally, whether campaigns to restrict rights are carried out in the name of faith, tradition, culture, or collective values. At the same time, rights activists must see defending sexual rights not as a distraction from their traditional preoccupations, but as a necessary and logical development. Human rights are the possessions of embodied human beings, whose dignity is bound up with the capacity to inhabit and experience their bodies as their own. Everyone deserves the free enjoyment of their sexuality. No one who does not hurt other people should be a prisoner of others’ consciences.

### ***Movements and Moral Panics***

The last fifteen years have seen great growth worldwide in the visibility of people gathering, organizing, and campaigning around sexuality—

and around sexual rights, sexual orientation, and gender identity. There are many causes. One lies simply in the spread of democratic governments in the 1980s and 1990s. As dictatorial regimes receded—in Latin America, in Eastern Europe, in Africa—and civil society asserted itself, activists for sexual rights and sexual orientation also claimed freedom to join that self-assertion. Models for organizing thus proliferated as well. Emerging groups across Africa that identify as lesbian, gay, or transgender may look to, and learn from, the work courageous people have performed in achieving equal protection in South Africa (where many activists in turn got their education in the anti-apartheid movement) or answering a dictator’s vilification in Zimbabwe.

Meanwhile, movements around women’s health issues—whether female-genital mutilation or access to reproductive health services—increasingly approached their work through a rights-based framework. Women’s sexuality, when viewed through the prism of human rights, could be seen as an empowering capacity, not a source of vulnerability (as movements opposing violence against women had long tended to portray it)—as something to be prized and defended.<sup>5</sup>

HIV/AIDS put sexuality squarely in the center of health policy debates; and HIV/AIDS activists also pushed public health discourse to open up to rights-based approaches. This soldered links between “sexual minorities” and the languages of rights. Indeed, the struggle against the epidemic has given many groups previously marginalized to the point of invisibility a new importance in human rights discussions, including drug users, prisoners, sex workers, and migrant workers.

The emergence of new or once-hidden identities in political life and in human rights discourse has prompted part of the backlash. “Lesbian,” “gay,” “sexual orientation,” “gender identity”—these concepts have been employed by activists in diverse places to explain who they are and why their constituencies share common ground. At they same time such concepts are decried as inauthentic imports or cultural impositions. Of

course, as has been widely noted, “homosexuality,” in the sense of a social self built around the gender of one’s object of desire, is a construct that originated in modern industrialized societies.<sup>6</sup> It is only one way of attaching cultural meanings to the phenomena, universally found, of homosexual *desire* and *conduct*. Yet the charge (heard sometimes from intellectuals as well as from conservative politicians) that those who translate these terms into settings other than their origin are the agents of an alien lexicography, pursuing their self-definition in foreign terms—this claim does not hold up. It neglects the creativity and capacity for *bricolage* with which humans reinterpret and adapt ideas to their own environments and needs: a constant change and interchange which is one of the basic workings of culture.

And in fact ideas as much as identities are ultimately at stake in the backlash. Advocacy around the rights of so-called “sexual minorities,” however they define themselves, neither takes place in a vacuum nor is reducible to a minority concern. This advocacy asserts a broader principle: that people should control their own sexualities; that, in the context of respect for others’ dignity and consent, everyone has the right (as the World Health Organization puts it) to “pursue a satisfying, safe, and pleasurable sex life”; and that this pursuit is not inimical to cultural and social values, but supports people’s healthy integration into culture and society.<sup>7</sup> It is an assertion which lesbian, gay, bisexual, and transgender activists make together with activists for women’s rights, campaigners against censorship, and other human rights defenders. The claim to sexual freedom is the deepest threat. The extension of human rights beyond consciences to bodies is the unbearable presumption.

Sexuality is something on which every society—probably every person—imposes a portentous array of meanings. It may be the most highly symbolized of human experiences. Fundamentalists fear sexuality emerging from the cocoon of significance in which they feel traditions once contained it. Yet this apprehension of escape itself becomes a

metaphor for other, larger anxieties about cultural, social, or political change. Sexuality stops being an experience and becomes an emblem.

“Gay and lesbian rights” and the promise of equality serve, to their fundamentalist opponents, as symbol rather than tangible threat. Those opponents rarely bother to examine the substance of what such equality might entail. It is the monstrous apparition of men’s and (particularly) women’s sexualities breaking the frame of traditional, authoritarian control that terrifies them, and leads them to call on the law to repress the genie back into the bottle. They are right that the liberatory impulse of human rights will not be restrained from defending freedoms in people’s intimate and physical, as well as political, lives. They are at their most dangerous in acting on the insight. Using sexuality as metaphor for broader processes of change, they extend their attack to the logic and essence of human rights themselves.

One feature of fundamentalist discourses is the way their different terms collapse into one another. “Culture” loses its variety and becomes indistinguishable from “morality,” and “morality” from “religion,” which in turn is defined by and often defines “tradition.” Collectively they can colonize “nationhood” until it becomes not a political entity but a rhetorical weapon. All these words will run through the examples of the backlash. In all cases, however, fundamentalisms strip these terms of ambiguity or negotiability. They become, in the fundamentalist vision, not ideas to be debated or environments in which to live, but mandates enforced by law.

Sometimes the backlash around sexuality has been overtly nationalistic. When the film *Fire*, depicting a love affair between two women, was released in India in 1998, it was met by riots and was hauled before the national Censor Board. Both violence and silencing were instigated by the right-wing government and its allies. One leader of the Hindu nationalist Shiv Sena party said lesbianism “is not in our national culture,” and wondered why the women had been given Hindu instead of

Muslim names.<sup>8</sup> Similar arguments have been used to support the arrest and harassment of HIV/AIDS outreach workers.<sup>9</sup> In defending India's law penalizing homosexual sex—a relic imported and imposed by British colonialism—the government has claimed it was needed to preserve true Indian mores and identity.

Sometimes the attacks show a mingling of religion, culture, and nationalism: as when Robert Mugabe of Zimbabwe, who has devoted a decade to steady homophobic attacks, wondered how “immoral and repulsive organizations, like those of homosexuals who offend both against the law of nature and the law of morals of religious beliefs espoused by our society, should have any advocates.”<sup>10</sup> Usually, however, they are meant to send two ominous messages: that freedom is a gift, not a given; and that if one group's freedoms can be stripped away, so can others'. Thus Mugabe has said:

Freedom... is not a selfish, one-way street. The greater the freedom one enjoys, the greater the responsibility one owes the community which bestows that freedom. ... If we accept homosexuality as a right, as is being argued by the association of sodomists and sexual perverts, what moral fibre shall our society ever have to deny organized drug addicts... the rights they might claim and allege they possess under the rubric of individual freedom and human rights, including the freedom of the press?<sup>11</sup>

Mugabe meant it. His threats to lesbian, gay, bisexual, and transgender people were a prelude to crackdowns on farm workers, farmers, trade unions, opposition parties. The press freedoms whose exclusivity he claimed to prize went out the window early in the process.

Political leaders in many African countries have imitated Mugabe's rhetoric. Yet by contrast, in neighboring Namibia, where President Sam



Nujoma indulged in similar attacks for years, human rights activists quickly saw the assaults as aimed at all their work and at the core values of human rights themselves. One said, “The government is making attacks on homosexuality a central part of its outlook. But it will not end with homosexuality—it is to create a culture of intolerance, a culture that will grow. Either we change this culture and become more tolerant, or it will get worse.”<sup>12</sup>

Disentangling intolerance from “culture” led to danger. Another activist whose organization condemned Nujoma’s statements related how he and his co-workers “have been attacked as traitors, as spies, and as being un-African. And we have been attacked for promoting homosexuality. ... We are not promoting homosexuality, we are promoting human rights.”<sup>13</sup> It is to their credit that human rights organizations fought back, and affirmed both that homosexuality belonged to, and that human rights principles were integral to, Namibia’s diverse culture.

In Egypt, the crackdown on homosexual conduct was used to isolate and defame the country’s embattled human rights organizations. Few groups intervened: those who did faced condemnation. The message was clear: that human rights had become the portal to perversion. “They’re defending Egyptian perverts under the pretext of ‘human rights!’” one tabloid headline raged.<sup>14</sup> A columnist asked of “sexual perverts,” “What moral debasement has this group arrived at? What kind of people are they, without religion, moral values, or honor... claiming human rights? What human? What rights?”<sup>15</sup>

Similarly, in Jamaica in 2004, attacks on a Human Rights Watch report linking endemic homophobic violence to the spread of HIV/AIDS turned into attacks on human rights groups in general. A writer charged that “homosexual surrogates attached” to Human Rights Watch have “ripped” into Jamaica for what it imagines is wide scale abuse here against male homosexuals. Homosexuals have always found that their viral-like attachment to key groups in civil society and other bodies

where social activism is a calling card has always assisted them as a launching pad from which they can subtly foist their sexuality on a nation of people totally turned off from and sickened by the abnormal and filthy act of one man having sex with another man.”<sup>16</sup>

Others threatened mainstream Jamaican human rights activists. The Jamaica Police Federation, representing most of the country’s police officers, ominously lashed out at Human Rights Watch’s “local accomplices” for “deliberately maligning the police and the state.” Declaring that “The government and the police cannot be held responsible for either the careless liaisons by homosexuals or the cultural responses of the population towards gays,” it called on the Minister of Justice to “slap on sedition charges where necessary to both foreign and local agents of provocation.”<sup>17</sup>

Religious groups have played a significant role in the backlash—and a significant role in opposing it. Within many religious traditions, powerful voices have spoken up to defend sexual rights, along with human rights principles generally. Still, evangelical Protestant churches in Africa (many of them North American in origin) have often preached homophobia. The Catholic Church in many places has lent official weight to campaigns against equality for lesbian, gay, bisexual, and transgender people, as well as against reproductive rights.<sup>18</sup> Yet the role of churches or mosques in whipping up fears around sexuality should not be overstated. In most places the backlash’s leadership remains lay. In many countries the roles of non-governmental organizations (NGOs) that identify themselves as defending religious values, without being tied to a particular institution or denomination, have been more powerful, and their rhetoric more ferocious, than most religious figures.

This is nowhere more true than in the United States. Controversies over lesbian, gay, bisexual, and transgender people’s claim to equality have burgeoned since 2003. That year, the Supreme Court struck down the country’s remaining “sodomy laws.” Social conservatives saw this as

a blow to their own authority, and as the loss of one of the basic ways in which governments declared their “disapproval” of homosexuality—a disapproval manifested in a jail cell. Later that year, courts in the state of Massachusetts ordered that the full rights of marriage be extended to same-sex partners. At least in one jurisdiction, it seemed, equality was at hand.<sup>19</sup>

Individual states have wide latitude in the U.S. to set their own marriage policies; however, the federal government has intervened in the name of overarching principles—most notably when the Supreme Court struck down laws against interracial marriages as fundamentally discriminatory. Social conservatives therefore took a two-pronged strategy. They have pressed, with great success, for states to amend their own constitutions to ban equality in civil marriage. Eleven such initiatives came on the ballot in 2004; eleven states passed them, often by enormous margins. Some of these amendments ruled out legal recognition of same-sex relationships in *any* form, such as civil unions. Their sweeping wording could conceivably bar companies from granting domestic-partner rights to same-sex employees, or actively prohibit a lesbian from visiting her partner in the hospital. The zero-sum meanness of such provisions reveals the underlying mindset, that certain relationships can be “protected” only by taking a legal bulldozer to others. The motive is not “defending marriage,” but fear: fear of difference, of the other. The only union they defend is the shotgun coupling imposed between government and religious compulsion.

The second strategy was to go national. President Bush has urged passage of a amendment to the U.S. constitution which would bar equality in civil marriage. It would be the first constitutional change in American history not to affirm a basic right but to ban a specific group from enjoying it. Legislative proposals to achieve the same effect nationwide are multiplying as well.

In the United States as in other countries, panics over sexual nonconformity have often been connected to political repression. Consider how, in South Africa, the legal prohibition on interracial sex became a foundation of the apartheid regime; consider too how, during the McCarthyite period in the United States in the 1950s, the search for invisible and insidious communists was paralleled by campaigns to root down and crack down on homosexuals, in local communities and in government itself. The strong desire of some social conservatives to expand state control over personal life, while eviscerating the state's secular character, was suggested by the influential conservative leader Bob Jones in greeting the 2004 election returns. Warning that "liberals... despise your Christ," he urged the victorious president to "exercise forceful leadership... in passing legislation that is defined by biblical norm regarding the family, sexuality, sanctity of life, religious freedom, freedom of speech, and"—it is not clear how compatible this is with the rest of the list—"limited government."<sup>20</sup>

But the blend of social conservatism and sexual fear in U.S. policy is up for export, where its effects are still more dangerous. Under the influence of religious and conservative NGOs, the United States has—both domestically and in its capacity as the world's largest donor to HIV/AIDS programs—heavily promoted HIV prevention programs that define sexual abstinence and marital fidelity as the sole solutions. The "United States Leadership against HIV/AIDS, Tuberculosis, and Malaria Act"—a foreign aid program passed in 2003, and commonly known as President's Emergency Plan for AIDS Relief (PEPFAR)—mandates that one-third of prevention spending go to "abstinence until marriage" programs. In the United States, such federally-funded programs have censored scientific information about the efficacy of condoms, and called marriage the *only* reliable strategy for preventing sexual transmission of HIV.<sup>21</sup> In teaching that heterosexual marriage is the sole safe environment for sex, these programs implicitly but intrinsically condemn lesbians' and gay men's sex lives—since, in most countries,

they cannot marry. The programs also cut off people at risk of HIV from information that could save their lives.

The result, in countries that are candidates for PEPFAR funding, has been a rash of statements endorsing abstinence and condemning condoms. In May 2004, for instance, President Yoweri Museveni of Uganda, who had long supported condoms as part of a prevention strategy, changed his position and declared that they should only be provided to sex workers.<sup>22</sup> In March 2004, Zambia reportedly banned distributing condoms in schools, claiming they spread promiscuity among youth.<sup>23</sup>

One characteristic of many of these assaults on sexuality is that fundamentalist forces interpret opposition—attempts to keep their proposals from being enacted into policy—as an attempt to silence them altogether, or to keep them from urging their principles upon free individuals. Thus promoting an open public sphere where religious institutions and others with different views can speak is treated virtually as an initiative to suppress the church. One can—and human rights activists do—oppose those who want gay sex criminalized, while respecting the opponents’ consciences and safeguarding their political freedoms. Yet in a strange inversion, those who vociferously object to applying human rights principles sometimes claim that any debate itself breaches their basic rights.

They do this by claiming that individuals’ rights violate the “rights” of the “community” to enforce morality—and silence. This appropriation of rights language should not be curtailed—the words are available to all—but it deserves to be questioned. When an Australian evangelical group claims that anti-discrimination legislation would infringe “the rights of heterosexuals,”<sup>24</sup> it may seem marginal. The Catholic Bishops Conference of the Philippines carried more authority, though, when answering Human Rights Watch’s criticism of government policies—heavily church-supported—that impeded condom use.<sup>25</sup> A spokesman

said, “If we speak the language of rights, let it be about authentic human rights—rights which foster human dignity. ... The right to religious belief is a paramount human right. Will Human Rights Watch deny that?”<sup>26</sup>

The right to religious belief does not mean that belief can tyrannize over others’ bodies—or deny others what they need to save their health and lives. The exercise of individual conscience is not infringed if governments give men and women information and condoms that will help them survive. Human rights groups should and typically do stand up fiercely for religious freedom and the rights of believers. They should also stand up against religious groups seeking to dilute or destroy rights protections on the sole ground that they safeguard actions which faith or teaching may condemn. This holds true whether the freedoms at stake are those of religious dissenters, atheists, women, or men, or whether they involve consensual sexual behavior. Human rights principles should not be twisted into a tool to suppress expression, conscience, or conduct, when the only harm is in the mind of someone who takes moral umbrage at another’s behavior or belief.

Finally, the public health consequences of the policies in question expose how untenable are fundamentalist forces’ claims to be defending “rights” or to be standing up for “communities.” When HIV/AIDS outreach workers are assaulted, in the name of national tradition; when people are force-fed unscientific propaganda instead of life-saving facts, in the name of safeguarding the family; when they are refused condoms, in the name of moral values: it is communities who suffer, as HIV infection spreads. More than ideology is at stake in the backlash over sexuality. Societies are devastated. People die.

### ***In the International Sphere***

Far from conferences and Cairo, another important thing happened in 1994. The U.N. Human Rights Committee, in its landmark decision in

*Toonen v. Australia*, held that so-called “sodomy laws”—laws criminalizing consensual homosexual conduct—violated standards of privacy and equality, and that “sexual orientation” was a status protected against discrimination by the International Covenant on Civil and Political Rights (ICCPR).

This has been the single most important U.N. move to affirm equality based on sexual orientation. It has supported the grassroots struggles of countless activists. Yet since that year, the United Nations has increasingly become a battlefield in wars over “culture” and sexuality.

U.N. conferences such as the Beijing World Conference on Women; General Assembly Special Sessions such as the 2001 meeting on HIV/AIDS or the 2002 gathering on children; and increasingly the annual meetings of the U.N. Commission on Human Rights have been sidetracked or taken over by fierce contests over questions of sexuality. In the process, an odd alliance has emerged. It brings together the countries of the Organization of the Islamic Conference (OIC); the Holy See (which, though not recognized as a state, occupies observer status at the United Nations); and a group of mostly U.S.-based NGOs, some identifying as Catholic, some rooted in evangelical Protestantism or Mormonism, all with domestic records of combating reproductive rights and sexual rights. Under the Bush administration, the latter have had sometimes tacit and sometimes overt backing from their government.<sup>27</sup>

The alliance merits some comment. Its members work together closely, visibly planning strategy in tandem at some sessions. Yet their opportunistic transcendence of the conflicting confessional, political, and social traditions they represent boldly defies any contention that “cultures” are or should be self-contained, insulated, or incapable of negotiating across differences. They model the diversity they deny. At various venues the members of the alliance have all claimed to be defending the “traditional family,” as if unaware of the different entities the term

might describe in Arizona and Qatar. The irony of finding present and former officials, including diplomats, from powerful OIC countries serving on advisory boards to U.S. NGOs identified with the “Christian right” is profound. To add to the irony, many of the U.S. NGOs now devoting time and resources to U.N. advocacy oppose the U.N. and all international human rights mechanisms. One highly prominent U.S. advocate said in 2000, “Should the U.S. get out of the U.N.? That’s a question I always steer clear of, principally because to participate in the U.N. in the way that I do, you must at least have a veneer of supporting the U.N.”<sup>28</sup>

The goals that unite them are simple to sum up: deleting sexuality. They fight to roll back the affirmations of reproductive and sexual rights in the Cairo and Beijing Platforms for Action; to restrict or eliminate mentions of family planning, sexuality education, reproductive rights, and related issues; and to keep language on sexuality, sexual rights, or sexual orientation out of any U.N. documents, ever.

“Sexual orientation” has been a key issue for these opponents, both in its own right and as a wedge to attract the votes of other countries from the developing world. One writer comments that religious and socially conservative groups in the U.S. are “turning to the developing world as an innocent, unspoiled frontier, which might possibly be rescued from a morally bankrupt West.”<sup>29</sup> At the Beijing conference in 1995, a flyer claiming to be from unnamed, conservative women from “Developed Countries” offered to “apologize to people from the less developed world ... [for the West’s] direct attack on the values, cultures, traditions and religious beliefs of the vast majority of the world’s peoples.”<sup>30</sup> At Beijing +5 (the General Assembly session five years after the World Conference on Women) a similar anonymous flyer courted developing states, blaming conference delays on perversions: “If the West would stop pushing homosexual and abortion ‘rights’ on unwilling countries, the document would be done. Don’t blame the developing countries



with the courage to defend their values and their right to self-government!”<sup>31</sup>

More is involved than flyers. The rights of lesbian, gay, bisexual, and transgender people simply appear an easy sacrifice in the eyes of this alliance. The 2001 U.N. Special Session on HIV/AIDS saw a furious (and ultimately successful) campaign to rid the final document of specific references to vulnerable groups, including men who have sex with men, drug users, and sex workers. OIC states fought to prevent the International Gay and Lesbian Human Rights Commission from addressing a panel on human rights—an issue which finally came to a General Assembly vote (where the OIC narrowly lost).

Debates around sexual orientation reached new intensity in 2003 and 2004, at the annual meetings of the U.N. Commission on Human Rights. In 2003, Brazil introduced a resolution on “Human Rights and Sexual Orientation,” which expressed “deep concern” at “violations of human rights all over the world against persons on the grounds of their sexual orientation.” The resolution came with little warning; few NGOs had a chance to mobilize fully to support it that year. It met with frenzied opposition, though, from some Commission members and from conservative NGOs, above all in the United States. Pakistan, in an *aide-memoire* on behalf of the OIC, stated:

The resolution has been built on an “assumption” “for the purposes of the resolution” that the concept [of sexual orientation] encompasses various manifestations of sexual behaviour. The list could always be expanded to include heinous activities like pedophilia and other errant behaviour. ... The draft resolution directly contradicts the tenets of Islam and other religions. Its adoption would be considered as a direct insult to the 1.2 billion Muslims around the world.<sup>32</sup>

This language imitated that of Christian-based NGOs in the United States, who had quickly circulated misinformation about the key term's meaning—suggesting that any of the sexual disorders listed in the American Psychiatric Association's Diagnostic and Statistical Manual (DSM) could qualify as a “sexual orientation.” Thus, they claimed, “22 different ‘sexual orientations’” could be protected by the resolution, including bestiality or pedophilia. They warned the resolution would offer “*special* human rights (rather than *equal* human rights),” calling it “infamous,” “dangerous,” and, worst of all, likely to “pave the way for the legalization of same-sex marriage across the world.”<sup>33</sup>

As the lobbyists well knew, “sexual orientation”—as understood in ordinary speech as well as in repeated references in official U.N. documents—describes whether a person's sexual and emotional desires are directed primarily to people of the same or opposite sex, or to both. It has nothing to do with the conditions listed in the Diagnostic and Statistical Manual.<sup>34</sup> Yet the distortion of language and medical fact, the conflation of human rights principles with “protecting bestiality,” had their effect. In a chaotic session, the resolution narrowly lost on a procedural question—by two votes—but was postponed until the following year. 2004 saw unprecedented global mobilization of lesbian, gay, bisexual, and transgender activists, and a sweeping coalition of other human rights groups, to support the measure. However, OIC countries applied equally unprecedented pressure, threatening to quash possible trade relations with Brazil. Sexuality at the United Nations had finally graduated to the kind of issue that economic ties could hang on. Brazil postponed the resolution again. Its future fate is unknown.

In a further sign of how the attacks on sexuality widen into attacks on general rights standards, in 2004 Egypt also spearheaded a battle by the OIC to remove “sexual orientation” from a crucial Commission resolution on extrajudicial executions. Repeatedly in the past, the same opponents had sought to undermine the work of the U.N. Special Rapporteur on extrajudicial killings, whose reports drew attention to

state-condoned or state-sponsored murders in many of their countries. They had used her work on murders of “sexual minorities” to discredit her work on honor killings of women, implying the second led to the first. And they used both to try to dismantle her mandate. This year, they made it clear they would be happy to kill the resolution—one basic to the United Nations’ human rights mechanisms—if it condemned killings of lesbians and gay men.

Although the move was defeated, the story here returns again to Cairo: for it was evident that Egypt was driven in part by the desire to keep unwanted U.N. attention away from its violent domestic crackdown on gay men. The local backlash and the international one meet.

### ***Cultures and Their Faces***

On the night of September 29, 2004, FannyAnn Eddy, founder of the Sierra Leone Lesbian and Gay Organization, was brutally murdered in the group’s offices in Freetown. Although the motives for her killing remain unclear, many suspect she was targeted for her visibility as a lesbian and an activist. Human Rights Watch worked closely with her. This essay is dedicated to her memory.

Lesbian, gay, bisexual, and transgender people have learned one lesson over the last twenty years: violence follows visibility. People can be killed for their courage in standing up, in speaking out about themselves. Yet FannyAnn’s life and death, on a continent where homosexuality is again and again called “un-African,” call attention to another truth. Cultures are made up of faces. They are not monoliths; they are composed of diverse individuals, each contributing to and minutely changing what the culture means and does.

When a culture is reinvented for ideological purposes as a faceless, seamless whole—incapable of dissent from within, so that any dissenter automatically becomes an outsider; incapable of changing, so that

growth seems like destruction—it has ceased to be an environment in which people can live and interpret their lives. It has become a rhetorical weapon to be wielded against individuals, a tool of repression. And any phenomenon that embraces innumerable Africans like FannyAnn can be called good or bad, right or wrong; but it cannot be called “un-African.”

The forces described here draw their strength from fear. They share an anxiety: that norms governing personal life, which family or community or religion used to inculcate, are losing strength. They share an ambition: to enlist the state’s authority to enforce those norms. If there is a useful definition of “fundamentalism,” perhaps it is this drive to seize the state, turn its spotlight on private life, and make it the agent of a newly-codified “tradition.” They fail to understand—or, perhaps, they understand too well—that a norm changes when it becomes a law: that, once backed by all the power of a modern state, it loses the flexibility and negotiability that are the essence of a tradition. It can only punish and repress, and it will find new victims.

The role of human rights principles, unquestionably, is to mark out spaces of personal freedom, to affirm areas where individual privacy and dignity and autonomy should prevail against state or community regulation. But human rights principles also defend communities. They guard them against measures which, by isolating or marginalizing people, threaten the whole body politic with epidemic disease. They protect minority and subcultural communities against change or uniformity forced on them by the state. They ensure diversity both among communities and cultures, and within them.

A dialogue between “rights talk” and “culture talk” is overdue—one which explores not only the real meaning of culture, but the actual workings of rights. Rights work does not promise utopia, only an endless process of protecting basic human values against constantly renewing threats. But it also does not promise the dissolution of cultures or

the annihilation of traditions. It helps to ensure that they remain responsive to the human beings they contain. To conserve is to care for, not to preserve unchanged. The dialogue will happen only if true conservatives, who respect the past because they grapple with its complexities, dismiss the false ideologies of cultural uniformity that exploit sexuality with no other real goal than to reject, exclude, and destroy.

*Scott Long directs the Lesbian, Gay, Bisexual, and Transgender Rights Program at Human Rights Watch. Jonathan Cohen, researcher with the HIV/AIDS and Human Rights Program, assisted in conceptualizing and researching this essay.*

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<sup>1</sup> Quoted in Human Rights Watch and the International Gay and Lesbian Human Rights Commission, *More than a Name: State-Sponsored Homophobia and its Consequences in Southern Africa*, 2003, p. 16.

<sup>2</sup> “Moi says no to ‘unAfrican sins,’” *The Nation* (Kenya), September 24, 1995.

<sup>3</sup> See Human Rights Watch, *In a Time of Torture: The Assault on Justice in Egypt’s Crackdown on Homosexual Conduct*, 2004.

<sup>4</sup> See Mahmood Mamdani, ed., *Beyond Rights Talk and Culture Talk: Comparative essays on the Politics of Rights and Culture* (Palgrave, 2000); see also, for a study of how “traditions” are manufactured to suit political and social agendas, E. B. Hobsbawm and Terence Ranger, eds., *The Invention of Tradition* (Cambridge, 1992).

<sup>5</sup> See, for instance, Lynn P. Freedman, “Reflections on Emerging Frameworks of Health and Human Rights”; Rebecca Cook, “Gender, Health, and Human Rights”; and Alice M. Miller, AnnJanette Rosga, and Meg Satterthwaite, “Health, Human Rights, and Lesbian Existence,” all anthologized in Jonathan M. Mann, Sofia Gruskin, Michael A. Grodin, and George J. Annas, *Health and Human Rights: A Reader* (New York: Routledge, 1999).

<sup>6</sup> Or, more precisely: the option of organizing a lifelong social identity around the experience of homosexual desire has historically been available only in certain cultural and class settings, modern industrial capitalism—with its loosening of the economic function of traditional family networks—being one. (The word “homosexual” itself, a hybrid of Greek and Latin roots, was only coined in 1869.) In other settings homosexual desire has been interpreted in other ways: as something to be consummated only at certain stages in the life-course, for instance. See David Halperin, *One Hundred Years of Homosexuality and Other Essays on Greek Love* (Routledge, 1990) for a fuller discussion. A number of recent movements have adopted, or adapted, more “traditional” identities as axes for organizing around sexual difference. In south Asia, for instance, older cultural identities for people who might, in a Western context, be called “transgender,” such as *hijra* or *meti*, as well as identities such as *koti* referring to men who have sex with men, carry a resonance not at all reducible to Western equivalents. Alternatively, in Zimbabwe, men within the group Gays and Lesbians of Zimbabwe have carved out their own space and sub-sub-culture, calling themselves *chengetanai* (a Shona word meaning “taking care of each other”) or “liberated queens,” and identifying themselves much more by their dissidence from gender norms than by their sexual behavior.

<sup>7</sup> See World Health Organization, “Technical Consultation on Sexual Health: Working Definitions,” at [http://www.who.int/reproductive-health/gender/sexual\\_health.html](http://www.who.int/reproductive-health/gender/sexual_health.html), retrieved November 22, 2004.

<sup>8</sup> Bal Thackeray, quoted in “Protest in front of Dilip Kumar’s house justified, says Thackeray,” *Times of India*, December 14, 1998; “Hindu leader says lesbian film should be about Moslem family,” Agence France-Presse, December 14, 1998. For a full account of the *Fire* controversy, see a report by the Campaign for Lesbian Rights, India (CALERI), *Emergency Jaari/Lesbian Emergence* (New Delhi, 1999).

<sup>9</sup> See Human Rights Watch, *Epidemic of Abuse: Police Harassment of HIV/AIDS Outreach Workers in India*, 2002.

<sup>10</sup> Quoted in Human Rights Watch and the International Gay and Lesbian Human Rights Commission, *More than a Name: State-Sponsored Homophobia and its Consequences in Southern Africa*, 2003, pp. 13-14.

<sup>11</sup> Ibid..

<sup>12</sup> Ibid., p. 31, quoting Norman Tjombe, Legal Action Centre, Namibia.

<sup>13</sup> Ibid., quoting Phil ya Nangoloh, National Society for Human Rights, Namibia.

<sup>14</sup> “Special report: How could anyone believe them after this ridiculous statement? They’re defending Egyptian perverts under the pretext of ‘human rights!’” *Rose al-Youssef*, July 15, 2001.

<sup>15</sup> Wagih Abu Zikri, columnist in *al-Akhhbar*, February 17, 2002.

<sup>16</sup> Mark Wignall, “What do these homosexual activists want?” *Jamaica Observer*, November 21, 2004.

<sup>17</sup> Sergeant David White, public relations officer, Jamaica Police Federation, “Charge those groups for sedition,” *Jamaica Observer*; November 25, 2004.

<sup>18</sup> In some countries the Orthodox Church has campaigned particularly militantly against sexual rights. In Romania, the church engaged throughout the 1990s in a long, ultimately unsuccessful struggle to prevent the repeal of that country’s brutal, Ceausescu-era sodomy law. (See Human Rights Watch and the International Gay and Lesbian Human Rights Commission, *Public Scandals: Sexual Orientation and Criminal Law in Romania*, 1998.) Political calculation underlay the intensity of the fight. The church was discredited among many Romanians by its tacit support of Ceausescu, and was searching for an issue to regain clout and credibility; opposition to reproductive rights—an immensely productive wedge issue for religious conservatives in other countries—was closed to it, however, by the acute unpopularity of Ceausescu’s pro-natalist, anti-abortion and anti-birth-control policies. The campaign had international repercussions. In 1998, Orthodox churches threatened to pull out of the World Council of Churches in outrage at the possibility of discussions of sexual orientation at its Eighth General Assembly (held in Harare, Zimbabwe).

<sup>19</sup> See “Non-Discrimination in Civil Marriage: Perspectives from International Human Rights Law and Practice,” a Human Rights Watch briefing paper, at <http://hrw.org/backgrounder/lgbt/civil-marriage.htm>.

<sup>20</sup> At <http://www.bju.edu/letter>, the website of Bob Jones University; retrieved November 11, 2004.

21 See Human Rights Watch, *Ignorance Only: HIV/AIDS, Human Rights and Federally Funded Abstinence-Only Programs in the United States*, September 2002. The domestic mandate to promote “abstinence only” education had been a project of conservative members of Congress since the 1980s. The 1996 “welfare reform” bill in the U.S., for instance, required states accepting federal funds to teach “abstinence from sexual activity outside marriage as the expected standard for all school-age children,” as well as that “sexual activity outside the context of marriage is likely to have harmful psychological and physical effects.” The bill points to one of the origins of the policy: in the endeavor to exert state control over the sexual lives of the poor. Meanwhile, both domestically and internationally, the Bush administration has used its commitment to “abstinence-only” education to funnel funds to “faith-based” organizations that are among its political supporters. Groups that criticize “abstinence-only” programs have been subjected to fiscal audits, apparently in response to pressure from the White House and conservative politicians. See Françoise Girard, *Global Implications of U.S. Domestic and International Policies on Sexuality*, International Working Group on Sexuality and Social Policy Working Papers No. 1, June 2004, at <http://www.healthsciences.columbia.edu/dept/sph/cgsh/IWGSSPWorkingPaper1English.pdf>, retrieved November 21, 2004.

22 Rachael Rinaldo, “Condoms take a back seat to abstinence with U.S. AIDS Money,” *Inter Press Service*, May 24, 2004. The article quotes an anonymous U.S. official as stating that funds could be used by governments to buy condoms—but that they should only be distributed to “high risk” groups.

23 Z. Geloo, “Anger at move to declare schools condom-free zones,” *Inter Press Service*, March 16, 2004.

24 Website of John Mark Ministries, <http://jmm.aaa.net.au/articles/10364.htm>, retrieved November 12, 2004.

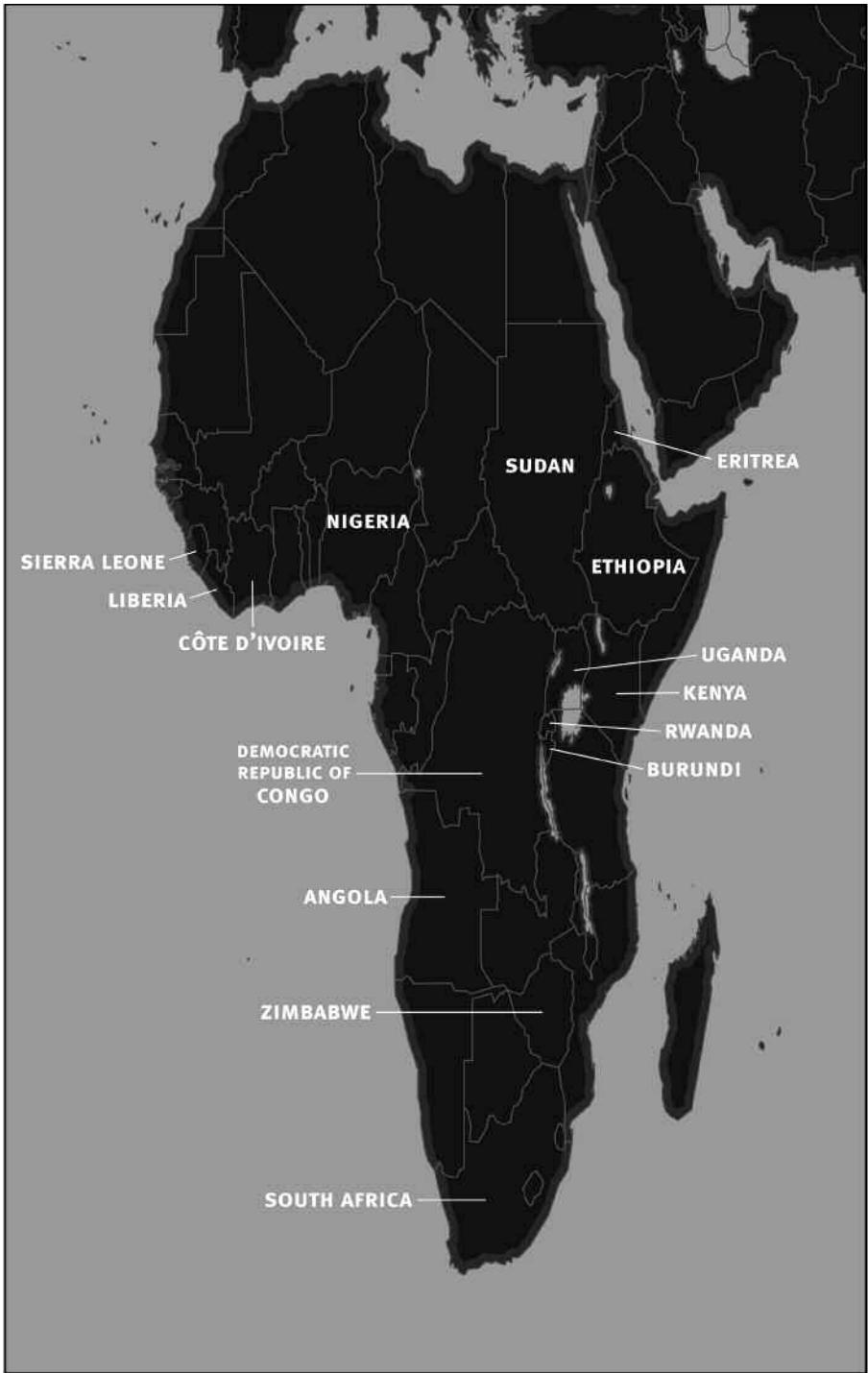
25 See Human Rights Watch, *Unprotected: Sex, Condoms, and the Human Right to Health in the Philippines*, vol. 16, no. 6, May 2004.

26 Patrick Goodenough, “*Philippine pro-lifers stand by anti-condom policy*,” CNSNews, May 6, 2004, at <http://www.cnsnews.com/ForeignBureaus/Archive/200405/FOR20040506b.html>, retrieved November 12, 2004.

27 On reproductive-rights issues at the U.N. level, the Bush administration has played an open and militant hand. When sexual orientation has arisen, it has been quieter—with indications that it directs NGOs to do its work for it.



- <sup>28</sup> Austin Ruse of the Catholic Family and Human Rights Institute (C-FAM), quoted in Jennifer Butler, “New Sheriff in Town’: The Christian Right nears major victory at the United Nations,” *Public Eye*, vol. 16, no. 2 (Winter/Spring 2002).
- <sup>29</sup> Jennifer Butler, “For Faith and Family: Christian Right Advocacy at the United Nations,” *Public Eye*, vol. 9, no. 2/3, p. 9.
- <sup>30</sup> Cited in Cynthia Rothschild and Scott Long, *Written Out: How Sexuality Is Used to Attack Women’s Organizing*, a report by the International Gay and Lesbian Human Rights Commission and the Center for Women’s Global Leadership, 2000, pp. 63-64.
- <sup>31</sup> Flyer on file with Human Rights Watch.
- <sup>32</sup> Copy on file at Human Rights Watch.
- <sup>33</sup> See Lynn Allred, “Thwarting the Anti-Family Agenda: An Eyewitness Account of the Commission on Human Rights,” *Meridian Magazine*, online at <http://lds-mag.com/familywatch/040505agenda.html>, retrieved November 11, 2004. Material about the “22 sexual orientations” was distributed at the 2003 and 2004 Commission sessions.
- <sup>34</sup> The DSM, of course, actually declares that homosexuality is not a disorder.



H U M A N  
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WORLD REPORT  
2005

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# AFRICA

## ANGOLA

The government's announcement that national elections will be held in late 2006 is a positive step towards Angola's reconstruction after twenty-seven years of civil war. Serious human rights abuses, however, continue to be committed. Deepening poverty combined with the government's lack of transparency and commitment to human rights could undermine Angola's hard-won peace enjoyed in all provinces, except Cabinda. The most pressing human rights concerns are: high levels of government corruption; the armed conflict in Cabinda; lack of respect for women's human rights; the return and resettlement process; violations of freedoms of expression, association, and assembly; and expulsions of foreign migrant workers.

### ***Corruption and Lack of Government Transparency in Public Financial Matters***

Mismanagement of public finances is a major problem that negatively impacts on Angolans' enjoyment of human rights. As previously documented by Human Rights Watch, U.S. \$4.2 billion disappeared from government coffers between 1997 and 2002—roughly equal to all of the social and humanitarian spending in Angola during the same time. The government has been forced to take steps to improve transparency, as international donors were largely unwilling to provide new assistance until the government became more accountable. In May 2004, it released the complete report of the Oil Diagnostic study that sought to determine how much of Angola's oil revenue is deposited into the central bank and, for the first time, publicly disclosed a large bonus payment of about U.S. \$300 million from ChevronTexaco for the extension of the Block 0 oil concession. By October 2004, the government reportedly started to audit Sonangol, the state owned oil company. Despite these steps, the government has not taken commensurate steps to account for expenditures. As a result of the government's limited efforts, institutions such as the International Monetary Fund maintains a cau-

tious stance towards the government and refuses to engage in a formal lending program until there is greater transparency in both revenues and expenditures.

### ***Armed Conflict in Cabinda***

The armed conflict in Cabinda, an oil-rich enclave separated from the rest of Angola by the Democratic Republic of the Congo (DRC), is one of the world's longest but least reported conflicts. For more than forty years, Cabindans have been subjected to low intensity guerilla warfare, as factions of the Front for the Liberation of the Cabinda Enclave (FLEC) have fought for independence. The conflict escalated in late 2002 when the government deployed some 30,000 soldiers to Cabinda, which led to an increase in violations of international humanitarian law and human rights abuses against the civilian population by the Angolan Armed Forces (FAA) and to the virtual destruction of FLEC's military forces by mid-2003.

During 2004, the human rights situation improved due to a decrease in military operations, but the FAA continues to commit violations against the civilian population, including killing, arbitrary detention, torture, sexual violence, and the denial of access to agricultural areas, rivers, and hunting grounds through restrictions on civilians' freedom of movement. Human Rights Watch found little evidence of recent abuses against civilians by FLEC factions, probably as the result of FLEC's weakened capacity. The police and judiciary in Cabinda have also violated due process rights guaranteed in Angola's constitution.

### ***Women's Human Rights***

Angolan women and girls are subjected to structural discrimination by law, practice, and custom. Angola has no specific laws for domestic violence or marital rape. Its outdated Penal Code imposes only lenient sanctions for crimes of a sexual nature. Sexual and domestic violence

against women and girls is widespread but few cases are reported to the police and/or prosecuted. Women are reluctant to report cases to the police given their attitude towards domestic and sexual violence, and the judiciary is virtually non-existent in the provinces. Unmarried rape victims in rural areas are often expected to marry the perpetrator as otherwise they might not find a husband. Customary laws, which govern the majority of the Angolan population, are discriminatory on family law issues, including property and inheritance rights.

Lack of respect for Angolan women's human rights is also evidenced in the field of education, politics and the work place. Only 54 percent of women and girls over fifteen years are literate compared to 82 percent of men in the same age group. This gender disparity is compounded in older age groups and in rural areas. Only sixteen percent of parliamentarians and three of the twenty-nine ministers are female. Women are also often paid less than men for the same work and are frequently fired when they become pregnant.

Women and girls (as well as boys) associated with the National Union for the Total Independence of Angola (UNITA) forces were also excluded from the Angolan Demobilization and Reintegration Program until mid-2004, when a pilot project for a limited number of female ex-combatants was implemented.

### ***Return and Resettlement***

Since the end of the war in April 2002, four million internally displaced persons (IDPs) and over 250,000 refugees have resettled in Angola. The majority, however, were resettled in ways that did not fully comply with Angolan, international human rights, and refugee law, as areas of return lacked basic social services and had often not been de-mined. By September 2004, about 190,000 refugees remained outside of Angola, and according to the government, there are still 340,000 IDPs. The government's commitment to voluntary return appeared questionable

following its announcement in September 2004 that remaining IDP centers will be closed by the end of the year. At year's end, the return and reintegration process remained highly problematic.

### ***Freedom of Expression, Association, and Assembly***

In the run-up to the scheduled 2006 elections, the promotion and respect of the rights to freedom of expression, association, and assembly are crucial. In Luanda and other coastal regions, these freedoms are generally more respected than in the provinces. Journalists criticizing the government have been physically abused, threatened, sued, and had defamation campaigns brought against them. Journalists have also been denied access to official information, including data on public expenditure. Opposition activists in the provinces were the target of violence by the police, army, the Civil Defense Organization, and supporters of the government. Angolan police broke up some demonstrations violently but allowed a peace march to go ahead in Cabinda in July 2004. The state-owned media as well as national radio and television stations routinely exclude critical voices from their reports and are tightly controlled by the government. The latter also continue to prevent Rádio Ecclésia, the Catholic broadcasting station, from extending its signal outside of Luanda and place excessive administrative and bureaucratic burdens on civil society, which interfere with their work.

### ***Expulsions of Foreign Migrant Workers***

Since December 2003, the Angolan government has expelled about 60,000 foreign migrants from Angola. The migrants are predominantly from the DRC and work illegally in the diamond mines in the Lundas. In April 2004, FAA soldiers conducted brutal body searches of Congolese migrant workers being expelled. The searches included degrading vaginal and anal searches, beatings, and the looting of their goods. Some who refused searches were raped or arbitrarily detained. The government temporarily suspended the expulsions following wide-

spread criticism, but resumed them in August 2004. Expulsions of Congolese continue in smaller numbers conducted by the police, without the involvement of the FAA. Fewer human rights abuses were reported, but Congolese have been arrested and expelled without being able to collect their family members or personal belongings. Police also reportedly raped five Congolese women in September 2004 before they were expelled.

### ***Key International Actors***

Donor fatigue has resulted in cut-backs to humanitarian assistance in 2004. By October 2004, less than 60 percent of the original U. N. appeal of U.S. \$262 million for humanitarian assistance to Angola had been donated, which negatively affected the resettlement and reintegration of returnees and IDPs. The funding situation is likely to deteriorate as donors may be more reluctant to finance development programs given the high levels of government corruption.

The role of the U.N. is gradually being reduced and by the end of 2005, the government will take over the responsibility for coordinating Angola's development programs from the U.N. Transitional Coordination Unit (TCU) created in July 2004. The TCU is also responsible for coordinating the U.N. agencies and its partners until the end of 2005.



## BURUNDI

Most of Burundi enjoyed relative peace for the first time in a decade during 2004, but the province of Rural Bujumbura just outside the national capital remains a battleground between the rebel National Liberation Forces (FNL) on one side and the combined Burundian Armed Forces and the Forces for the Defense of Democracy (FDD) on the other. The FDD is a former rebel movement that joined the government at the end of 2003. The FNL, drawn largely from the majority Hutu population, remains outside the peace process that has brought together other Hutu-dominated groups, including the FDD, with parties of the Tutsi minority who have dominated political and military life for generations. All forces in the country-wide civil war and those involved in the more recent limited combat outside the capital committed grave violations of international humanitarian and human rights law, killing and raping civilians and pillaging their property.

The Arusha Accords of 2000, the first of several power-sharing arrangements between belligerents, provided for a three year period of transition to be ended with national elections by November 1, 2004. By July 2004, the major parties had failed to agree even on a constitution under which such elections could be held. With strong backing from regional heads of state, Hutu-dominated parties pushed through a constitution in September that was rejected by the leading Tutsi-dominated parties on the grounds that it failed to provide adequate safeguards for their rights and security. But just before the new constitution was to take effect, most of the Tutsi-led parties changed their position and agreed to work within the new constitution, at least until a national referendum could be held, now scheduled for the end of 2004, with elections to take place in early 2005.

In June 2004, a South African-led peace-keeping force, operating under the auspices of the African Union, was replaced by a United Nations peacekeeping force known as the United Nations Operation in Burundi

(ONUB). Reaching its full complement only towards the end of the year, ONUB deployed increasing numbers of troops and observers to Rural Bujumbura but without markedly reducing the number of abuses against civilians.

### ***Civilians Targeted by Combatants***

Government soldiers in collaboration with the FDD fought to extirpate the FNL from the hills surrounding Bujumbura, areas that had formed the FNL base for years. In some cases they engaged FNL combatants but often they also attacked civilian populations thought to support the FNL by paying them party dues or by giving them food and shelter. They also attacked civilians in reprisal for FNL ambushes against government soldiers or FDD combatants. They deliberately killed civilians, raped women and girls, burned houses, and stole property. FNL forces assassinated those known or thought to be working with the government and stole or extorted property from civilians. Combat and abuse by combatants frequently caused civilians to flee and tens of thousands spent more than six months of the year living in camps, temporary lodgings, or in the bush. By late 2004, government and FDD forces were regularly looting civilians immediately after they had received humanitarian assistance like food, blankets, or other household items. The practice had become so widespread that humanitarian agencies were obliged to suspend deliveries of aid in order to avoid further attacks on people who were living in abject misery. The FDD, in the past occasionally allied with the FNL, saw the other movement as a potential rival for votes if a functional electoral system is established and apparently were the force most responsible for abuses against civilians thought to support the FNL

On August 13, 2004, FNL rebels, apparently together with combatants from other groups, massacred more than 150 Congolese refugees at Gatumba camp, near the Congolese border. More than one hundred Burundian army soldiers and dozens of Burundian national police in

nearby barracks failed to respond to repeated calls for help from the civilians, most of them women and children, who were killed by intense gunfire or were burned to death in their tents. As of early November, Burundian military authorities had taken no public action against the officers responsible for this failure to protect civilians under their charge.

### ***Justice***

Despite frequent calls for justice, both national and international actors appear driven more by expediency than real concern for accountability. The late 2003 agreement between the government and the FDD, generally supported by the international community, granted “provisional immunity” to all combatants and leaders of both forces, meaning that justice for their crimes would be at least postponed and probably never delivered. Prosecutors in the military justice system now claim that they cannot prosecute accused soldiers because of this “provisional immunity.”

Hundreds of FDD combatants detained in Burundian jails, including some accused of crimes resulting in deaths, were released in mid-2004 under this provision. In July 2004 prisoners at most Burundian jails went on strike for several weeks, demanding that they too be released either under the terms of this agreement or under another broader arrangement that provided for the release of “political prisoners.” Authorities restored order in the prisons and promised to set up a committee to examine prisoners’ demands, thus postponing a decision on the complicated question.

Under the Arusha Accords, the parties asked the United Nations to provide an international commission to investigate serious crimes committed in Burundi since 1962. The Security Council did not act on this request until April 2004 and then sent a team only to assess the feasibility of such a commission. The conclusions of the assessment team had

not been published by late November, at which time the council seemed more inclined to dispense with further commissions and move directly to supporting prosecution. During these years of delay, Burundian authorities insisted that they wanted an international mechanism to deliver justice but showed no real commitment to delivering justice for these crimes in the national court system.

In 2004, authorities began slowly to implement reforms to the judicial system adopted in 2003 but they have not yet indicted any suspects under a law passed that year against genocide, war crimes and crimes against humanity.

After a spokesman acknowledged FNL responsibility for the Gatumba massacre, the government issued arrest warrants for two FNL leaders but neither has been caught. Faced with the difficulty of prosecuting a complicated as well as a horrendous crime, some Burundians raised the issue of joining the International Criminal Court, a process that had been begun but then stalled in August 2003. Under both domestic and international pressure, the government completed the ratification procedure for membership in the ICC, raising the hope that some such crimes could eventually be punished.

### ***Land and the Return of Refugees***

Nearly eighty thousand largely Hutu refugees returned to Burundi from Tanzania by August 2004, but the flow slowed and even temporarily reversed with uncertainty about instability that might result from the failure to hold elections. Hundreds of Tutsi residents also fled from Burundi to Rwanda in September and October, also fearing violence.

The government faces the problem of finding ways to reconcile the property rights of returnees with the rights of those who currently occupy the land. In similar circumstances ten years ago, the return of an

earlier generation of refugees and ensuing contests over the control of land sparked the tensions that led to the beginning of the civil war.

### ***Key International Actors***

International actors are committed to avoiding a genocide like that which occurred in Rwanda, the neighbor and demographic twin of Burundi, but have been reluctant to commit the necessary resources to promote real peace: the U.N. agreed to a peace-keeping force only in 2004 and still has not agreed to establish a commission to help deliver justice for past serious violations of international law.

South Africa bore most of the cost of the initial African Union peace-keeping force and has also invested substantial political resources in trying to facilitate agreements in Burundi. Its leadership has sometimes meshed poorly with that of other heads of state in the region, but all came together to provide forceful backing for the most recent advance towards a constitution.

Various international actors, particularly the U.N., tried to move the FNL towards negotiations in June and July, but after the Gatumba massacre, they suspended all such efforts. Towards the end of the year, the U.N. and others discretely signaled a willingness to resume talks with the FNL, leaving unclear how they could do so without sacrificing justice for the Gatumba massacre.

The U.N. Human Rights Commission did not renew the mandate of a special rapporteur for Burundi, but human rights personnel attached to the U.N. peacekeeping force became increasingly effective in monitoring abuses.

In late November 2004, Burundi joined international efforts to protect children and ratified two optional protocols to the Convention on the Rights of the Child (formally adopted May 25, 2000), that on the

involvement of children in armed conflict and that on the sale of children, child prostitution and child pornography.

## CÔTE D'IVOIRE

The eighteen-month-ceasefire between the government of Côte d'Ivoire and northern-based rebels and the peace process initiated at the same time were shattered in early November 2004 when Ivorian government aircraft launched bombing raids on the main rebel-held cities of Bouaké and Korhogo. The killing of nine French soldiers in a government air raid on a French base a few days later provoked a deepening of the human rights and diplomatic crisis. The French retaliated by largely destroying Côte d'Ivoire's air force, which in turn sparked a brutal wave of attacks by pro-government militias against French and other civilians in the commercial capital Abidjan and western cacao-growing region. The use of xenophobic hate speech by Ivorian state media during the November crisis incited the pro-government militias to commit serious crimes against foreigners, including rape.

In response to the crisis, the United Nations Security Council passed resolution 1572 which imposed a thirteen-month arms embargo on Côte d'Ivoire and threatened economic and travel sanctions if the parties failed to implement their commitments under the preexisting peace accords. At year's end, the Ivorian government is politically isolated by the international community. However, neither the embargo nor the threat of further sanctions have deterred it from threatening to pursue a military solution to the conflict. The prospect of a renewed government offensive against the rebels raises serious human rights concerns, particularly given the more prominent use of the ill-disciplined militias and the government's use of hate media to incite violence against perceived opponents. The renewed conflict in Côte d'Ivoire threatens to further draw in roving combatants from neighboring countries and jeopardize the precarious stability within the region.

The north and most of the west of the country remain under the control of the rebel forces known as the Forces Nouvelles (FN), while the government retains control of the south. Some four thousand French

troops monitor the ceasefire line. Neither the faltering peace process nor the six thousand-strong United Nations peacekeeping mission, the United Nations Operation in Côte d'Ivoire (UNOCI), established in April 2004, have been able to facilitate respect for human rights.

The 1999-2000 military junta, 2002-2003 internal armed conflict between the government and rebels, and the political unrest that followed have all been characterized by a serious disintegration of the rule of law, often with fatal consequences. The issues at the heart of the Ivorian conflict—the exploitation of ethnicity for political gain, competition over land and natural resources, and corruption—continue unabated. From 1999 serious atrocities have been perpetrated by both sides, including numerous massacres, sexual abuse, and the widespread use of child soldiers. Neither the Ivorian government nor the rebel leadership has taken concrete steps to investigate and hold accountable those most responsible for these crimes. Perpetrators have therefore been emboldened by the current climate of impunity that allows grave abuses to go unpunished.

### ***Impunity of State Security Forces***

State Security Forces continue to act with impunity while the Ivorian government demonstrates little political will to hold accountable perpetrators within the government or security forces.

From March 25-27, 2004, pro-government forces participated in a deadly crackdown against opposition groups who planned to protest the lack of progress in implementing the Linas-Marcoussis Agreement. During the violence, members of the Ivorian security forces, including pro-government militias and Front Populaire Ivoirien party militants responded aggressively by using unnecessary and deadly means that were disproportionate to the supposed threat the march posed. Instead of dispersing demonstrators with non-lethal means as they assembled, the security forces shot at and detained them in their communities as



they prepared to gather, fired upon them as they attempted to flee, and executed many after being detained. During the violence at least 105 civilians were killed, 290 were wounded, and some twenty individuals “disappeared” after being taken into custody by members of the Ivorian security forces and pro-government militias, many on the basis of their nationality, ethnicity, or religion.

From September 2004, security forces have been involved in a number of incidents, including the disappearance of people close to leaders of opposition party Rally of Republicans (Rassemblement de Republicains, RDR), raids by security forces on mosques and market places, and increased racketeering and extortion—particularly of northern Ivorians, supporters or perceived RDR supporters, and West African immigrants. In late September, the Ivorian Army raided several mosques in Yamoussoukro and detained some 250 people, most of whom were West African immigrants. On September 29, Ivorian gendarmes raided a market in the Abidjan suburb of Adjamé, and detained 380 mostly northerners or West Africa immigrants, scores of whom were beaten and forced to pay money for their release. On October 5, a gardener and three security guards were abducted by the Republican Guard from the Abidjan residence of opposition leader Allasane Ouattara. The bruised body of the gardener was found a few days later floating in a lagoon in Abidjan.

### ***Attacks on Journalists and Press Freedom by Pro-government Forces***

National and international journalists have on numerous occasions been threatened and harassed by pro-government forces. In April 2004, Guy-Andre Kieffer, a French-Canadian journalist who wrote about corruption in the cacao industry, disappeared in Abidjan and is believed to be dead. A relative of the president has been charged with complicity in the kidnapping and murder, though no further arrests have been made. French prosecutors, who have opened a separate investigation, have

accused the government of blocking their investigations. The resumption of attacks on rebel-held positions was accompanied by attacks on four private opposition newspapers—*Le Patriote*, *24 Heures*, *Le Nouveau Réveil* and *Le Libéral Nouvea*—which were on November 4 ransacked, looted or burned by hundreds of pro-government militias.

### ***The Use of Hate Speech***

State owned and private pro-government press continue to play a crucial role in exacerbating tensions in Ivorian society not only through unbalanced and sometimes provocative coverage of events, but also by direct incitation of hatred, intolerance and violence against groups perceived to oppose the government. The most dramatic example of this occurred in November 2004 when high-level government officials and militia leaders speaking on state radio and television, disseminated continual messages which incited pro-government militias to attack French civilians. There was at least one instance in which a broadcaster's incitement of an attack included the number plate of a vehicle said to be driven by French nationals.

The government's widespread use of hate speech and incitement of violence against French and other Europeans has provoked concerns about future attacks against the governments more familiar targets: Muslims, northerners and West African immigrants. The use of hate speech provoked widespread condemnation by the international community, including a warning from the United Nations adviser on the prevention of genocide and an obligation under U.N. S.C. resolution 1572 for the peacekeeping mission to strengthen its monitoring role of broadcasts that incite or provide directions for violence. However, the U.N. has not indicated if the peacekeeping mission is prepared to block the hate speech transmissions through technical or other means.

## ***Impunity of Pro-government Militant Groups and Civilian Militias***

Political developments were throughout the year accompanied by acts of harassment, intimidation and violence by the pro-government militant groups and civilian militias. Since 2000, the government has increasingly relied on pro-government militias for both law enforcement and, since 2002, to combat the rebellion. From September 2004, pro-government militia members have reportedly been undergoing military training in Abidjan. Throughout the year members of the political opposition, UNOCI personnel, French soldiers, journalists and foreigners were most often the targets. For example, on March 10, scores of youth from the “Young Patriots,” stormed the Ministry of Justice in Abidjan to protest appointments made by the justice minister, who is also the president of one of the key opposition parties. As deadlines for rebels to begin disarming passed in June and October, hundreds of “Young Patriots” attacked United Nations and French personnel. After a small rebel attack on the town of Gohitafla was repelled by French troops in July, militant youths destroyed tens of UNOCI vehicles in Abidjan and San Pedro. In November, the mobs attacked, looted and burned French and other European owned homes, businesses and schools, provoking a massive evacuation of at least five thousand foreign nationals. French government sources said at least three of its citizens were raped and scores of others wounded during the attacks.

## ***Abuses by the Forces Nouvelles***

Within rebel-held areas – thought to be at least 50 percent of the national territory – there are no legally constituted courts, nor has the rebel leadership established a legitimate judicial authority or shown any political will to try serious crimes in which their commanders or combatants were involved. Within FN-controlled areas there were frequent reports of extortion, looting of civilian property, armed robbery, rape, arbitrary taxation, abduction, extra-judicial execution of suspected gov-

ernment informants, and attacks against United Nations peacekeepers and French soldiers.

The most serious incident occurred on June 20-21, 2004, during clashes between rival rebel factions in the northern city of Korhogo which led to the deaths of some one hundred people, including civilians. According to a fact-finding mission by the UNOCI human rights section, many of those found in three mass graves had been executed or suffocated after being held in a make-shift prison. Many others were tortured and subjected to inhuman and degrading treatment.

### ***Inter-communal Conflict Over Land***

Longstanding tension over access and ownership of land between indigenous Ivorians, some of whom have formed into civilian based militias, and West African immigrant farmers, the majority from Burkina Faso, continues to claim numerous lives during 2004. The tension, exacerbated by political rhetoric during the 2002-2003, has forced thousands from lands they farmed in the west and southwest of the country. In late December 2003 and January 2004, French soldiers found the bodies of thirty five people thought to be mostly West African immigrants in several villages around Bangolo in the west. At around the same time hundreds of people of Burkinabe origin were forced by local militias from the Bete ethnic group to leave their homes around Gagnoa. In March and April 2004, at least twelve people were killed near Gagnoa and elsewhere in the southwestern part of the country. Since June 2004, foreign communities around Guiglo and Duekoue were targeted by an unidentified armed group, resulting in the deaths of at least seven and displacement of thousands. In November communal violence between the Bete and Dioula ethnic groups in Gagnoa resulted in at least five deaths. Reform of the land ownership law was among the package of legal reforms slated for review under the peace accord, however the government has yet to undertake action to end the violence and implement needed reforms.

### ***Key International Actors***

Throughout most of 2004, the impasse in implementation of the January 2003 Linas-Marcousses Agreement and fears that it would lead to a fresh outbreak of violence resulted in a flurry of diplomatic efforts to resolve the crisis by the United Nations, the Economic Community of West African States (ECOWAS), the African Union (AU) and the French government. The Ivorian government's resumption of hostilities in the face of these efforts resulted in widespread condemnation and international isolation. It also provoked a crisis in Franco-Ivorian relations.

In February 2004 the Security Council expanded the mandate of the United Nations mission in Côte d'Ivoire to become a full peacekeeping operation, including the deployment of some six thousand peacekeepers and two hundred military observers. A high level summit in July aimed at jump-starting the peace-process resulted in the signing of the Accra III agreement which committed the government to adopt several key legal reforms by the end of August 2004, including one on citizenship for West African immigrants, one which would define eligibility to contest presidential elections, and another which would change rights to land tenure. The agreement also set October 15, 2004 as the starting date for disarmament. At year's end, none of the key reforms have been passed by the Ivorian government.

Throughout 2004 the U.N., the European Union (E.U.), and the United States made repeated calls to both sides to end human rights abuses, including the incitement of violence through hate speech, and implement the peace accords. The United Nations, including the Secretary-General, Security Council and Office of the United Nations High Commissioner for Human Rights (OHCHR) have taken a proactive role in denouncing and investigating serious international crimes committed in Côte d'Ivoire, and indeed on numerous occasions have called for perpetrators to be held accountable. Since 2000 the OHCHR

dispatched three independent commissions of inquiry into the grave human rights situation in Côte d'Ivoire; the first following the election violence of October 2000; the second following the violent crackdown of an opposition demonstration in March 2004; and the third, following a request by all parties to the Linas-Marcoussis Agreement to investigate all serious violations of human rights and humanitarian law perpetrated in Côte d'Ivoire since September 19, 2002.

## DEMOCRATIC REPUBLIC OF CONGO

After eighteen months in power, the transitional government of the Democratic Republic of Congo (DRC) remains fragile, far from its goals of peace and effective administration of this huge central African nation. Installed after five years of civil war, the uneasy coalition of former belligerents is plagued by mistrust, dissatisfaction among troops not yet fully integrated in a new national army—including an aborted rebellion by some of them, and challenges from armed groups outside the peace process. It also faces continued interference from neighboring countries, in particular Uganda and Rwanda.

In eastern Congo, soldiers of the national army and combatants of armed groups continue to target civilians, killing, raping, and otherwise injuring them, carrying out arbitrary arrests and torture, and destroying or pillaging their property. Tens of thousands of persons have fled their homes, several thousand of them across international borders. After the attempted rebellion and a massacre of Congolese refugees in neighboring Burundi, ethnically-based fear and hatred have risen sharply, emotions that are amplified and manipulated by politicians and some civil society leaders.

An over-stretched United Nations peacekeeping force, the U.N. Organization Mission in Congo (MONUC), contributes little to protecting civilians outside of a few urban areas and itself has come increasingly under attack.

With a weak coalition in Kinshasa, divisions in the army, and growing ethnic tensions in the east, the DRC is ill-prepared to address the complex political and logistical obstacles to elections that are now set for mid-2005. Failure to address these fundamental problems increases the likelihood of more conflict, potentially destabilizing the entire region.

## ***Continuing Violence against Civilians***

During 2004 government soldiers and armed combatants engaged in numerous skirmishes for control over local areas in eastern DRC. In many of these incidents they committed grave violations of international humanitarian and human rights law, particularly in Ituri, North and South Kivu, Maniema, and Northern Katanga. In the northeastern district of Ituri, known for high levels of violence in prior years, MONUC soldiers limit abuses in Bunia, the main town, but fail to curb abuses by armed groups organized on an ethnic basis in the countryside. Further to the northeast, combatants attacked civilians at the village of Gobu in January 2004, killing at least one hundred of them. In September, another fourteen civilians were slain at Lengabo, only a short distance from Bunia. Women and girls suffer systematic sexual violence in many zones of conflict and in the Mongbwalu area, some eighty Hema women accused of being traitors to local communities were summarily executed.

In May and June 2004 dissident soldiers rebelled and captured the South Kivu town of Bukavu from government forces. Members of both forces committed war crimes, killing and raping civilians, some of whom were targeted on an ethnic basis. Thousands of government troops arrived to defeat the rebels, many of whom were Tutsi or Banyamulenge, an ethnic group related to Tutsi. Some of the rebels then fled to Rwanda while others retreated to North Kivu. Following the rebellion, thousands of Banyamulenge civilians and others associated with them in South Kivu feared reprisals and fled to Rwanda or Burundi. Over 150 of those refugees were massacred in mid-August at Gatumba refugee camp just inside the Burundian border. Most of the attackers were Burundian rebels, but some spoke Congolese languages and may have come from DRC.



### ***Increasing Ethnic Hostility***

The Bukavu revolt and the Gatumba massacre sharply increased fear and hatred between Tutsi and Banyamulenge peoples and other ethnic groups in eastern DRC. In some places animosity against Tutsi and Banyamulenge is generalized to all Rwandaphones, people linguistically or culturally linked to Rwanda. After Banyamulenge civilians were killed in Bukavu, some Banyamulenge and Tutsi leaders charged that government soldiers and people of other ethnic groups were committing genocide against them. In June 2004, Rwandan government authorities—many of them Tutsi—threatened to invade Congo to defend Tutsi and Banyamulenge. After the Gatumba massacre, they repeated the threat, backed by Burundian Tutsi military officers. Many Congolese who had suffered under Rwandan occupation from 1996 to 2002 fear another Rwandan attack and charge that Banyamulenge and Congolese Tutsi intend to help the Rwandans, as some of them have done in the past. When Banyamulenge refugees tried to return from Burundi in October, crowds in the town of Uvira stoned them and attacked the MONUC troops protecting them. Political, military, and civil society leaders manipulated tension between ethnic groups, even producing fake documents meant to prove that others planned attacks against them.

Questions of land use and ownership and of citizenship underlie many of the conflicts among ethnic communities in eastern Congo; they are complicated by laws that are poorly written or inconsistently applied. The government is trying to address these issues through the necessary reform legislation.

### ***Illegal Exploitation of Resources***

In 2003 an independent panel of experts established by the U.N. Security Council documented links between the illegal exploitation of resources and conflicts in the DRC but since the publication of its report only Belgium has launched investigations into possible breaches

of international business norms by corporations registered in its territory. The DRC government, committed to reviewing unfavorable contracts signed during the five years of war, has made little progress in doing so. Local organizations as well as international observers report growing corruption and fraud by officials.

Meanwhile leaders of armed groups in the DRC continue to profit from the illegal exploitation of resources and to fight for control of lucrative border posts or strategic mining areas. In 2004 such groups fought for access to resources like gold, cassiterite, and cobalt in North Kivu, South Kivu, Ituri and parts of Katanga. In July the Security Council renewed an arms embargo on eastern Congo and the mandate of a panel investigating its enforcement, but it limited the scope and hence the effectiveness of the investigations by not authorizing inquiry into the financing of weapons purchases.

### ***Civil and Political Rights***

Local and national officials continue to harass, arbitrarily arrest, or beat journalists, civil society activists, and ordinary citizens. Combatants of armed groups, including those officially integrated into the national army, continue to prey upon civilian populations, collecting illegal “taxes” and extorting money through illegal detention or torture.

### ***Making Justice Work***

The pervasive culture of impunity is one of the greatest obstacles to lasting peace as well as to ensuring civil and political rights in the DRC. Despite national and international proclamations about the importance of accountability for past crimes, numerous persons suspected of violations of international human rights and humanitarian law continue to occupy posts of national or local responsibility, including key positions in the newly integrated army. Integrating abusive commanders into a

new army may buy their compliance with the transitional process in the short term, but only prepares the way for future instability.

Delivering justice in the DRC will require enormous human and material resources. The European Union, assisted by MONUC, has supported a pilot program for rebuilding justice in Ituri that offers the potential for replication elsewhere. After the Lengabo killings mentioned above, MONUC also helped arrest dozens of suspects. At the invitation of the DRC government, the prosecutor of the International Criminal Court (ICC) has begun investigating war crimes and crimes against humanity, an effort that may eventually bring some major perpetrators to justice. But no progress has been made on finding mechanisms to deliver justice for the massive crimes committed before July 2002 when the jurisdiction of the ICC begins. Several women's groups are seeking ways to encourage the prosecution of sexual violence, committed so widely in the DRC.

### ***Key International Actors***

In October 2004, the Security Council increased MONUC troops to 16,700 and strengthened its Chapter VII mandate to protect civilians. Although the increase fell far short of the 23,900 troops requested by the U.N. Secretary General, it will give MONUC improved capacity to deal with recurrent threats to civilians. There have been allegations of sexual violence and exploitation of women and girls by MONUC forces themselves. Although the U.N. has announced a zero-tolerance policy with regard to sexual exploitation by members of peacekeeping forces, to date there have been no criminal charges brought against any peacekeepers. An internal U.N. investigation has been initiated to look into the allegations.

Although Rwanda supposedly withdrew its military forces from DRC in 2002, U.N. sources reported the presence of Rwandan troops in DRC in 2004. In addition, U.N. experts concluded that Rwanda supported

the Bukavu revolt against the transitional government. Meanwhile Ugandan President Museveni attempted to put pressure on the ICC prosecutor not to investigate crimes by leaders of armed groups supported by Uganda.

The U.K., South Africa, Belgium and the European Union intervened at critical moments in 2004 to prevent breakdowns in the transitional process. The U.K. also twice dissuaded Rwanda from increased interference in the DRC by suspending or threatening to suspend aid. In at least one case South Africa also brought pressure to bear successfully on Rwanda to create no obstacles to the transition.

## ERITREA

Plagued by famine and heightened tensions with Ethiopia over their joint border, Eritrea has remained a highly repressive state in which dissent is suppressed and nongovernmental political, civic, social, and minority religious institutions are largely forbidden to function.

### ***Suppression of Political Dissent and Opinion – Arbitrary Arrest and Illegal Detention***

Eritrea is a one-party state. No political party other than the People's Front for Democracy and Justice (PFDJ) is allowed to exist. No group larger than seven is allowed to assemble without government approval. No national elections have been held since Eritrea won its independence from Ethiopia in 1993. Elections were canceled in 1997 because of a border war with Ethiopia. They were canceled again in 2001, two years after the war ended. They remain unscheduled. Regional non-partisan assembly elections were held in 2004 but the offices involved have little power.

The government has refused to implement the 1997 constitution, drafted by a constitutional assembly and ratified by referendum, that respects civil and political rights. The constitution contains restraints on the arbitrary use of power. It provides for writs of habeas corpus, the rights of prisoners to have the validity of their detention decided by a court, and fair and public trials. The constitution protects freedom of the press, speech, and peaceful assembly. It authorizes the right to form political organizations. It allows every Eritrean to practice any religion.

Many individuals arrested in 2001 and many of those arrested since are held incommunicado in secret detention sites. In September 18, 2001, the government arrested eleven leaders of the PFDJ after release of a letter they sent to President Issayas Afewerki, criticizing his leadership and asking for democratic reform, including implementation of the

1997 constitution. At the same time, the government arrested publishers, editors, and reporters and closed all nongovernmental newspapers and magazines. In the years since, the government has arrested scores of Eritreans because of their ties to the dissidents, their perceived political views, or their deviation from government dogma.

Although President Issayas has called the detainees traitors and spies, the government has been unwilling to bring them to trial or to accord them any semblance of due process. Under the Eritrean penal code, detainees should not be held for over thirty days without charges. In late 2003, the African Commission held Eritrea to be in violation of Articles 2, 6, 7(1), and 9(2) of the African Charter on Human and Peoples' Rights and urged the immediate release of the eleven political leaders arrested in 2001.

Arbitrary arrests and prolonged imprisonment without trial have not been limited to political leaders and the press. The government detains about 350 refugees who fled Eritrea but were involuntarily repatriated in 2002 (from Malta) and in 2004 (from Libya). They are held incommunicado in detention centers on the Red Sea coast and in the Dahlak islands. Faced with the grim prospect of incommunicado detention and torture, a planeload of 75 Eritreans being forcibly returned to Eritrea from Libya commandeered their Libyan transport and forced it to land in Sudan.

Since the closing of the private press in 2001, the government has maintained a monopoly on access to information. In 2003, the government posted guards to prohibit access to two information centers operated by the United Nations Mission to Ethiopia and Eritrea (UNMEE). It then asked UNMEE to close both centers on the grounds that they were unnecessary and that some of their materials were not suitable for young children. In 2004 the government expelled the British Broadcasting Corporation correspondent, the sole resident foreign journalist.

In 2004, as part of its campaign to isolate its citizens and to prevent the flow of information, the government placed all Internet cafes under government supervision, thereby controlling access. The government claimed that it was acting to protect Internet users and to prevent access to “pornographic” sites. The government also imposed travel restrictions on foreign diplomats, requiring government approval for travel outside Asmara. It prevented UNMEE from using the most accessible route to service its observers and troops in central and western Eritrea along the border with Ethiopia, a road that passes through urban centers and could bring Eritreans into contact with the outside world.

### ***Suppression of Minority Religions***

Members of Pentecostal Christian churches have been arrested for possession of bibles or for communal worship. The government closed all religious institutions in May 2002 except for those affiliated with the Eritrean Orthodox, Roman Catholic, and Eritrean Evangelical (Lutheran) churches and Moslem mosques. At the end of 2004, there were reliable reports that over 300 members of unrecognized churches were incarcerated. Many of those arrested were beaten or otherwise tortured during their arrest or while in captivity. Jehovah’s Witnesses have been especially mistreated. Some have been detained for a decade for refusing to participate in national service even though the official penalty is incarceration for no more than three years. In September 2004, the United States designated Eritrea as a country of “particular concern” for its intolerance and mistreatment of adherents of minority religions. The Eritrean government defended its practices on the ground that the unrecognized churches had failed to register, but the United States State Department report noted that some of the religious groups had applied for registration in 2002 and that the government had issued *no* registration permits since the registration regime was imposed.

### ***Compulsory Military Service***

All Eritreans between the ages of eighteen and forty-five must perform two years of compulsory national service. In practice, however, the time for service is repeatedly prolonged. There are frequent sweeps to round up evaders. During a massive roundup in November 2004, security forces shot into hundreds of detainees being held in an overcrowded military prison camp (Adi Abeito) near Asmara, killing as many as twenty and injuring dozens more, after some detainees managed to collapse part of the compound wall. The government often uses national service as retribution for perceived criticism of government policies. Those accused of evading service are frequently tortured.

### ***Prison Conditions and Torture***

Due to the volume of arrests, prisoners are often held in improvised cargo containers. At Aderser, near Sawa, prisoners are held in underground cells. At least six high school students were also reported incarcerated in solitary confinement in underground cells at Sawa in 2003. In addition to psychological abuse, escapees report the use of physical torture at some prisons. Prisoners have been suspended from trees, arms tied behind their backs, a technique known as *almaz* (diamond). Prisoners have also been placed face down, hands tied to feet, a torture known as the “helicopter.” Prison visits by international human rights organizations are prohibited.

### ***Relations with Ethiopia***

The 1998-2000 war with Ethiopia ended with an armistice agreement by which Eritrea and Ethiopia agreed to binding arbitration of their border. In 2003, Ethiopia announced that it rejected the decision of the independent boundary commission, largely because it awarded the village of Badme, the flashpoint for the war, to Eritrea. (*See Ethiopia*). The Eritrean government uses the possibility of renewed conflict as a



justification for postponing elections and for prolonging national service. Eritrea has increasingly lashed out against the international community for not compelling Ethiopia to implement the border commission decision. Throughout 2004, it adamantly refused to meet with the special envoy appointed by the U.N. Secretary General to attempt to resolve the border impasse.

### ***Key International Actors***

UNMEE maintains just under four thousand troops along the twenty-five-kilometer-wide armistice buffer line between the two countries. In September 2004 the Security Council voted to extend UNMEE's mandate through March 2005.

The international community's assistance consists of food and other humanitarian assistance. Because of Eritrea's woeful human rights record, it receives little in other types of assistance. The European Union (E.U.) announced in 2003 that it would provide Eritrea an unstated sum under the European Initiative for Democracy and Human Rights, in addition to a \$96 million five-year aid package (until 2007) for social and economic development. The E.U. said that its assistance would depend on the government's willingness to improve civil liberties.

The United States has withheld non-humanitarian assistance, largely because Eritrea has refused to release two American Embassy local employees arrested in 2001. (After three years, no charges have been filed against them.) While the official U.S. position is one of keeping its distance, U.S. defense department officials, including the secretary of defense, frequently praise the Eritrean government for its support in fighting terrorism.

## ETHIOPIA

The Ethiopian government continues to deny many of its citizens' basic human rights. Police and security forces have harassed, illegally detained, tortured, and in some cases, killed members of the political opposition, demonstrators and suspected insurgents. The government has also continued its efforts to muzzle the private press through the use of criminal sanctions and other forms of intimidation.

Ethiopia is affected by chronic food security problems, but the government's attempts to address the issue through a massive resettlement program appear to be courting humanitarian disaster in some areas.

### ***Police Brutality, Torture, and Illegal Detention***

Police forces often use excessive force to quell peaceful demonstrations, with demonstrators subject to mass arrest and mistreatment. In January 2004, between 330 and 350 Addis Ababa University students peacefully protesting the arrest of eight other students two days earlier were themselves arrested by Federal Police. While in detention, the students were forced to run and crawl barefoot over sharp gravel for several hours at a time. Police have repeatedly employed similar methods of torture and yet are rarely held accountable for their excesses. Police also responded with force in the early months of 2004 to student demonstrations in secondary schools throughout Oromia. The Ethiopian Human Rights Council (EHRCO) reported that dozens of students were detained, some of whom reported being mistreated while in custody. One student was reportedly shot and killed by police during a student demonstration in Tikur Inchini.

In August 2004, several dozen individuals were arrested in and around the town of Agaro in Oromia and imprisoned for allegedly supporting the outlawed Oromo Liberation Front (OLF). Some prisoners reported mistreatment while in custody and police reportedly threatened family

members wishing to visit detained relatives. As of October 2004, the prisoners remained in detention even though none had been charged with any crime.

In July 2004, the Ethiopian government revoked the license of the venerable Oromo self-help association Mecha Tulema for allegedly carrying out “political activities” in violation of its charter. The police subsequently arrested four of the organization’s leaders on charges of “terrorism” and providing support to the OLF. The four were released on bail in August but were arbitrarily arrested a week later.

### ***Repression of Opposition Political Parties***

Ethiopia will hold national legislative elections in May 2005, and the continuing intolerance of dissent on the part of many officials raises serious concerns as to whether opposition candidates will be able to contest that poll in an environment free of fear. The last national elections in 2000, and local elections held in most of the country in 2001, were marred by serious irregularities including violence directed against opposition supporters and candidates in the most closely contested constituencies. Much of that abuse was orchestrated by provincial officials belonging to parties allied with the ruling coalition. EHRCO observers monitoring local elections held in Somali state in January 2004 reported widespread instances of intimidation, harassment, and arrest of opposition candidates.

### ***Abuses Committed by the Ethiopian Armed Forces***

The Ethiopian military has committed human rights abuses against civilians. In Gambella state, armed attacks directed against the Anuak community claimed up to 424 lives in the last weeks of 2003 and beginning of 2004, with at least some soldiers and policemen participating in the violence. The immediate trigger for the violence was a series of attacks by Anuak insurgents against civilians of other ethnic groups in

the area. A government-appointed Commission of Inquiry largely absolved the military of any blame, but serious doubts have been raised about the thoroughness of that commission's work and the credibility of its findings. Many eyewitnesses allege that military involvement in the violence was widespread and apparently well-coordinated, and reports continue to emerge of attacks carried out by the military against Anuak in the countryside. The violence has left some 50,000 people displaced within Gambella state and led several thousand Anuaks to flee to refugee camps near Pochalla, Sudan.

Occasional skirmishes between security forces and armed insurrectionary bands continue in other parts of the country. Security forces frequently arrest civilians, claiming they are members of the OLF in Oromia state or the Ogaden National Liberation Front (ONLF) and Al-Itihad Al-Islamiya in Somali state. Few of those arrested are brought to trial. Some are released; others are kept in arbitrary detention for prolonged periods, often without a hearing or cause shown, sometimes incommunicado. Frequent reports of extrajudicial executions and torture emerge from Somali region, but access to the region has been restricted by the military to such a degree that these reports are impossible to confirm.

### ***Restrictions on the Press***

Ethiopia's last imprisoned journalist, Tewodros Kassa, was freed from prison in September 2004 after serving a two-year sentence for allegedly defaming a dead businessman and inciting "political violence." However, many independent journalists, editors, and publishers continue to endure harassment and intimidation, and criminal penalties for a range of speech-related offenses remain on the books.

Serious concerns remain over the government's efforts to introduce a controversial new press law. The government has agreed to reconsider some of the more worrying provisions of the law, such as criminal sanc-

tions for offenses by journalists and the creation of a state-run press council, but it remains to be seen whether any substantive changes will be made. Ethiopia's only independent journalists' organization, the Ethiopia Free Press Journalists Association (EFJA), was shut down shortly after publicly opposing the draft law in late 2003, ostensibly for failure to submit required annual audits. The EFJA's leadership was then purged and replaced at a meeting organized by government officials. Many of the EFJA's members continue to contest the legitimacy of the government's actions.

### ***Food Security***

Ethiopia has a chronic food insecurity problem, and in recent years failed rains have left millions of people in need of food aid. In an effort to find a long-term solution to these problems, the Ethiopian government has launched a U.S. \$3.2 billion plan aimed at ending the country's dependence on foreign aid over the next several years. A key component of that program is the planned resettlement of 2.2 million people from drought-prone areas to relatively fertile and underpopulated land. However, appalling logistical failures have left many of the 350,000 who have already moved without access to clean water, health care, shelter, education, or even food. Many resettled populations suffer from unacceptably high levels of morbidity, malnutrition, and child mortality. These problems may worsen as the pace of resettlement accelerates in the next 2-3 years. Many settlers have been induced to migrate to the new sites by false promises of schools, clinics, wells, food aid, and new houses.

### ***Judicial Delay***

Thirteen years after the overthrow of the former military government (the Derg), several thousand of its former officials remain jailed without trial, charged with genocide, crimes against humanity, and major felonies. Of those who have been tried, many have been acquitted, some

after more than a decade of imprisonment. The loss of evidence over the years has resulted in some acquittals, but such losses may also make presenting an effective defense more difficult. Former dictator Mengistu Haile Mariam, on trial in absentia, remains a guest of the Mugabe government in Zimbabwe, with little chance of being held accountable for his abuses so long as he remains there.

### ***Tensions with Eritrea***

While the governments of both Ethiopia and Eritrea insist that they are committed to a peaceful resolution of their ongoing border dispute, the situation remains at an impasse. In August 2004, the Boundary Commission charged with demarcating the border reported that it was impossible for it to make any progress under the present circumstances. That commission's 2002 decision was rejected by Ethiopia in 2003 when it became clear that the contested village of Badme, where the war started, would fall on the Eritrean side. Eritrea has refused to negotiate, insisting that Ethiopia is bound by the commission's decision, while Ethiopia refused to consider any solution that requires it to surrender control of Badme. In December 2004, Prime Minister Meles Zenawi softened his previous position by announcing acceptance of the Commission's decision "in principle" and calling for a "dialogue" over its implementation.

### ***Human Rights Commissioner and Ombudsman***

After years of delay, the Ethiopian government appointed Dr. Kasa Gebre Hiwot and Abay Tekle Beyene to fill the constitutionally-mandated posts of head of the Human Rights Commission and Ombudsman, respectively. Many opposition MPs opposed both appointments, complaining that they were forced through without meaningful debate or consultation. It remains to be seen whether the government will provide these institutions with the capacity to do their work effectively and respect their independence.

***Key International Actors***

Ethiopia is considered an essential partner of the U.S. in its “war on terrorism” and Washington has generally been unwilling to apply meaningful pressure on the Ethiopian government over its human rights record. The U.S. suspects Islamic extremist groups are hiding in bordering areas of Somalia, and sometimes inside Ethiopia itself. In 2003, the U.S. military, operating out of its base in Djibouti, trained an Ethiopian army division in counter-terrorism. The United States is also the largest donor of bilateral aid in Ethiopia.

The United Nations Mission in Ethiopia and Eritrea (UNMEE) maintains just under 4,000 troops along the twenty-five kilometer-wide armistice buffer line between the two countries. In September 2004 the Security Council voted to extend UNMEE’s mandate through March 2005.

## KENYA

Only two years after the election of the National Rainbow Coalition Party (NARC), after twenty-four years of autocratic rule by President Moi, the public euphoria that greeted its entry into power has begun to wane. The record of the Mwai Kibaki government has been a source of both hope and disappointment.

The current human rights situation in Kenya is one of few serious abuses. However, the potential is growing for serious problems in the future as much of the repressive state machinery from the Moi era remains intact. And while this government has made some commendable steps to address human rights concerns, it has demonstrated insufficient willingness to commit to any institutional changes that would fundamentally limit the extensive presidential and executive powers it inherited.

Change at the highest levels of power is not being institutionalized, and high-ranking Kibaki officials are not being held to account for abuses in the same way as former Moi government officials. The government's commitment to the rule of law is increasingly coming under question, amid a backdrop of internal power-brokering and unpunished corruption scandals within the ruling party. Since the election, the political divisions among NARC coalition members have deepened along ethnic lines. Increased political jockeying is rapidly emerging as factions seek to entrench power before the next election in 2007.

### ***Signs of Hope***

Commendable and promising steps have been taken to address human rights issues. The government appointed to high office several well known rights activists. Officials enforced universal free primary education. A more independent government National Human Rights Commission staffed with qualified persons was sworn in.



A major reform program was initiated for the judiciary, police and prison services. Public pressure forced out former High Court Chief Justice Bernard Chunga, accused of complicity in torture and cruel, inhuman, and degrading treatment of suspected members of *Mwakenya*, a clandestine political movement in the 1980s. A massive shake-up of the judiciary followed an internal report that accused twenty-three judges of corruption. While the removal of corrupt and politically compliant judges was a welcome step, the process attracted criticism for the lack of due process. The process commenced with a committee of inquiry which did not always take affidavits from accusers, arrived at its findings without seeking a response from the accused judges, and its findings were widely publicized in the newspapers before consideration by the appointing authority. In some cases, there has been no fixed charge, but a process of new allegations introduced serially as the inquiry has proceeded so that the affected party does not know what new allegation he/she may face as the hearing progresses. The expulsion of judges considered—but not yet found—guilty of corruption, ineptitude or improper conduct amounts to a denial of due process. The new judges have been appointed as acting judges and are serving without tenure until they are formally appointed.

The freedom of the press and electronic media flourished and there has been a real expansion of FM radio. This resulted in an increase in public participation and critical commentary of government actions. However, the government's response to its own policy has not always been welcoming. It has threatened curbs and failed to dismantle some of the restrictive statutory amendments of the Moi years. Thus, an exorbitant security of one million shillings [U.S.\$12,500] for new publications still remains; Information Minister Raphael Tuju appointed an extra-legal committee of "inquiry" in a radio station's operations in displeasure at their commentaries; and the old Media Bill of the Moi regime passed in 2002 remains a threat to press freedom.

With strong calls for accountability for past abuses, President Kibaki mandated three transitional justice initiatives to address human rights abuses, economic crimes (corruption), and the widespread illegal expropriation of public lands. The government created a task force to examine whether a truth and reconciliation commission should be established, although it has since ignored the recommendation of the task force to create such a commission. In closely-followed public hearings, the Goldenberg Commission of Inquiry began to unearth evidence about the Goldenberg scandal, viewed as the single worst case of corruption during the Moi era, implicating President Moi and others. President Kibaki also set up a Land Commission to provide him with a report on “land grabbing” by former government officials. That report was handed to the president in June 2004 with detailed recommendations. It remains to be seen whether these initiatives will lead to any prosecutions or reparations.

### ***Disappointments and Concerns***

The broadening of human rights space in Kenya since the 2002 election is a most welcome development, but important human rights concerns remain. The repressive state machinery that permitted the misrule that characterized the Moi era remains in place. The fact that this institutional framework is being retained and can be used by the Kibaki government remains a continuing danger to sustainable human rights in Kenya.

Additionally, the government’s reform efforts to address the ills of the past are not always being undertaken with care for due process and rights protections. In some cases, the approach and justification of the Kibaki government has been that good intentions can allow it to forego safeguards in the process of redressing past wrongs.

## ***Constitutional Reform***

The NARC government came to power on a campaign promise that it would make the new constitution a cornerstone of its rule. The draft constitution has become a symbol of the hopes and aspirations of Kenyans for a participatory democracy. It contains a strong non-derogable bill of rights, separation and devolution of powers, and a weaker presidency through the creation of a prime minister position. Although a product of consensus and political compromise, it is the most widely consultative rights document that Kenya has ever seen and contains better human rights guarantees than the current constitution. Its passage would be a good first step towards a devolution of executive power and the creation of an institutional framework for the protection of rights through an enlarged and enforceable Bill of Rights.

Twice the government has publicly announced deadlines by which the constitution would be passed; both times it has failed to deliver. On July 3, 2004, peaceful protests in support of the constitution in Nairobi were met with police using water cannons and tear gas, and during demonstrations in Kisumu on July 7, live ammunition was fired by police killing one person and injuring several demonstrators.

Political wrangling among ruling NARC members has scuttled the likelihood that this draft constitution will be passed in its current form, if at all. The split is between NARC's two predominant coalition partners: the National Alliance of Kenya (NAK) headed by President Kibaki, and the Liberal Democratic Party (LDP) headed by Raila Odinga. LDP members complain that they have been marginalized and are pushing for Odinga to be appointed prime minister following the passage of the draft constitution. Appearing unwilling to devolve power from the presidency—and particularly not to a member of the Luo tribe—the NAK faction are blocking passage of the constitution.

The thwarting of the constitutional review process signals an apparent unwillingness to allow an institutional framework that would devolve or share power, in particular with other ethnic groups in the country. This has had an immediate and adverse impact on the issue of the executive devolution of power and accountability, the rebuilding of independent state institutions, and the passage of a strong Bill of Rights.

Also, there is growing impunity for actions by those in the inner-circle of government. Since the new government came to power, there have been several instances of government ministers publicly expressing their intention to disregard court injunctions; property expropriated by executive order, and reluctance to prosecute violations by the president's supporters. As corruption scandals or other excesses by current government officials come to light, the government has been unwilling to dismiss, investigate or prosecute its members the same way that it is dealing with former government officials.

### ***Key International Actors***

One of the most significant developments came in late 2003 when numerous international donors officially resumed aid to Kenya. These renewed pledges indicated widespread support for the Kibaki government's economic and political reforms.

Donor aid to Kenya had previously been suspended because of rampant corruption, abuses, and economic mismanagement under President Moi. The International Monetary Fund (IMF) suspended lending in December 2000 and shortly thereafter the World Bank followed suit. In 2003, the European Union was the first to announce that it would resume aid, pledging 50 million euros in budget support and 225 million euros for development projects. Days later, the IMF announced that it would also resume dealings with Kenya, approving a U.S.\$252.8 million loan, of which roughly U.S. \$36 million will be available immediately. Then, in the last week of November, a group of donors—

including the World Bank, the European Union, the African Development Bank, the United States and the United Kingdom—announced pledges totaling U.S. \$4.1 billion for 2004-2006, the greatest portion of which would be available in 2004. Unlike the majority of aid, to support infrastructure and development projects, the U.S. aid (approximately U.S. \$78 million) was earmarked for its “Draining the Swamps that Feed Terrorism” program, to focus specifically on good governance and security initiatives designed to curb corruption and terrorist threats.

Many donor pledges still have not been delivered in full due largely to their concerns about the stalling of constitutional reform, the political in-fighting in NARC, and corruption scandals in the new government.

## LIBERIA

The peace agreement signed between the Liberian government and two rebel groups in August 2003 ended more than three years of internal armed conflict and provided for a transitional government, largely made up of members of the three former warring parties, to guide Liberia to elections in 2005. In 2004, the deployment of some fifteen thousand United Nations peacekeepers and one thousand civilian police, and the disarmament of more than ninety thousand combatants contributed to a marked decrease in abuses against civilians and attacks against human rights defenders. However, the human rights situation remains precarious as a result of frequent criminal acts by ex-combatants in the face of inadequate police and civil authorities; striking deficiencies within the national judicial system; infighting and allegations of corruption within the transitional government; serious shortfalls in financing the program to reintegrate and train demobilized combatants; and continued regional instability, most notably in neighboring Côte d'Ivoire and Guinea.

There has been little discussion on how to ensure accountability for past human rights abuses. The selection of commissioners for the truth and reconciliation commission mandated by the 2003 peace agreement, lacked transparency. The Nigerian government, which offered former president Charles Taylor a safe haven in August 2003 when rebels threatened to take the capital Monrovia, has refused to hand him over to the Special Court for Sierra Leone, which indicted him for war crimes connected with his support for rebels in Sierra Leone. Meanwhile, several of Taylor's close associates have been implicated in plans to attack neighboring Guinea, which once served as a haven for the rebels which led to his removal from power.

### ***Ongoing Insecurity and Related Abuses***

Protection of the civilian population remains an urgent priority, particularly given serious institutional deficiencies within the national police

force and judicial system. By the end of 2004, peacekeepers from the United Nations Mission in Liberia (UNMIL) were deployed in all major towns and along most highways. Prior to this deployment and the disarming of ex-combatants there were frequent reports of harassment of civilians, forced labor in rubber and diamond producing areas, extortion at market places, looting of foodstuffs intended for aid distribution, assaults against aid workers, illegal checkpoints, and looting. Civilians living in rural areas beyond the reach of UNMIL peacekeepers remain particularly vulnerable to attacks by demobilized combatants from all former factions. Women and girls living within camps for the internally displaced remain vulnerable to sexual violence and exploitation, primarily by other camp residents.

### ***Disarmament, Demobilization and Reintegration of Former Combatants***

During 2004, over ninety thousand combatants including some 12,600 women and six thousand children were disarmed and demobilized. However, concern was raised about the quantity of arms turned in—only one rifle, rocket launcher, pistol or mortar round for every three fighters on average—and because combatants were reluctant to surrender heavy weapons. A key challenge for Liberia is the degree to which disarmed combatants can be successfully reintegrated and trained. This is jeopardized by significant shortfalls in funding to support promised education or skills training programs. The dearth of programs, particularly in the capital Monrovia where the majority of ex-combatants have concentrated, makes them vulnerable for re-recruitment; since at least June 2004, commanders claiming to represent a fledgling Guinean insurgency and others claiming to support Guinean President Lansana Conte have engaged in the recruitment of ex-combatants, including children. In December 2003, the U.N. Security Council voted to reapply the arms embargo and a travel ban on individuals involved in previous attempts to destabilize the region.

## ***Re-establishing the Rule of Law***

Decades of corruption and mismanagement, and fourteen years of war led to the near collapse of most state institutions, including the judicial system. Over the next several years the international community must devote significant resources to create a functioning police force, and professional and independent judiciary. An ambitious rule of law strategy consisting of four components: police, judicial, corrections, and human rights, has been integrated into UNMIL. Developing all four components of the program simultaneously is essential to promoting the rule of law.

Under former president Taylor the Liberian Police was an arm of repression and exploitation. Over the next two years, the 1090 strong civilian police component of UNMIL will train a force of some 3,500 police officers, 1,800 of whom are to be functional in time of the projected October 2005 elections. UNMIL has undertaken to thoroughly vet and screen any previous human rights abusers from the new force. The new Liberian Police Service must be free of political influence, balanced along gender and tribal lines, and adequately trained in human rights standards.

Court personnel including magistrates, lawyers and judges have for decades been subject to poor conditions of service including low salaries. Their judicial independence has been compromised by political interference and corruption. Numerous courtrooms were looted and destroyed during the war and at present the judicial system lacks basic resources and personnel. There are very few detention facilities and prisons. Funding to rehabilitate court and prison infrastructure, and adequately train and remunerate court staff, including public defenders, prosecutors and judges, is urgently needed and should be a priority for the international community.



### ***Accountability for Past Abuses***

Civil society has expressed interest in having those most responsible for atrocities during Liberia's fourteen year internal conflict held accountable for their crimes. However they maintain that the disarmament process must first be completed and a greater modicum of security established before any such process is initiated. Meanwhile, the chairman of the National Transitional Government of Liberia (NTGL) and several ministers and high-level functionaries, themselves former commanders within a warring faction, have expressed opposition to trying war criminals. Through inclusion of an amnesty in the 2003 peace agreement was avoided, article XXXIV of the accord commits the government to "give consideration to a recommendation for general amnesty" at an unspecified date. The international community should continue to pressure the Liberian parliament to desist from passing an amnesty, and must begin to explore ways for those most responsible for war crimes and other serious violations of international law to be brought to justice. In preparation, local and international human rights groups should continue the process of investigating and documenting atrocities committed since 1989.

### ***Truth and Reconciliation Commission***

A truth and reconciliation commission was mandated by the 2003 peace agreement and in January 2004, eight Liberians were appointed as commissioners by NTGL Chairman Bryant. However, the commissioners lack the relevant experience, and among them is one of Bryant's close family members. The selection process lacked transparency and there was insufficient consultation with civil society. After significant input from the UNMIL human rights section and local and international human rights organizations, an act which called for the reconstitution of the commission to include the appointment of international and national commissioners was drafted and is under consideration by NTGL members. The selection process for commissioners will require signifi-

cant input and monitoring by local and international human rights organizations.

### ***Corruption***

Successive Liberian administrations have been characterized by widespread nepotism and corruption. President Taylor siphoned off public funds, largely derived from the exploitation of local timber, diamonds and iron ore. Consistent allegations of corruption by members of the NTGL, including numerous scandals about lavish spending and the awarding of contracts have been made. Two commissions envisioned to stem corruption—the Governance Reform Commission and the Contract and Monopolies Commission —were set up under the 2003 peace agreement, but have yet to adequately address the allegations. The U.N. Security Council should refuse to lift sanctions on the sale of diamonds and timber, imposed respectively in 2001 and 2003, until the new government is able to assert effective and transparent control over these revenue sources.

### ***Key International Actors***

International Actors, notably the United Nations and Economic Community of West African States (ECOWAS) were committed to bringing Liberia's recent conflict to an end and filling the security vacuum left after former President Taylor departed into exile in August 2004. They have yet to address the issue of justice for atrocities committed during Liberia's fourteen year internal conflict and refused to call on Nigeria to surrender former president Taylor to the SCSL, despite concerns that he might destabilize Liberia and the region.

ECOWAS took the lead on resolving internal disputes within the NTGL, but did little to pressure the warring parties to desist from committing abuses against civilians and address concerns about corruption. ECOWAS members actively lobbied members of the Liberian par-

liament to vote against a resolution calling on Nigeria to surrender Taylor to the SCSL. The United States' refusal to commit ground troops during the rebel assault on Monrovia in 2003 provoked disappointment. However, the U.S. Congress committed U.S. \$200 million in humanitarian assistance to Liberia and approved US \$240 million for U.N. peacekeeping in Liberia. The U.S. took the lead on the restructuring of the Liberian Army, which is estimated to be ongoing through 2005 and include a comprehensive vetting component to screen out notorious human rights abusers. While U.S. \$ 520 million was in January 2004 pledged to reconstruct Liberia, donating nations had by years' end only delivered U.S. \$244 million of this amount.

## NIGERIA

The persistent failure of the Nigerian government to prosecute the perpetrators of serious human rights violations has contributed to a devastating cycle of inter-communal conflict. The violence is exacerbated by the inadequate protection of civilians by the security forces. In 2004, violence between Christians and Muslims in Plateau state and the city of Kano, claimed hundreds of lives and led President Obasanjo to impose a state of emergency in Plateau in May. Ongoing conflict over control of oil wealth in the Niger delta remains a cause of serious violence. However, the willingness of the federal government to use dialogue to respond to problems in the Niger delta and Plateau state, may signal a softening of the heavy handed approach of the past.

Tackling impunity remains a key challenge for the government. No-one has yet been brought to justice for the massacre of hundreds of people by the military in Odi, Bayelsa state, in 1999, and in Benue state, in 2001. The police continue to commit numerous extra-judicial killings, acts of torture and arbitrary arrests. Several opponents or critics of the government have been arrested, harassed, and intimidated. Scores of people were killed in violence related to the local government elections in March. Shari'a (Islamic law) courts in the north continue to hand down death sentences; however, such sentences have not been implemented since early 2002. While the federal government has made some efforts to tackle corruption, it remains pervasive within both the public and private sectors, leading directly to violations of social and economic rights; the political elite continued to amass wealth at the expense of the vast majority of Nigerians who live in extreme poverty.

### ***Inter-communal Violence***

Inter-communal violence remains the most serious human rights concern in Nigeria. Since the end of military rule in 1999, fighting in several regions of the country has claimed thousands of lives. Plateau state

in central Nigeria has been particularly affected, and the first half of 2004 saw an escalation of violence around the southern part of the state. This culminated in a large scale attack by Christians on the town of Yelwa in May. Around seven hundred people were killed and tens of thousands displaced. One week later, Muslims in the northern city of Kano took revenge for the Yelwa attack and turned against Christians, killing more than two hundred people. Following the violence, President Obasanjo declared a state of emergency in Plateau, suspended the state government, and established an interim administration to implement a six month “peace plan.” The plan brought communities and religious leaders together for dialogue and proposed a reconciliation commission, which stipulates that persons admitting responsibility for violence in Plateau state conflicts from 2001-2004, will be granted amnesty. The state of emergency has, so far, succeeded in calming tensions and there have been no further outbreaks of violence.

Security forces frequently fail to respond to early warning signs of conflict and in many incidents, as was the case in Yelwa, they are notably absent. The violence is often fueled by political actors and community leaders. Impunity for violations contributes to the cycle of violence and emboldens the perpetrators. In the aftermath of the conflict in Plateau and Kano, very few arrests were made and those responsible for instigating and planning the attacks appeared to have escaped justice.

### ***Conflict in the Niger Delta***

The oil rich Niger delta, in the south of the country, remains the scene of recurring violence between members of different ethnic groups competing for political and economic power, and between militia and security forces sent to restore order in the area. Local groups are also fighting over control of the theft of crude oil, known as “illegal bunkering”. The violence is aggravated by the widespread availability of small arms—a problem which exists throughout Nigeria but is particularly acute in the delta. Despite a massive army, navy and police presence in

the area, local communities remain vulnerable to attack by the militias, criminal gangs and security forces. Oil companies rarely speak out publicly about such abuses; indeed, some of their own practices have contributed to the conflict.

Following the deaths of seven people, including two US citizens, in an ambush on an oil company boat in April 2004, warring factions in Delta state declared a ceasefire. Rivers state, where there are large numbers of armed gangs, saw some of the worst violence in 2004: hundreds of people were killed (some by security forces and others in fighting between the groups) and thousands of people displaced from their homes. President Obasanjo, in an unprecedented move, invited rival groups to Abuja at the end of September for negotiations, indicating just how seriously he takes the threat to security—and oil production—in Rivers state. This may signal a shift away from the heavy handed approach of the past, but it remains to be seen whether the federal government will heed demands for greater resource control for the people of the delta.

### ***Abuses by Police***

Despite repeated promises of reform by senior government and police officials, extra-judicial killings, torture, ill treatment, arbitrary arrests and extortion remain the hallmarks of the Nigerian police. Throughout the years, a large number of extra-judicial killings occurred not only in the context of crime fighting operations against alleged armed robbers, but also during routine duties such as traffic control. Cases of torture and ill-treatment by the police during arrest and detention are common. Police often take advantage of situations of generalized violence and disorder to carry out further killings. For example, in May 2004, riots between Muslims and Christians in Kano left more than two hundred people dead, dozens of whom had been shot dead by the police. In very few cases were the individuals responsible for these acts or their superiors brought to justice.

### ***Freedom of Expression***

Despite significant gains in civil liberties since the end of military rule, several restrictions on freedom of expression remain. There were numerous cases of arrests, detention, ill-treatment, intimidation and harassment of critics and opponents of the government. In September 2004, the offices of *Insider Weekly* magazine were raided by the State Security Service (SSS) and two staff members were arrested for criticizing the government. During anti-government protests in May, police used tear gas and detained several protestors in Lagos. Similarly during nationwide strikes to protest against an increase in the price of fuel in June and October, several labor union activists were detained and obstructed by police. In other incidents, members of the Movement for the Actualization of the Sovereign State of Biafra (MASSOB), an Igbo self determination group critical of the government, were repeatedly harassed and arrested.

### ***Human Rights Concerns in the Context of Shari'a***

Shari'a (Islamic law), which was extended to cover criminal law in 2000, is in force in twelve of Nigeria's thirty-six states. Shari'a has provisions for sentences amounting to cruel inhuman and degrading treatment, including death sentences, amputations and floggings. However, the number of sentences that have been handed down by Shari'a courts has decreased and there appears to be a reluctance on the part of the authorities to carry them out. No executions or amputations have taken place since early 2002 though a number of defendants remain under sentence of death. For example in September and October 2004, two women in Bauchi state, were sentenced to death by stoning for adultery. Both are currently appealing their sentence. Many trials in Shari'a courts fail to conform to international standards and do not respect due process even as defined by Shari'a legislation; defendants rarely have access to a lawyer, are not informed about their rights, and judges are poorly trained. The manner in which Shari'a is applied discriminates

against women, particularly in adultery cases where different standards of evidence are required making it more likely that women will be convicted.

### ***Political Violence***

Politically motivated killings and violence continued to be a regular occurrence in Nigeria. Most incidents of violence involve fighting between factions of the ruling People's Democratic Party (PDP) or between the supporters of the PDP and the main opposition All Nigeria People's Party (ANPP). Local party leaders regularly hire and arm thugs to intimidate political opponents, and then protect them from prosecution. In the weeks preceding the local government elections in March 2004, numerous prominent politicians were killed or targeted in assassination attempts. Local candidates, election officials and rank and file party members were also killed in many incidents that went unreported. On polling day, voting in many local government areas was marred by electoral violence and in some areas elections had to be postponed due to insecurity. Local monitoring groups observed substantial flaws in the preparations for elections, and widespread irregularities and fraud during voting.

### ***Key International Actors***

Under President Obasanjo, Nigeria continues to enjoy a generally positive image in the eyes of foreign governments. The country has assumed regional significance through Obasanjo's chairmanship of the African Union and his efforts to broker peace in the Darfur region of Sudan. This, combined with Nigeria's economic significance as a major oil producer, creates an unwillingness on the part of key governments—notably the United Kingdom and United States—and intergovernmental organizations such as the African Union and the Commonwealth—to criticize Nigeria's human rights record, despite abundant evidence of serious human rights problems and little action on the part of the gov-



ernment to address them. Former Liberian President Charles Taylor, indicted by the Special Court for Sierra Leone for war crimes, crimes against humanity, and other serious violations of international humanitarian law, was granted asylum in Nigeria in 2003. Despite a landmark decision by the special court in May 2004, which ruled sitting heads of state are not granted immunity, Nigeria continues to refuse to surrender him to the court.

## RWANDA

Ten years after the end of a genocide and war, the Rwandan government has created a veneer of stability by suppressing dissent and limiting the exercise of civil and political rights. It often cites the need to avoid another genocide as the purported justification for such repressive measures. Victorious militarily in 1994, the ruling Rwandan Patriotic Front (RPF) also won elections ending a transition period in 2003, bolstering its margin of victory by fraud, arrests, intimidation, and appeals to ethnic fears and loyalties.

In 2004, the RPF further reinforced its control by attacking civil society organizations, churches, and schools for supposedly disseminating “genocidal ideology.” Authorities arrested dozens of persons accused of this crime.

Judicial authorities carried out a sham trial of a former president and seven others, but few other trials. Tens of thousands of persons remained jailed on accusations of genocide, some of them detained more than ten years, and the prosecutor general estimated that another 500,000 persons would be accused of genocide.

In the course of reforming the judicial system, authorities obliged judges and judicial personnel, more than five hundred of them, to resign. Fewer than one hundred were re-appointed to positions in the new system. During this year nearly half the 106 mayors were also obliged to resign. Authorities insist that those removed lacked competence or were corrupt, a remarkable charge given the numbers and responsibilities of those removed.

### ***Limits on Civil and Political Rights***

In 2003, a parliamentary commission charged the leading opposition party with “divisionism” and called for its dissolution. Although there

was no further official action against the party, it vanished from the scene. In June 2004 a similar parliamentary commission called for the dissolution of the League for the Protection of Human Rights in Rwanda (LIPRODHOR), the leading human rights organization in Rwanda, and of four other civil society organizations, said to have spread “divisionism” or its more extreme manifestation, “genocidal ideology.” Fearing immediate arrest, a dozen LIPRODHOR staff members fled the country. In its lengthy report, the commission also charged more than 300 persons, many Protestant and Catholic churches, international organizations like Care International, Pax Christi, Trocaire, and Norwegian People’s Aid, as well as a staff member who administered grants for the Dutch embassy in Rwanda with supporting the dissemination of “divisionism” and “genocidal ideology.” It asked that 11.11.11, a Belgian coalition that funded many organizations in Rwanda, be prohibited from operating in the country. The commission offered no significant proof for any of its charges, which it made publicly in parliament and over the national radio. Still suffering the consequences of the 1994 genocide, Rwandan authorities understandably seek to end ideas that might contribute to genocide, but the parliamentary commission seemed intent on eliminating not just those ideas but also public criticism of government policies, discussion of crimes committed by the RPF, and expression of support for candidates opposed to the RPF.

Authorities continue to harass and arbitrarily detain those who tried to organize a political alternative to the RPF. Pierre Gakwandi and Leonard Kavutse, both arrested on charges of divisionism prior to the presidential elections and named in the 2003 parliamentary commission report, remained in pre-trial detention. Others accused of “divisionism” lost employment or were deprived of their passports.

The government frequently invokes the role of the media in inciting the 1994 genocide as justification for restricting press freedom, leaving only one independent newspaper struggling to survive. In March 2004, the

editor-in-chief and senior journalist of that newspaper, *Umuseso*, fled the country after receiving death threats from a high-ranking government official. This editor was the third to flee Rwanda since the journal began publishing in 2000. His successor, detained or interrogated at least four times in the remaining months of the year, was tried on accusations of divisionism and defaming a high-ranking RPF official. In late November he was acquitted of the divisionism charge and punished with only token fines and damages on the other charges, a decision that gave some hope for greater press freedom.

### ***Justice and Impunity***

In June 2002, Rwanda launched a system of state-run popular justice called *gacaca* to deal with most of the one hundred thousand genocide suspects who had spent years in pretrial detention. But by late 2004 only ten percent of some eleven thousand *gacaca* courts had held pre-trial hearings and none had actually tried any suspects. *Gacaca* was supposed to reduce the prison population but persons confessing to guilt as part of the process have named tens of thousands of new suspects. Authorities estimate that five hundred thousand more persons may yet be accused, an astonishing number that raises questions about why so many persons waited until ten years after the crime to accuse suspected perpetrators. Some convicted persons are to serve half their sentence at home in a work-release program, but the details for its operation had not been set at the end of 2004.

Meant to involve everyone in the community, *gacaca* has failed to attract widespread participation, in part because it was seen as one-sided justice: although originally mandated to try war crimes committed by RPF soldiers during the period of the genocide, *gacaca* courts have not been allowed by authorities to consider such cases. Acknowledging that attendance at *gacaca* was poor in eight of twelve provinces, authorities reformed the system in mid-2004, simplifying the procedure and reducing the number of judges for each jurisdiction. In addition, authority to

consider war crimes was struck from the mandate, thus eliminating any possibility of justice for RPF crimes under this form of popular justice. Gacaca jurisdictions were authorized to reopen cases of persons previously acquitted by the standard courts, thus violating the usual protection against double jeopardy. To deal with the problem of flagging attendance, the revised law requires citizens to participate and sets punishments for those who fail to attend.

In early 2003, the president granted conditional release to some 24,000 persons who had confessed their guilt for genocidal crimes. Although those released are supposed to face trial at some point, few Rwandans believe that they will do so. The possibility that thousands of confessed criminals would never account for their crimes in public proceedings further undermined the legitimacy of gacaca in the eyes of some Rwandans.

In April 2004 former President Bizimungu, former Minister Ntakirutinka and six co-defendants were brought to trial after spending two years in pre-trial detention. The accusations against Bizimungu included several treason-related charges, illegal possession of a firearm and embezzlement of public funds. Despite the gravity of the charges and the number of accused, the prosecution presented its case in only six days. Prosecution witnesses against Bizimungu and Ntakirutinka repeatedly contradicted themselves and each other. The judge denied their right to fully cross-examine some witnesses and refused to allow them to call others. The prosecution presented a single witness against the other six co-defendants. His evidence was inconsistent, uncorroborated and later challenged by seven defense witnesses. Despite the weakness of the prosecution case, the court convicted all eight, sentencing Bizimungu to ten years in prison, Ntakirutinka to ten years in prison, and the others to five years each. All eight defendants remain in detention awaiting appeal.

Until the end of 2004, the Rwandan government opposed investigations of RPF crimes by the U.N. International Criminal Tribunal for Rwanda (ICTR) and itself did little to investigate and prosecute its soldiers for war crimes and crimes against humanity committed during the genocide or subsequently. Unless the ICTR tries some of those accused, RPF soldiers will escape punishment for their crimes, reinforcing past patterns of impunity.

### ***Key International Actors***

Burdened by guilt over their inaction during the genocide, many foreign donors generously support the Rwandan government—credited with having ended the genocide—while ordinarily overlooking its human rights abuses. U.N. Security Council members issued only a mild reprimand when the matter of Rwandan obstruction of ICTR investigations was brought before them. Documentation of illegal Rwandan exploitation of DRC resources by a U.N. panel in 2002 and 2003 elicited only mild criticism. Foreign leaders also generally applauded the 2003 elections even though observers, including those of the European Union, reported widespread abuses.

In 2004 the United Kingdom, Rwanda's most generous donor, reportedly twice suspended or threatened to suspend aid in order to restrain Rwandan intervention in the DRC. South Africa also supposedly brought pressure to bear on Rwanda for the same reason. But the U.K. and others still hesitated to criticize abuses inside Rwanda, although the European Union did finally issue mildly critical letters concerning the Bizimungu trial and the attack on civil society for "genocidal ideology." Rwanda sharply rejected these reproofs.

## SIERRA LEONE

The human rights situation has vastly improved since Sierra Leone's devastating civil war was officially declared over in January 2002. However, implementation of the rule of law remains weak and questions remain about the government's willingness to guarantee economic, social, and cultural rights. The mismanagement and corruption of public funds, coupled with high unemployment among young adults, a drastic increase in basic commodity prices, and continued insecurity within the sub-region, render Sierra Leone vulnerable to future instability.

Sierra Leone's civil war was characterized by egregious human rights abuses on all sides but especially by rebel forces. A confluence of factors helped end the war, including the deployment of a 17,000-member United Nations peacekeeping force known as UNAMSIL, a U.N. arms embargo against neighboring Liberia, and the commitment of British troops to stop a rebel advance against the capital, Freetown, in 2000. Despite the disarmament of some 47,000 combatants, and the successful completion of presidential and parliamentary elections in 2002 and local elections in 2004, the deep rooted issues that gave rise to the conflict—endemic corruption, weak rule of law, crushing poverty, and the inequitable distribution of the country's vast natural resources—remain largely unaddressed by the government.

Significant progress has been made, however, in achieving accountability for war crimes committed during the decade-long war and some hopeful developments that may build respect for human rights. During 2004 the Special Court for Sierra Leone commenced its first trials, the Truth and Reconciliation Commission submitted its report to the government, and the Parliament passed an act establishing the National Human Rights Commission of Sierra Leone.

Nevertheless, the draw-down and eventual complete withdrawal of UNAMSIL peacekeepers set for June 2005 and continuing insecurity in neighboring Liberia, Guinea, and Cote d'Ivoire give cause for concern. During 2004, the military strength of UNAMSIL was reduced from 11,500 to fewer than 5,000 troops. Given continuing concerns about the extent to which the Sierra Leone police and army can ensure the security of the country and will uphold the rule of law, a residual force of some 3,250 UNAMSIL military personnel will remain in Sierra Leone until at least June 2005.

### ***Accountability for Past Abuses***

The U.N.-mandated Special Court for Sierra Leone (SCSL), established to bring to justice persons “who bear the greatest responsibility” for atrocities during the war, has so far indicted thirteen individuals, including former Liberian president Charles Taylor and former Sierra Leone government minister Hinga Norman. The first trials commenced in June 2004. The first of two chambers is currently holding two trials – of the Civil Defense Forces (CDF) and Revolutionary United Front (RUF) – on a rotating basis. A delay in the establishment of the planned second trial chamber threatens to seriously undermine the court’s capacity to complete operations efficiently.

Since starting operations in 2002, the SCSL has made significant progress, including indicting suspects from all warring factions; charging all indictees with child soldier recruitment and most indictees with gender based crimes; establishing a defense unit to ensure protection of the rights of the accused; issuing precedent-setting decisions on international jurisprudence; conducting outreach to the local population; and employing Sierra Leoneans to work in every organ of the Special Court.

However, several concerns remain about the SCSL operations. These include insufficient resources for the witness protection unit, outreach section, chambers and defense office; that the existing indictments



reflect an inappropriately narrow interpretation of the court's mandate, such that several particularly brutal regional or mid-level commanders have not been indicted; and that Nigeria has so far failed to surrender Charles Taylor to the SCSL. Taylor, indicted by the SCSL on seventeen counts of crimes against humanity and other serious violations of international humanitarian law, was in August 2004 offered a safe haven by the Nigerian government when rebels threatened to take the Liberian capital Monrovia. The international community, most notably the United Nations Security Council, has failed to exert sufficient pressure to ensure that Taylor is surrendered to the court.

In October 2004, the Truth and Reconciliation Commission (TRC), created in 2002 in accordance with the terms of the 1999 Lomé peace accord, released its final report. The TRC was tasked with establishing an impartial historical record of the conflict, promoting reconciliation, and making recommendations to prevent a repetition of the violence. The operation of the TRC was plagued with management and funding problems, however, the public hearings were well attended and the final report contains some significant findings and recommendations. The TRC faulted years of bad governance, endemic corruption, and the denial of basic human rights as having created the conditions that made conflict inevitable, and noted that many of the causes of conflict have yet to be adequately addressed. The recommendations were aimed at promoting good governance and providing for the wars' most vulnerable victims. They included the strengthening of the judiciary, abolition of the death penalty, that senior public officials disclose their financial interests, and that special funds be set up to care for children, amputees, and women victims. The TRC also called on Liberia and Libya, which supported the RUF and AFRC, to make symbolic and financial contributions to a war victims' fund.

## ***Corruption***

Corruption and mismanagement within both the public and private sectors in Sierra Leone remain endemic. The government Anti-Corruption Commission (ACC), created in 2000 largely due to pressure from international donors, has been subject to political interference, with few convictions for corruption-related offenses. The ACC has the power to investigate allegations of corruption within the public and private sectors. Once investigations are complete, the Attorney General, who has, in the past, been subject to political pressure, determines whether there are grounds for prosecution. Since October 2003, three judges from Commonwealth countries have been attached to the Sierra Leone High court to hear cases referred by the ACC. However, the planned appointment of a Commonwealth-provided prosecutor has yet to materialize and is undermining the independence and success of the ACC.

## ***Dysfunctional Judicial System***

Efforts to refurbish numerous court buildings destroyed during the war have helped improve court infrastructure, and by the end of 2004 magistrates' courts were functioning in all of Sierra Leone's fourteen provinces. However, insufficient numbers of judges, magistrates, public defenders, and prosecutors continue to result in huge back-logs, and those charged with criminal offenses spend months and in some cases years in pretrial detention. Low salaries paid to magistrates and judges make them susceptible to corruption. At year end, there were over 80 former rebel combatants held since their arrest in 2000 under a now-repealed Emergency Powers Act, without regard for due process rights. At least 15 individuals, including two women, were on death row following convictions for felonies, however, no executions were carried out.

The system of local courts presided over by traditional leaders or their officials and applying customary law is the only form of legal system

accessible to an estimated 70 percent of the population. Customary law applied by the local courts is often discriminatory, particularly against women, and the local courts frequently abuse their powers by illegally detaining persons and charging excessively high fines for minor offences, as well as adjudicating criminal cases which should by law be tried in the higher courts.

### ***Sierra Leone Army and Police***

The Sierra Leone Army and Sierra Leone Police have over the years been the source of considerable instability, corruption, and human rights violations and have enjoyed near-complete immunity from prosecution. Efforts by the British-led International Military Advisory and Training Team (IMATT), which since 1999 has endeavored to reform, restructure, and rehabilitate the army, have led to considerable improvement in the professionalism of the force. However, shortages in equipment, vehicles, and communications equipment undermine their operations, particularly along the volatile and isolated borders with Liberia and Guinea. In 2004, few reports were made of abuses, extortion, or indiscipline by the army.

While there have been improvements in the conduct of the police, and at year's end the government had successfully re-established a police presence in all provincial and major towns in Sierra Leone, reports of extortion, bribe-taking, and unprofessional conduct remain common. The Commonwealth Police Development Task Force (CPDTF) has since 1998 been responsible for restructuring and retraining the police. Low salaries, lack of training capacity, and inadequate resources remain key challenges.

### ***Key International Actors***

The international and donor community has since 1999 spent billions of dollars to bring about peace and stability in and facilitate the post-

war reconstruction of Sierra Leone. Although this level of commitment is welcome, it has not always been accompanied by willingness to use the leverage such a high dependency on aid gives to put pressure on the Sierra Leone government to address the conditions giving rise to continued human rights abuses.

The United Kingdom and United States have taken the lead in rebuilding Sierra Leone's infrastructure and institutions. The U.K. has for the last several years spent some U.S.\$60 million per year on rebuilding and restructuring the army, police and judiciary. The U.S. spent some U.S. \$45 million on reconstruction, the reintegration of former combatants, and improving the control and management of the diamond sector.

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## SOUTH AFRICA

South Africa's third general elections marked that country's tenth year of its constitutional democracy. The institutional and policy framework have laid the foundation for the promotion and protection of human rights. However, human rights concerns remain; particularly in relation to the rights of detained and accused persons; excessive use of force by police; the rights of foreign nationals; and violence against women. Ten years since the first democratic elections, the realization of social and economic rights—such as access to primary education in rural areas—has become a pressing human rights issue. Although many human rights problems can be partly attributed to the legacy of apartheid, the current government could do more to implement policies that address and prevent abuses.

### ***Police***

Although the government has introduced significant reforms, inappropriate and excessive use of force by police remains a serious human rights issue. From April 2003 to March 2004, the Independent Complaints Directorate (ICD), a statutory oversight body, received reports of 383 deaths in police custody, with twenty percent of these deaths resulting from deaths in police cells. Other deaths are in course of effecting arrest. While it is encouraging that the reporting mechanism is in place, the increasing number of deaths, particularly in police custody, is worrying. The police have prevented the ICD from initiating inspections at police holding cells absent a complaint. Police have also on occasion used excessive force against peaceful demonstrators. Increasingly, police have been involved in violent confrontations with communities protesting against a lack of services. Police officers killed a seventeen-year-old boy and injured more than twenty children after firing rubber bullets on protestors of eNtabazwe—a township previously designated for Africans—outside Harrismith on a national road on August 30, 2004. On October 5, in a protest against the installation of

pre-paid water meters in Chiawelo, Soweto, police used stun grenades and batons to disperse demonstrators.

### ***Prisons***

Overcrowding in South Africa's prisons continues to be a problem. As of March 31, 2004, 187, 640 prisoners were being held in facilities that should accommodate 110,787. The numbers of sentenced has increased from 92, 581 in January 1995 to 133, 764 as of March 31, 2004.

Overcrowding continues to threaten the health and living conditions of prisoners and impedes rehabilitation efforts. Sexual assaults and gang violence are a further threat to the safety of prisoners. To ease overcrowding, the Inspecting Judge of Prisons—an independent oversight body—has recommended the early release of prisoners who are too poor to afford bail. As of March 31, 2004, thirteen thousand detained persons—about a third of the pre-trial population—could not afford bail.

Despite almost a decade since the death penalty was declared unconstitutional and abolished in South Africa, 106 prisoners remain incarcerated under the death sentence. The government is yet to commute their sentences to life imprisonment.

### ***Children in Detention***

Despite international law requirements that child offenders not be detained except as a last resort, the number of juveniles in detention facilities— mostly jails - awaiting trial continues to increase. There are currently more than two thousand child offenders in detention awaiting trial—up from around five hundred in 1995. While in some cases juveniles are held separately from adults, this is not always the case, leaving them particularly vulnerable to sexual abuse, violence, and gang related activities. The Child Justice Bill, deliberated in the South African

Parliament during 2004, proposes a restorative justice approach in an attempt to move children out of the criminal justice system.

### ***Rights of Foreign Nationals***

South Africa has seen a large increase in the number of undocumented migrants from Southern Africa and asylum seekers from the rest of Africa since 1994. As of 2003, the department of home affairs has received 152, 414 asylum applications since 1994. Although the 1998 Refugee Act provides a legal system to protect the rights of asylum seekers and refugees that incorporates international standards, significant problems remain in its administration. Concerns have been raised about intolerance of foreign nationals, particularly in effecting arrests for deportation. The ICD is investigating police officers for unlawful arrest of a South African woman who was “too dark,” and subsequently prepared for deportation on September 29. Close to fifty thousand undocumented migrants from Mozambique and Zimbabwe work on commercial farms. Yet, South Africa deports around four thousand people per month mostly to Mozambique and Zimbabwe, who return illegally to South Africa.

### ***Violence against Women and Children***

Violence against women and children is widely recognized as a serious concern in South Africa: 52, 733 rapes and attempted rapes were reported to the South African police between April 2003 and March 2004 a slight increase from the previous. The South African government has taken important legislative steps to try to combat violence against women, including introducing a new Sexual Offences Bill to remove anomalies from the existing law, which was discussed in Parliament during 2004. Police continue to receive training in handling rape cases. Specialized courts are being established, yet conviction rates remain low. In a country where one quarter of adults are HIV-positive, rape can mean a death sentence. In April 2002, the government pledged

to provide rape survivors with post-exposure prophylaxis (PEP)—antiretroviral drugs that can reduce the chances of contracting the virus from an HIV-positive attacker. Government inaction and misinformation by high-level officials as well as administrative delays in dispensing the antiretroviral drugs continues to impede access to this lifesaving program. Children, an estimated 40 percent of rape and attempted rape survivors, are especially harmed by government failure to address their needs.

### ***Social and Economic Rights***

South Africa's economic disparities contribute to human rights concerns. It is estimated that twenty-two million people—roughly half the population, the great majority of them Africans—live in extreme poverty. About a fifth of the South African population receives government financial assistance.

People living in rural areas apparently have particular difficulty in accessing their rights to health care and social services. Regarding education, although access to public schooling for children is widely available and enrollment has increased since 1994, there are wide disparities in schools' resources: about 40 percent of state-run schools—mostly those in rural areas—have no electricity and approximately 30 percent no clean water. Physical access to education in rural areas is of particular concern. Some learners must walk up to thirty kilometers each day to and from school, exposing them to dangers such as sexual violence and contributing to high drop-out rates. The government established a ministerial committee on rural education in May to examine concerns about schooling in rural South Africa.

### ***South Africa's Regional Role***

In the promotion of human rights, democracy and peace, South Africa has played a key role in the first year of the Peace and Security Council



of the African Union, and is hosting the Pan-African Parliament. South Africa has increased its role in seeking peaceful solutions to conflicts in Africa by providing military personnel in peace support operations, and monitoring and supporting post-conflict reconstruction in the Democratic Republic of Congo and Burundi and conflict resolution in Darfur, Sudan.

## SUDAN

As peace talks aimed at ending the twenty-one-year civil war in southern Sudan were nearing completion, the crisis in the western Darfur region intensified in 2004. The government of Sudan answered the military challenge posed by the two rebel movements in Darfur, the Sudan Liberation Army (SLA) and the Justice and Equality Movement (JEM), by arming, training and deploying Arab ethnic militias known as “Janjaweed”, who had an additional agenda of land-grabbing. The Janjaweed and Sudanese armed forces continued a campaign begun in earnest in 2003 of ethnic cleansing and forced displacement by bombing and burning villages, killing civilians, and raping women. The first half of 2004 saw a dramatic increase in these atrocities. By year’s end hundreds of villages were destroyed, an estimated 2 million civilians were forcibly displaced by the government of Sudan and its militias, and 70,000 died as a direct or indirect cause of this campaign.

### *The Crisis in Darfur*

The government-sponsored death and displacement in Darfur was initially a counterinsurgency tactic of employing ethnic proxy militias to conduct a campaign of ethnic cleansing, as it has done in southern Sudan for much of the last twenty years. The extent of the humanitarian catastrophe produced by government policies in Darfur finally came to the attention of the world as the numbers of internal displaced persons (IDPs) mounted from one to two million.

On April 8, a Humanitarian Ceasefire Agreement was signed in N’Djamena, Chad between the government of Sudan and the two Darfurian rebel movements under Chadian, African Union (A.U.), U.S. and E.U. auspices. This agreement committed the government of Sudan to “neutralize” the Janjaweed militias and called for the A.U. to set up a ceasefire commission (CFC) to monitor and report on ceasefire

violations. It took several months, however, for the CFC to become operational.

The government of Sudan again promised, this time signing a Joint Communiqué on July 3 with U.N. Secretary-General Kofi Annan, to disarm the Janjaweed, improve humanitarian access, human rights and security, and to seek a political resolution to the conflict. Pressure increased with the adoption on July 30 of U.N. Security Council Resolution 1556 which reiterated the steps outlined in the Joint Communiqué, called for restrictions on arms transfers to all “non-governmental entities, including the Janjaweed,” and imposed a thirty-day deadline on the Sudanese government to disarm the Janjaweed militias.

The continued failure on the part of the government of Sudan to rein in the Janjaweed militias and halt all attacks by them and its other forces on civilians led the Security Council to pass resolution 1564 on September 18. This second resolution threatened sanctions on the government of Sudan if it did not comply fully with this resolution and the previous one, and authorized the establishment of an international Commission of Inquiry “to investigate reports of violations of international humanitarian law and human rights law in Darfur by all parties, to determine also whether or not acts of genocide have occurred, and to identify the perpetrators of such violations with a view to ensuring that those responsible are held accountable”. The resolution also pressed the government of Sudan to accept a larger A.U. ceasefire monitoring force.

The Sudanese government claims that it is unable to neutralize and disarm the Janjaweed, yet it has refused to accept international help to achieve this. Not one Janjaweed leader has been investigated or accused of a crime. The few prosecutions that the government of Sudan has undertaken have turned out to be against detainees involved in crimes unrelated to the Darfur conflict or convicted of different charges months or years earlier. The government of Sudan set up a national commission of inquiry to investigate crimes committed in the Darfur

conflict but it has accomplished nothing to date. The Janjaweed and the Sudanese army share several camps, and there are numerous reports of coordinated attacks on civilians launched from these camps. Members of the Janjaweed are quietly being incorporated into regular police forces, the army and the popular defense forces (government Islamist militia under army jurisdiction). Ceasefire violations are a regular occurrence throughout Darfur and no penalties have been applied to any party. The Security Council, although threatening sanctions if the human rights menace of the Janjaweed was not curbed, let deadlines come and go without imposing any further sanctions or enforcing the sanctions already mandated.

### ***The North-South Peace Process***

The twenty-one-year conflict fought largely in the south between the ruling Islamist military government in Khartoum and the rebel Sudan People's Liberation Movement/Army (SPLM/A) inched closer to resolution in 2004. In May, the government of Sudan and the SPLM/A signed the last of six key political protocols in Naivasha, Kenya outlining power and wealth sharing arrangements for southern Sudan for a six-and-a-half-year interim period, after which a self-determination referendum in the south will decide whether the south becomes independent. However, the agreements totally ignore human rights considerations, such as accountability for crimes committed during the war, truth telling, and the enforcement of international human rights and humanitarian law in the future. The Naivasha protocols contemplate national, state and local elections at an undetermined time between the signing of the final agreement and the referendum on succession.

The U.S., U.K. and Norway pushed the almost three-year intensive negotiations between the two parties, then came increasingly under fire for deliberately excluding other rebel and political movements from the peace process. The escalation of the crisis in Darfur highlighted the widespread discontent with the partial resolution, and spawned at least

two other rebel movements in the west in 2004. Renewed pressure from the international community to conclude the peace talks as a necessary precursor to addressing the conflict in Darfur brought the two parties back to the table in October, although this peace process was definitely in jeopardy as the Sudanese government's good faith was questioned by its resort to ethnic manipulation and scorched-earth tactics in the west.

The Security Council held a special meeting in Nairobi, Kenya on November 18-19 and passed Resolution 1574 offering economic assistance and debt relief to Sudan if the Comprehensive Peace Agreement is signed by the end of 2004. With respect to Darfur, the Resolution did not threaten "further measures", only a milder warning to "take appropriate action against any party failing to fulfill its commitments". It left out the explicit demand of previous resolutions for Khartoum to disarm and prosecute the government-backed Janjaweed militias.

### ***The Humanitarian Situation***

Sudan is home to the world's largest internally displaced persons (IDP) population, which grew in 2004 from 4 million to almost 6 million. The IDPs in Darfur continue to grow in number and face constant insecurity. Those who managed to reach camps accessible to humanitarian assistance were at physical risk, frequently of rape, when venturing outside to collect fodder, food or firewood. Many remained in rural areas inaccessible to aid agencies, including in rebel held zones, and were vulnerable to attacks by the Janjaweed. The U.N.-agreed creation of "safe areas" in Darfur, protected by the government of Sudan, raised the risk of consolidating ethnic cleansing and caused increased clashes between the government and the rebels, who were not consulted on the "safe-areas" plan. More than 200,000 Darfurian refugees were in Chad in 2004.

A combination of insecurity, drought, widespread looting and the missed planting season increased the risk of famine as almost 2 million

people in Darfur (estimated population of 5-6 million) were in need of food aid. Lack of sanitation and health services in the IDP camps caused massive outbreaks of diseases such as diarrhea and malaria which caused thousands of deaths, especially in vulnerable groups such as infants and the elderly.

The plans of the estimated 4 million southern war displaced persons to return home were put on hold as the signing of the Naivasha peace agreement was delayed.

### ***Key International Actors***

The United States eventually took the lead in the U.N. Security Council which passed four resolutions on Sudan in 2004. The U.S. legislatures passed a joint resolution on July 23 declaring that the Sudanese government and the Janjaweed were guilty of genocide. Secretary of State Colin Powell authorized a survey of Darfurian refugees in Chad and concluded from it that “genocide has been committed and may still be occurring in Darfur”.

Because of international resentment over the U.S. war in Iraq, however, the U.S. had difficulty diplomatically in convincing others to take a stronger stand on Darfur. The United Nations Security Council has been divided over sanctions. China and Russia, both with large investments in Sudan, threaten to veto resolutions that called for sanctions against the Sudanese government for failing to disarm the Janjaweed and stop attacks against civilians. Sudan’s election to the U.N. Commission on Human Rights on May 5 was another indication of the international community’s failure to censure the government of Sudan for abuses in Darfur. On November 24, the UN General Assembly voted down a resolution condemning Sudan.

The Office of the High Commissioner for Human Rights sent eight human rights monitors to Darfur in August and promised in October to

double that number. Following her September mission to Sudan, U.N. High Commissioner for Human Rights Louise Arbour recommended the deployment of an international police force in Darfur and denounced the total impunity enjoyed by perpetrators of atrocities in the region. Louise Arbour was accompanied on her mission by Juan Mendez, the U.N. Secretary General's special advisor on the prevention of genocide.

The recently-created African Union deployed up to 136 ceasefire monitors to Darfur and more than 625 Rwandan and Nigerian troops as a protection force for these A.U. monitors. Nigerian President Olusegun Obasanjo hosted A.U. talks in Abuja between Khartoum, the SLA and the JEM in late 2004 but these talks broke down and the ceasefire was in tatters.

The A.U. volunteered to send a civilian protection force of up to 2,341 troops and 815 civilian police, a suggestion seconded by the Security Council. The Sudanese government rejected the proposal but backed down after the language was watered down to provide A.U. protection for civilians within their eyesight.

By many assessments, at the end of 2004 the fledgling A.U. and its member countries still lacked the funds and capacity to mount an effective operation seven times the size of its 2004 force in Darfur, with civilian protection needs remaining unmet.

## UGANDA

The war in northern Uganda, which started when President Yoweri Museveni and the National Resistance Movement/Army took power eighteen years ago in 1986, continued in 2004. Violence and related human rights abuses abated somewhat by mid-year yet predictions of an imminent military solution to the conflict proved unfounded. The war pits the northern Lord's Resistance Army (LRA) against the government's Ugandan Peoples' Defence Forces (UPDF) and the people of the three northern districts where the Acholi live – and the war has expanded to parts of eastern Uganda in 2003-04. In February, the LRA committed the worst massacre of the entire conflict in an eastern district by attacking Barlonyo internally displaced person's camp, defended only by a small local defence unit, and killing more than 330 people. The LRA continues in its practice of abducting children, who remain the main victims of this war. President Museveni did, however, take an unprecedented step in referring the case of Uganda's LRA to the International Criminal Court (ICC) in December 2003. The ICC agreed to undertake an investigation but peace activists in Uganda remain wary that Museveni will manipulate this international institution to punish his foes, and thereby diminish chances for a negotiated settlement, while avoiding investigation of the Ugandan army's abuses.

Ugandan security agencies have proliferated and are implicated in torture and illegal detention of suspected rebels and their sympathizers. The Ugandan government continued to support armed groups in the conflict in the Ituri region of the Democratic Republic of Congo (DRC), despite officially withdrawing from eastern DRC in accordance with the Luanda accords signed in September 2002.

### ***The War in Northern Uganda***

The LRA persisted in its policy of abducting northern Ugandan children to use as soldiers and forced sexual partners for its forces in 2004.



This has brought the number of abducted children to a new high. More than 20,000 children have been seized by the LRA over the course of the war. In total, more than 1,300,000 civilians are currently forced to live in government-controlled displaced camps.

In 2004, the LRA continued with renewed severity its attacks on civilians living in displaced persons and Sudanese refugee camps and others it considered to be collaborating with the UPDF. An LRA raid on Barlonyo camp near Lira in eastern Uganda resulted in up to 337 deaths. This attack was followed by a protest demonstration of more than 10,000 people, angry at the lack of government protection in the camps. Many questioned the willingness and effectiveness of the UPDF to protect civilians against the LRA, claiming that it is often absent or too late to respond when the LRA strikes. President Museveni, in a rare move, apologized for UPDF's failure to stop the massacre. The LRA continued in its offensive through the year, killing civilians, abducting children, destroying and looting property and taking captives to porter the loot in a number of other raids on internally displaced persons camps. Cases of LRA mutilation of suspected spies, including cutting off lips and limbs, were reported.

The UPDF has also committed abuses in the north, including arbitrary detention, torture, rape, and stealing. A few civilians have pending civil actions for damages on account of this ill treatment; the UPDF soldiers are rarely criminally prosecuted for abuse of civilians. Furthermore, the failure to protect civilians in the north has been persistent. The Human Rights Committee, a body that monitors state compliance with the International Covenant on Civil and Political Rights, noted in its concluding observations on Uganda the failure of the state "to ensure the right to liberty and security of persons affected by the armed conflict in northern Uganda."

President Museveni referred the war in northern Uganda, particularly the LRA's role in it, to the ICC in December 2003. This was the first

time a state has made such a referral. The ICC prosecutor, Luis Moreno-Ocampo, since launched an investigation but it is not clear that the serious crimes committed by the government will also be investigated.

### ***The Conflict in DRC***

Despite the official withdrawal in May 2003 of Ugandan troops, Uganda continues to provide support to armed groups in Eastern DRC, particularly in the Ituri region, which they partially occupied from 1998 to 2003, and where the UPDF committed war crimes and other violations of international humanitarian law. Continued support for proxies in DRC has been in part to ensure allies in Uganda's strategic border region, but also to ensure continued control over the lucrative trade in natural resources from the DRC, particularly gold. A report in mid 2004 by a U.N. arms monitoring panel documented Ugandan complicity in arms trading across the border, and Ugandan forces intervened on at least one occasion to ensure their allies in Ituri remained in control. In August and September 2004 local sources reported further assistance by Ugandan troops to General Jérôme Kakwavu, leader of an Ituri based armed group responsible for the torture and killing of civilians. In a move to deflect Uganda's role in supporting such groups, President Museveni wrote secretly in August 2004 to the U.N. Secretary General requesting provisional immunity from prosecution for armed group leaders operating in Ituri, and the suspension of investigations by the International Criminal Court (ICC) in DRC but not in Uganda.

### ***Torture and Other Abuses by Ugandan Security Forces***

Ugandan security and intelligence agencies have used torture to coerce detainees to provide information or confess, detaining suspects in illegal places of detention called "safe houses," and holding them for weeks or months without ever charging them with any crime. Methods of torture include suspending suspects tied "kandoya" (tying hands and feet

behind the victim) from the ceiling, severe beating and kicking, and attaching electric wires to the male genitals.

Among the agencies accused of torture are the UPDF's Chieftancy of Military Intelligence (CMI), the Internal Security Organization (ISO), the Violent Crime Crack Unit (VCCU) and ad hoc agencies such as the Joint Anti-Terrorist Task Force (JATF.) In October the Uganda Human Rights Commission (UHRC) found that torture continued to be a widespread practice amongst security organizations in Uganda, being commonly used to humiliate and breakdown suspects in investigation.

The torture and illegal detentions in safe houses seem related to military intelligence and security force suspicions that the detainees, who are often involved in political opposition activities, are linked to armed rebel movements. Many previously or currently politically active suspects are charged with terrorism or treason, both of which carry the death penalty. By constitutional provision detainees in such cases may be held for up to 360 days without being charged with any crime although they must be held in legal places of detention.

### ***Political Freedom***

The present political system restricts prospective candidates to standing on an all-inclusive "movement" platform. The movement system is based on the idea of one supposedly all-inclusive "movement" in which individual candidates run for elections based on their personal merit. The system was introduced in 1986 by the victorious rebel forces led by current President Museveni. In practice, this "no-party" system has significantly curtailed civil and political rights of those who are in political opposition. A legal challenge to the legitimacy of the movement system in Uganda was successful at the Constitutional Court in June. The court ruled that a 2000 referendum which had confirmed one-party rule was null and void. However, following an angry outburst from President Museveni on the decision was subsequently overturned by the Supreme

Court in September. Presently the Constitution specifically requires Parliament to amend the constitution to allow the President to serve more than two terms in office, but the authorities plan a referendum on the issue – possibly to be combined with a referendum on whether a multi-party political system should be reinstated. The referendum is planned for February 2005.

### ***Press Freedom***

The temporary closure by army and police of the independent Monitor newspaper in late 2002 has had a chilling effect on that newspaper and on free speech generally. Journalists from the paper continued to come under attack in 2004, two of whom were publicly denounced as “rebel collaborators” by the spokesman for the UPDF.

However, in February the Supreme Court enhanced freedom of expression in Uganda by repealing a frequently invoked law allowing reporters to be prosecuted for reporting subversive “false news” in a ruling in favour of the Monitor newspaper. Following this the Chief Magistrates Court in Kampala in April ruled in favour of The Monitor in another case brought by the government who alleged the newspaper had endangered national security by reporting on the war in the north.

### ***HIV/AIDS***

Uganda continues to face a generalized epidemic of HIV/AIDS despite being widely acknowledged as a regional success story in combating the epidemic. In 2004, senior government officials, including President Museveni, made numerous comments undermining the effectiveness of condoms as a strategy to prevent sexual HIV transmission. These comments were apparently linked to the prospect of significant foreign aid from the United States for programs that emphasize “abstinence only” as an HIV prevention strategy. Abstinence only programs have been shown to censor critical and lifesaving information about condoms and

HIV prevention, in violation of the human right to information and the highest attainable standard of health.

### ***Key International Actors***

The humanitarian situation in northern Uganda remained dire in 2004, with 80 percent of the entire northern population in displaced persons' camps. Security remains very poor for relief agencies as well as for the population itself, and in several areas the UPDF refuses to escort relief convoys to camps on account of danger.

A group of international donors meets regularly with the Ugandan government and negotiates budget items, including defense spending, with it. These donors provide one-half of the budget of the Ugandan government, their funds going directly to the treasury once the budget has been agreed.

The U.S. government is not part of this donors' group, and has provided military assistance and training to the UPDF to enable it to protect civilians in northern Uganda as well as become an effective counterinsurgency force—an approach the donor's group does not endorse. No special human rights conditions are attached to this U.S. military assistance. This aid has facilitated the pursuit of a purely military solution to the conflict in the north, an approach Museveni has long endorsed that has been widely criticized by civil society in the north.

## ZIMBABWE

The human rights situation in Zimbabwe continues to be of grave concern. Repressive laws such as the Public Order and Security Act (POSA) and the Access to Information and Protection of Privacy Act (AIPPA) remain in place. The government continues to use these laws to suppress criticism of government and public debate, and those most affected included representatives of Zimbabwe civil society, opposition party supporters, and the independent media.

The government also tabled in parliament new legislation regulating the operations of non-governmental organizations (NGOs), and the AIPPA Amendment Bill which reportedly seeks to tighten existing media laws. Concerns were expressed that these new laws would further curtail fundamental rights to freedom of expression and association.

Food security remains a pressing issue and concerns have been raised about the availability of food and the risk of political interference in food distribution in the run-up to parliamentary elections in March 2005.

### ***Elections***

Serious concerns also exist about whether parliamentary elections, scheduled for March 2005, will be free and fair. The last two elections in Zimbabwe were marked by widespread violence and serious electoral irregularities.

In July 2004, the government announced that it would undertake electoral reforms that would comply with guidelines drafted by the Southern African Development Community (SADC). In October, the government tabled in parliament the Zimbabwe Electoral Commission (ZEC) Bill, which would establish an independent authority to administer all elections and referendums in Zimbabwe. The main opposition

party, Movement for Democratic Change (MDC,) dismissed the government's attempts at electoral reform, and argued that they were superficial and failed to address much needed electoral changes. Morgan Tsvangirai, the leader of the MDC, also called for the postponement of the elections to allow for reform of Zimbabwe's electoral laws and processes. However, the government insisted that elections would take place as scheduled.

An inclusive national electoral institution would make a significant contribution to the holding of free and fair parliamentary elections. However, there were concerns that the ZEC bill did little to enhance the prospects of a free and fair election. There were questions about the independence of the electoral commission, and confusion over the functions of the commission and other electoral bodies. The proposed law would also centralize control over voter education in the Commission, thereby restricting the role of NGOs. Moreover, an independent electoral commission would not be a remedy for repressive laws such as POSA and AIPPA that have contributed to an uneven playing field.

It remains to be seen whether the government would fully implement electoral reform and create an environment conducive to a fair electoral process in time for the March 2005 elections.

### ***Freedom of Expression and Association***

In October 2004, the Non-Governmental Organizations Draft Bill was tabled in parliament for discussion and debate. If enacted, the law would require NGOs to register with a government-appointed Council of NGOs that would have virtually unchecked power to investigate and audit the groups' activities and funding. National and foreign NGOs would be required to register with the Council by submitting the "names, nationality and addresses of its promoters," and sources of funding. Registration could be denied or withdrawn at any time if the Council determined that the organization "ceased to operate *bona fide* in

furtherance of the objects for which it was registered.” The law would also empower the Council to constantly monitor NGOs, and noncompliance with its rules and regulations would result in fines and imprisonment with no possibility of recourse to the courts.

Of particular concern were the limitations that the proposed law would place on NGOs active on issues of governance, including human rights. The draft law stated that no foreign NGO would be registered if “its sole or principal objects involve or include issues of governance.” Similarly, local organizations working on matters such as governance issues would be barred from receiving “any foreign funding or donation.” The proposed law would undermine fundamental freedoms of association and expression and place each and every NGO at the whim of the government.

### ***Food Security***

On May 12, 2004, the government announced that Zimbabwe would not require general food aid from the international community or food imports in 2004-5, as it had predicted a bumper harvest. Representatives of NGOs, United Nations agencies, and donor countries feel, however, that the government has over-stated the crop yield and that a large number of rural and urban Zimbabweans will require assistance as the year progresses.

In June, a member of Parliament raised questions about the government’s estimate, leading Parliament to authorize an investigation. If the government’s projections of a bumper crop were not met, Zimbabweans’ primary access to food assistance would be through the government’s Grain Marketing Board (GMB.) Since 2002, donors have provided food aid to Zimbabweans through a program separate from the GMB program. The government’s persistence, however, in permitting the GMB to conduct its operations and distribution practices without transparency rendered uncertain Zimbabweans’ access to domesti-



cally-managed food assistance. GMB distributions were often irregular and insufficient to meet high demands. Many Zimbabweans also cannot afford to buy the GMB's subsidized maize.

Problems with access to food could also be compounded in the months approaching the parliamentary elections in March 2005. Representatives of civil society, relief agencies, and donor countries warned that access to subsidized maize distributed by the GMB was likely to be subject to political interference in the pre-election period, with supporters of the opposition suffering most, as had been reported to have been the case in previous elections. Relief agencies expect interference in and restrictions on their operations during the election run-up, including their targeted feeding programs that provide food to acutely vulnerable Zimbabweans, such as orphans and households with chronically ill members.

In late November 2004, it was reported that the government would allow the World Food Programme to distribute 60000 tons of food aid.

### ***Key International Actors***

In August 2004, SADC approved the Principles and Guidelines Governing Democratic Elections, which require member states holding elections to “safeguard the human and civil liberties of all citizens, including the freedom of movement, assembly, association, expression and campaigning during electoral processes.” More significantly, all SADC member states, including Zimbabwe, signed the SADC electoral protocol, and agreed to hold elections in line with these principles.

The South African government continued to play a principal role in trying to improve the situation in Zimbabwe. In October 2004, President Thabo Mbeki of South Africa—current chair of the SADC Organ on Politics, Defense and Security—held discussions with Morgan Tsvangirai, the MDC leader, on the situation in Zimbabwe and the

forthcoming parliamentary elections. Morgan Tsvangirai also flew to Mauritius to hold discussions with President Paul Berenger in his capacity as chair of SADC.

In July 2004, the African Union (A.U.) adopted a critical report on the human rights situation in Zimbabwe. The report was prepared by experts from the African Commission on Human and Peoples' Rights, based on a mission to Zimbabwe around the 2002 elections. The adoption of the report was seen as a significant step by the AU in addressing Zimbabwe's human rights record.

The European Union formally renewed sanctions on Zimbabwe in February 2004. The Union added another year to sanctions that were first imposed in 2002. It decided to keep in place measures that ban nearly 100 Zimbabwean government officials from entering the E.U., and froze any assets they might hold in Europe. The E.U. also decided to extend an embargo on shipments of military supplies to Zimbabwe. These sanctions have not had the anticipated effect, and Zimbabwe government officials have been able to attend international meetings hosted by E.U. countries.





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WORLD REPORT  
2005

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# AMERICAS

## ARGENTINA

Serious problems continue to beset Argentina's criminal justice system. These include police abuses, prison overcrowding, torture of detainees, and degrading conditions of detention in police lockups. Under strong public pressure to deal more effectively with violent urban crime, the government of President Néstor Kirchner passed laws in 2003 increasing the use of pretrial detention and lengthening jail sentences for violent offenders.

On a positive note, the Kirchner government continues to press for accountability for human rights violations committed during Argentina's period of military rule (1976-1983). At this writing, roughly one hundred former military and police officers had been detained, and several key trials were underway.

### ***Police Abuses***

Police frequently fail to observe international norms concerning the use of lethal force and, as a result, the death rate in confrontations with suspects is high. Extrajudicial executions and torture by police are also serious problems, although the true number of extrajudicial executions is hard to gauge. According to official figures, twenty-five people, including four minors, were killed in 2003 during armed clashes involving federal police officers in the city of Buenos Aires. In 2004, victims included fifteen-year-old Héctor David Herrera, who was killed on April 16, reportedly shot at close range by members of the federal police.

The March 2004 kidnapping and murder of twenty-three-year-old Axel Blumberg led his father, Juan Carlos Blumberg, to initiate a high-profile public campaign against impunity for violent crimes. In response to demonstrations by thousands of people, the government rushed through laws that lengthened sentences for armed robbery and for arms offenses.

The new laws increase the maximum length of cumulative sentences for violent crimes to fifty years, drastically restricts the possibility of provisional release for the accused, and bars convicts from early release. In addition, a bill approved by the Buenos Aires city legislature in September modified the city's misdemeanor code by increasing penalties for many misdemeanors to a maximum of sixty days of detention, a period longer than that contemplated in the Criminal Code for some crimes. The Center for Legal and Social Studies (Centro de Estudios Legales y Sociales, CELS), a nongovernmental human rights group, criticized the Buenos Aires law as "manifestly repressive" and in breach of the Argentine Constitution and international human rights treaties.

### ***Detention Conditions***

The Argentine prison system is seriously overstretched, and torture and mistreatment of detainees is widespread. In October 2004, the Committee against Torture of the Provincial Commission of Memory (of Buenos Aires province), after analyzing 3,500 criminal complaints against officials of the Buenos Aires prison system, published dramatic findings indicating that abuse is systemic.

Due to prison overcrowding, 5,441 people were being held awaiting trial in police lockups in the province of Buenos Aires as of July 2004. According to a report by CELS, there were up to ten detainees each crammed into cells measuring 1.8 by 2.5 meters—with no beds, ventilation or natural light—requiring detainees to take turns sleeping on the floor. At this writing, a collective *habeas corpus* petition lodged by CELS in 2001 on behalf of detainees held in police lockups was still pending before the Supreme Court. In August 2004, Human Rights Watch, the International Commission of Jurists, and the World Organization against Torture co-presented an *amicus curiae* brief to the court in support of the position taken by CELS.

The detention and mistreatment of juveniles in police stations in the province of Buenos Aires continues to be a serious problem. In a report published in December 2003, CELS revealed that many children are held illegally with adults on police premises but do not appear in official statistics. In October 2004, the press reported that three hundred juveniles were being held illegally in police lockups in the province.

### ***Reproductive Rights***

Argentina has taken important steps toward guaranteeing women's right to reproductive health, most notably through the implementation of a national program on "reproductive health and responsible procreation" in 2002. However, women continue to face multiple obstacles in their access to contraception and to information on reproductive health care. Some of these obstacles constitute violations of international human rights standards: denial of access to voluntary tubal ligation; pervasive domestic violence without effective recourse; deliberate dissemination of misinformation or withholding of information on contraceptive methods in the public health care system; and severely limited access to abortion, even where not punishable by law. These violations are exacerbated for low income women by grossly inadequate services in some areas and a seriously overburdened public health care system.

### ***Accountability for Past Abuses***

Following the congressional annulment in August 2003 of the "full stop" and "due obedience" laws—which had obstructed prosecutions of those responsible for human rights abuses committed during military rule—human rights trials continue to advance. The Minister of Defense, José Pampuro, stated in June 2004 that since the current president entered office, ninety-seven former military officers had been detained for past human rights abuses. Among the most high-profile prosecutions are those involving fifteen former agents of the Navy Mechanics School (ESMA), including Alfredo Astiz, and thirty former



officers of the First Army Corps. In September 2004, Judge Jorge Urso indicted nineteen former military officials, including ex-junta leader Gen. Jorge Videla, for involvement in Operation Condor, a collaborative venture of the military regimes of the Southern Cone countries in the 1970s to arrest, torture, and “disappear” dissidents located in each others’ territory.

In March 2004, a federal court in La Plata sentenced Miguel Etchecolatz and Jorge Berges, a former police commissioner and doctor, respectively, to seven years of imprisonment for concealing the identity of the baby daughter of Aída Sanz, who was abducted by the security forces in 1977 when nine months pregnant and “disappeared.” Berges personally had handed the baby over to a civilian couple who raised her under a false name. It was the first time that a court in La Plata has convicted anyone of human rights violations, although up to two thousand people are said to have “disappeared” there during military rule.

A final judicial decision on the constitutionality of the annulment of the “full stop” and “due obedience” laws was still pending at this writing. In October 2003, the Supreme Court referred the case to the Criminal Cassation Panel. The same panel also was due to rule on whether the reopening of the ESMA case violated Argentina’s prohibition on double jeopardy.

In August 2004, the Supreme Court rejected an appeal by a former Chilean agent who had argued that the life sentence he received for the 1974 assassination of Chilean army commander Gen. Carlos Prats should be thrown out because the statute of limitations had elapsed. In a landmark decision, the court ruled that, as a crime against humanity, the murder was not subject to a statute of limitations.

In a symbolic event commemorating the twenty-eighth anniversary of the March 24, 1976, military coup, President Kirchner ordered portraits of two leaders of the military juntas that ruled the country until 1983

removed from the walls of the Military College. Kirchner also visited the ESMA and signed an agreement with the city government to turn the building into a “museum of memory.”

### ***Freedom of Expression***

Although Argentina has a free and vibrant press, progress on bills to extend rights of free expression and access to information remain disappointingly slow. Press freedom groups have lobbied Congress to adopt legislation to make defamation of public officials punishable only by civil damages, as opposed to criminal sanctions. A bill to this effect introduced into the Senate in October 2002 is still bogged down in the legislative process. Also held up in the Senate is a bill, already approved in the lower house in May 2003, that would give Argentine citizens the right to information held by public bodies.

Journalists in some Argentine provinces face threats and physical attacks for their reporting. The perpetrators of such crimes are rarely prosecuted.

### ***Key International Actors***

Recently declassified U.S. government documents reveal the strong support given by former Secretary of State Henry Kissinger to the Argentine military junta in 1976, at a time when the junta was responsible for massive human rights abuses. According to a record of a conversation between Kissinger and Argentina’s then-Foreign Minister, Adm. César Augusto Guzzetti, Kissinger told Guzzetti: “[I]f there are things that have to be done, you should do them quickly. But you should get back quickly to normal procedures.” The documents show how Kissinger undermined efforts by the U.S. Congress and the U.S. ambassador in Argentina to press the Argentine military to stop the abuses.

Trials continue in Spain of ESMA agents Adolfo Scilingo and Ricardo Miguel Cavallo, the latter of whom was extradited from Mexico in June 2003. Courts in other countries, such as Germany, continue investigating crimes committed during the “dirty war” against their nationals. In November 2003, a Nuremberg court issued international warrants for the arrest of former president Jorge Rafael Videla and two other former military officials for the murder of two German students in 1976 and 1977. All three suspects were already under house arrest in Argentina on other human rights charges.

## BRAZIL

Egregious abuses in the criminal justice system—including extrajudicial killings and torture by police and prison authorities—remain Brazil's most pressing human rights problem, but in 2004 there were new threats to freedom of expression. A foreign correspondent was nearly expelled from Brazil for an article that President Luiz Inácio Lula da Silva considered offensive, and the government took steps to create regulatory bodies for the country's film, broadcast, and print media.

Socially and economically marginalized populations are among those hardest hit by long-standing and systemic weaknesses of the criminal justice system. The problems of forced labor and human trafficking, as well as rural violence and land conflicts, also target the country's poorer citizens. As in the past, perpetrators of human rights abuses enjoy impunity in the vast majority of cases.

### ***Police Violence***

Both civil and military police forces are frequently responsible for serious abuses, including torture, extrajudicial executions, “disappearances,” and acts of racism. In the first six months of the year, the state police ombudsman for São Paulo reported 109 homicides by police. Although high, the figure represented a 73 percent decrease from that of the previous year, when police killings reached an eleven-year high. In Rio de Janeiro, the only state to publish such data monthly, police killed 593 people during the first eight months of 2004, representing a 25 percent decline from the previous year's figure. Despite these decreases, unofficial estimates have placed the total number of police killings in Brazil at around 3,000 annually. Indeed, the death toll may be even higher as many states do not record such figures correctly and some do not record them at all.

Complaints of police abuse tend to cite brutality, murder, corruption, and a lack of interest in maintaining order in certain areas. In October 2004, rights groups accused the Rio police of sitting on the sidelines in the *favela* of Vigario Geral while rival drug gangs engaged in deadly gun battles, endangering the lives of the area's residents.

### ***Free Expression***

Brazil tarnished its record of respect for freedom of expression in May 2004 when it took steps to expel a foreign correspondent for commenting on the president's alleged drinking habit. In response to an article published in the *New York Times*, the government canceled Larry Rohter's visa, stating that it was "inconvenient" for him to stay in the country. The government later changed course and allowed him to remain.

With the introduction of legislation to create a National Journalists' Council just three months later, the government cast further doubt on its commitment to press freedom. The draft law, still pending at this writing, would empower the council to "orient, discipline and monitor" journalists and their work and require all journalists to register with the body. A violation of the council's rules could result in fines or even dismissal from the official registry. Critics of the proposed measures, among them the country's main journalism, film, and television associations, called the draft law the worst affront to press freedom since censorship under the military dictatorship.

Also widely criticized is draft legislation that would establish a National Cinema and Audiovisual Agency. The agency would have the power to conduct prior review of programming and could veto certain programs if they were judged not to meet standards of "editorial responsibility."

In a related move, the government has also proposed legislation, passed by the Senate on June 29, 2004, to "register, regulate and control" non-

governmental organizations (NGOs). Federal funding to these organizations would be conditioned on their registry, and they would be required to report annually on all private and public funding they receive, including donations.

### ***Detention Conditions***

According to the federal Ministry of Justice, the number of inmates in Brazilian prisons rose from 114,000 in 1992 to 300,000 in 2004. Severe overcrowding and institutionalized violence—such as beatings, torture and even summary executions—are chronic and widespread in Brazilian prisons. In April 2004, a riot in Urso Branco prison in the northwestern state of Rondonia left nine inmates dead, two of whom were decapitated in front of shocked onlookers. According to press reports, the prison was designed to hold 350 inmates, but housed some one thousand more than capacity at the time of the riots. In a step toward greater transparency, the government recently announced the creation of a System of Penitentiary Information (Infopen), which it says will make data on prison conditions available online, and will be updated regularly by state officials.

Children are vulnerable to abuses in the juvenile justice system. Although they are promised special protection under Brazilian and international law, children in Brazil are routinely detained in abusive conditions, where they face violence at the hands of other youths or prison guards, and are unnecessarily confined to their cells for lengthy periods of time. As of early 2004, the Justice Ministry reported that 13,489 under-eighteen-year-olds were in detention, half of them in the state of São Paulo alone, exceeding the capacity of the country's juvenile detention centers, which are designed to hold 11,199. In May 2004, rights groups called for more transparency in cases of abuse, following public allegations that a new body within São Paulo's state juvenile detention system charged with investigating such abuses had thrown out 94 percent of the cases that came before it in its first year of operations.

According to these groups, official sources counted ten deaths in custody and twenty-six riots in São Paulo juvenile facilities in the same period.

### ***Impunity and Access to Justice***

The vast majority of human rights crimes in Brazil go unpunished, reflecting widespread corruption and other factors. Lack of access to justice—especially for the poorest and most vulnerable sectors of society—is a major problem, even according to Brazil’s own Secretariat for Human Rights. Though the federal government created a Public Transparency and Anti-Corruption Council in September 2004, additional efforts are necessary to increase transparency and to ensure that human rights abusers are punished adequately.

The Brazilian government has yet to pass federal laws to criminalize a number of serious human rights offenses. Such laws, if enacted and enforced, would contribute significantly to improving the country’s poor record of allowing abusers to go free.

### ***Forced Labor and Trafficking in Human Beings***

More than a hundred years after slavery was formally abolished in Brazil, a modern-day version of this hateful practice continues to thrive in rural areas. In 2004, the Labor Ministry made progress toward addressing the issue of forced labor through a national campaign conducted in partnership with the International Labor Organization. As of September 2004, mobile inspections teams had freed 2,078 people in situations of forced labor. Worryingly, however, three inspectors and their driver were killed on January 28, 2004, in Unaí, Minas Gerais, as they were investigating forced labor on ranches in the region.

The Brazilian Ministry of Justice, in partnership with UNODC, launched a program in May 2004 against human trafficking. According

to the U.N., most victims of such trafficking in Brazil are women, who are trafficked through international prostitution networks. A U.S. Congressional report estimated that between eight hundred and nine hundred women are exported for these purposes each year.

### ***Rural Violence and Land Conflict***

Though urban violence in Brazil grabs the most attention, the problem of rural violence is extremely serious. The Pastoral Land Commission has reported that 1,349 people were murdered in rural areas between 1985 and 2003. Only seventy-five cases have gone to court, however, and, of these, forty-four resulted in acquittal. In 2003 alone, seventy-three rural laborers were murdered, the highest number since 1990 and up nearly 70 percent from the previous year.

In January 2004, twenty-nine illegal diamond miners were killed on the Roosevelt reservation, home of the Cinta-Larga indigenous peoples in the state of Rondônia. Members of the tribe claimed responsibility for the massacre, stating they were acting to protect their land, which has been the site of violent clashes and invasions by miners for decades.

### ***Key International Actors***

The U.N. special rapporteur on the right to adequate housing, Miloon Kothari, visited Brazil in May and June 2004. He expressed concern regarding the removal of indigenous communities from ancestral lands in Alcântara, Maranhão—due to expansion of an aeronautical missile launch base—urging that such removals be carried out only with the consent of the populations facing displacement.

In an official visit to Brazil in early October, U.S. Secretary of State Colin Powell praised the country's role in supplying peacekeeping troops to Haiti, a country suffering from political turmoil and natural disasters.



## CHILE

Chile has made significant progress in recent years in prosecuting former military personnel accused of committing grave human rights violations during the dictatorship of Gen. Augusto Pinochet (1973-1990.)

A new code of criminal procedure, in force all over the country except Santiago (where it will be introduced in 2005), has strengthened due process guarantees for criminal defendants and greatly reduced the incidence of torture. Yet special procedures that violate due process rights are still being use in prosecutions of members of the Mapuche indigenous community, charged under terrorism laws for attacks on farms and pine plantations in the Araucanía region. A still unresolved legacy of the Pinochet era is the problem of military court jurisdiction over crimes involving police.

### ***Prosecutions for Human Rights Violations under Military Rule***

According to the Catholic Church's Vicariate of Solidarity, 311 former military personnel, including twenty-one army generals, had been convicted or were facing charges for human rights violations by mid-2004. In early January 2004, the Santiago Appeals Court upheld the conviction of Gen. Manuel Contreras, former head of the Directorate of National Intelligence (DINA, or Pinochet's secret police), and three lower-ranking DINA agents, for the 1975 "disappearance" of detainee Miguel Angel Sandoval Rodríguez. In November, the Supreme Court dismissed a final appeal against the conviction, ruling that the crime of kidnapping was not covered by an amnesty law enacted by the military government in 1978.

In recent years, the courts have deemed the 1978 amnesty to be inapplicable in "disappearance" cases since a "disappearance" must be considered a kidnapping—an ongoing crime—unless the victim's remains have been found and the courts have thereby established his or her death.

Following the Supreme Court verdict, the government announced that a building on an army base would be adapted as a special prison for human rights offenders.

In a surprise ruling, the Santiago Appeals Court stripped Pinochet of his immunity as a former head of state in May 2004, allowing him to face trial for the “disappearance” of twenty people in the 1970s. The Supreme Court narrowly affirmed the decision in August. The crimes form part of “Operation Condor,” a clandestine scheme by the military regimes of Chile, Argentina, Brazil, Uruguay, and Paraguay to kidnap and “disappear” dissidents from each other’s countries. As of December 1, 2004, the investigating judge in the case was assessing reports on Pinochet’s medical condition before deciding whether to indict him. In December Pinochet lost his immunity again, this time to face possible prosecution for the 1974 assassination in Buenos Aires of former army commander Gen. Carlos Prats and his wife, Sofía Cuthbert.

It is the third time that the Chilean courts have cleared the way for Pinochet to be prosecuted for human rights violations. His first prosecution ended in July 2002, when the Supreme Court ruled that the eighty-eight year-old former dictator suffered from moderate dementia, making him unfit to stand trial. Pinochet also faces a criminal investigation and a tax office probe after a United States Senate investigation revealed in July 2004 that a Washington, D.C., bank held millions of dollars in secret deposits for Pinochet while he was in detention on human rights charges in London.

### ***Confronting the Past***

Chile has been confronting human rights violations of the past in other important ways. On November 28, President Lagos presented on television the report of the National Commission on Political Imprisonment and Torture (Comisión Nacional sobre Prisión Política y Tortura),

which he had established in 2003 to receive testimonies from victims of torture under military rule and recommend reparation measures.

The report was based on testimony from 35,000 people, many of whom had never testified before about the abuses they had suffered. It concluded that torture had been a systematic state practice and recommended various reparation measures, including that victims receive a state pension of about 112,000 pesos a month (approximately U.S.\$190). Human Rights Watch criticized the government's decision to keep the testimonies secret for fifty years, and urged that it send information about alleged perpetrators to the courts for investigation.

The dramatic findings of the report prompted a national debate in the news media. Prior to the report's release, the army's commander-in-chief acknowledged for the first time the army's institutional responsibility for human rights violations during military rule. Until his statement, the army's position had always been that human rights violations were solely the responsibility of individual officers. The other branches of the armed forces accepted the findings of the report, but insisted that responsibility for the abuses was individual rather than institutional.

### ***Due Process and Police Abuses***

The introduction of the new Code of Criminal Procedure in all parts of Chile except the capital has helped reduce complaints of torture and mistreatment by the uniformed police (Carabineros). The new code requires a judge to review all detentions within twenty-four hours in a public hearing at which the defendant, his or her defense lawyer, and the prosecutor are present. Confessions must be ratified by the defendant in court to be admissible in criminal proceedings. The Public Defender's Office, created under the new code as an independent body under the supervision of the Ministry of Justice, provides free expert legal counsel to those unable to hire a lawyer. These and other measures have greatly strengthened due process protections for defendants.

## ***Unfair Trials of Mapuche***

Not all Chileans have benefited equally from the new code, however. During 2004, twelve members of Chile's largest indigenous community, the Mapuche, as well as a non-Mapuche sympathizer, were tried on terrorism charges for crimes committed in the context of land conflicts with private owners and forestry companies. Several provisions of Chile's antiterrorism law restrict the due process rights of the accused.

The government claimed that arson attacks by Mapuche on farmhouses, woods, and fields in the Araucanía region in southern Chile were orchestrated acts of terrorism, intended to generate fear in the groups affected and to pressure them to abandon their properties. In a report published in October 2004, Human Rights Watch argued that the terrorism charges were an exaggerated and inappropriate response to the disorder, which was directed mainly against property and had not claimed any lives. The Chilean antiterrorism law allows the identity of witnesses to be withheld from defendants, permits the prosecution to conduct investigations in secret for up to six months, and allows defendants to be held for months in preventive detention prior to the issuance of a formal indictment.

In a trial in Temuco in October 2004 of eight Mapuche defendants facing charges of illicit terrorist association, the prosecution presented at least ten witnesses who appeared in court behind screens and spoke through voice-distorting microphones. The practice of concealing from defendants the identity of their accusers breaches due process rules established in the International Covenant on Civil and Political Rights. To the credit of the Public Defender's Office, whose lawyers provided free legal counsel to the Mapuche, the court unanimously acquitted the defendants in early November.

The police reportedly mistreat and insult inhabitants of Mapuche communities, including women, children, and the elderly, when police make

arrests or conduct searches. Complaints of such abuse are investigated by military tribunals that have a near-perfect record of ruling in favor of police. Acts of violence by civilians against the police are also dealt with by military tribunals, in clear breach of international fair trial standards. Human Rights Watch has urged the Chilean government to introduce legislation limiting the jurisdiction of military courts to military offenses.

### ***Restrictions on Freedom of Expression***

For the second consecutive year, Congress in 2004 dragged its feet on legal reforms to protect freedom of expression. In December 2003, the lower house of Congress approved a bill to amend the Criminal Code and Code of Military Justice to remove provisions that penalize strongly-worded criticism of the president, military officers, and members of Congress and the higher courts, a type of law known as *desacato*. Delaying the bill's approval, senators insisted on linking *desacato* reform to broader proposals to protect the privacy and reputations of those in the public eye. A bill hurriedly approved by the lower house in December 2003, which could subject media that comment on politicians' private lives to crippling damage awards, was discussed at length in the relevant Senate committee in 2004. As of November 1, 2004, however, neither bill had been submitted to a vote.

## COLOMBIA

Colombia's forty-year internal armed conflict continues to be accompanied by widespread violations of human rights and international humanitarian law. All actors in the conflict—guerrillas, paramilitary groups, and the armed forces—commit serious violations, such as massacres, assassinations, and kidnappings.

In 2004, while pursuing an aggressive military offensive against guerrilla groups, the government engaged in peace negotiations with paramilitary groups. The negotiations may result in the demobilization of several thousand individuals who claim to have been members of paramilitary groups. At the same time, however, paramilitaries have been flouting the OAS-monitored ceasefire they agreed to at the start of negotiations, while consolidating their control over vast areas of the country. And the demobilization process continues to lack sufficient safeguards to ensure that paramilitaries responsible for the commission of atrocities are brought to justice.

The government has yet to take credible action to break ties between the military and paramilitary groups. Impunity, particularly with respect to high-level military officials, remains the norm.

### ***Negotiations with Paramilitary Groups***

The Colombian government has been negotiating the demobilization of paramilitary groups since early 2003. The negotiations have been mired in controversy: an initial demobilization of several hundred individuals in late 2003 is now widely viewed as a failure because many of those who demobilized were in fact criminals posing as paramilitaries, and because of reports that, of those who were not impostors, many have continued to engage in paramilitary activities. In addition, the paramilitaries have not adhered to the ceasefire agreement that they initially announced in November of 2002. A report by Colombia's Public

Advocate released in October 2004 stated that in the first eight months of the year it had received complaints involving 342 apparent paramilitary breaches of the ceasefire, including kidnappings, forced displacement, extortion, targeted homicides, and massacres.

A significant obstacle to a full and effective paramilitary demobilization is the lack of a legal framework to govern the demobilization process and the benefits to be provided to those who demobilize. A draft bill initially proposed by the administration of President Alvaro Uribe in 2003 would have allowed cooperative paramilitary leaders responsible for atrocities to go virtually unpunished. After an international and domestic outcry, the proposed law was modified. However, a new version of the bill circulated in April 2004 still contains serious flaws—a failure to provide for thorough investigations of paramilitary crimes and illegal assets, and a loophole allowing those convicted of atrocities to entirely avoid incarceration—that make the effective demobilization and dismantling of paramilitary structures unlikely.

In November 2004, the government announced a schedule for the demobilization of three to four thousand paramilitary troops by the end of the year, applying similar procedures to those that were used in the Cacique Nutibara demobilization.

### ***Military-Paramilitary Ties***

Paramilitary groups maintain close ties with a number of Colombian military units. The Uribe administration has yet to take effective action to break these ties by investigating and prosecuting high-ranking members of the armed forces credibly alleged to have collaborated with paramilitary groups.

Credible reports indicate that some of the territories from which the military has ejected the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia, FARC) are now under

the control of paramilitary groups, which continue to carry out indiscriminate attacks on the civilian population.

### ***Impunity***

The Attorney General's Office continues to make little progress in prosecuting commanding military officers against whom there are credible allegations of human rights violations. Prosecutors appear to lack the political will necessary to take on such high-ranking and well-connected suspects.

In 2004, for example, Attorney General Luis Camilo Osorio announced that he would not file charges against General Rito Alejo del Río. Del Río had been under investigation for allegedly supporting paramilitaries who had attacked villages, executed local civic leaders, and provoked mass displacement and severe hardship for thousands of people in northern Colombia between 1995 and 1997. The evidence against Del Río was compelling enough to prompt then-President Andrés Pastrana to dismiss Del Río in 1998. The U.S. government cancelled his visa to the United States in July 1999, on the ground that there was credible evidence that implicated him in "international terrorism," among other crimes.

### ***Anti-terrorism Measures***

Colombia's Constitutional Court struck down on procedural grounds a constitutional reform, proposed by the Uribe administration and approved by Congress in 2003, that would have allowed the military to perform arrests and searches, and intercept private communications, without a warrant or any prior judicial review. The government is widely expected to reenact the reform in 2005, this time following the requisite legal procedures.



The government continues to carry out mass arrests of individuals suspected of collaborating with guerrilla groups, a tactic that has resulted in abuses by security forces and judicial authorities. Authorities have frequently based both individual and mass arrests on inadequate or unreliable information, in some cases obtained solely from secret informants or demobilized individuals in contexts in which authorities know or should know that the information is unreliable. Such arrests, even if wrongful, can turn individuals into targets for attack after their release. For example, university professor Alfredo Correa de Andreis was assassinated by unknown assailants shortly after being formally cleared of charges, based on allegations by a secret informant, that he was a FARC ideologue.

### ***Human Rights Monitors and Other Vulnerable Groups***

Colombia is an extremely dangerous place for human rights monitors, who have for years been threatened and attacked because of their work. The problem has recently been exacerbated by statements from government officials, who in 2003 and again in 2004 publicly accused human rights organizations as well as individual human rights monitors of being guerrilla collaborators or apologists for terrorism. After sustained international criticism, President Uribe and other government officials have started to conduct meetings with representatives of domestic and international human rights organizations.

Other particularly vulnerable groups include journalists, academics, labor union leaders, and members of indigenous groups. In August 2004, for example, three labor union leaders in Arauca were apparently killed by members of the armed forces.

The Kankuamo, like many other indigenous communities, has been repeatedly targeted by guerrilla and paramilitary groups who are fighting for control of traditional Kankuamo lands in Colombia's Sierra Nevada mountains. Assassinations and massacres have resulted in hun-

dreds of Kankuamo deaths and the decimation of entire towns. In July 2004, the Inter-American Court of Human Rights told Colombia to adopt measures to protect the community. But the continued killing of Kankuamo leaders raises doubts about the government's willingness to comply with this decision.

### ***Violations by Guerrilla Groups***

While in retreat in some parts of the country, guerrillas continue to commit frequent and serious violations of international humanitarian law. Abuses include massacres, extrajudicial executions, and kidnappings for financial or political gain.

The Uribe administration expressed willingness in 2004 to negotiate the release of FARC members not convicted of committing atrocities, in exchange for the release of hostages held by the FARC. The FARC has refused this exchange, however, stating that the government should first establish a demilitarized zone where the exchange could occur.

### ***Child Recruitment***

At least one of every four irregular combatants in Colombia is under eighteen years of age. Of these, several thousand are under the age of fifteen, the minimum recruitment age permitted under the Geneva Conventions. Eighty percent of the children under arms belong to one of two guerrilla groups, the FARC or the National Liberation Army (Ejército de Liberación Nacional, ELN). The remainder fights for paramilitaries.

Many children join up for food or physical protection, to escape domestic violence, or because of promises of money. A few join under coercion or out of fear. Others are street children with nowhere to go. Children as young as thirteen are trained to use assault rifles, grenades, and mortars.

### ***Key International Actors***

The United States remains the most influential foreign actor in Colombia. In 2004 it provided more than U.S.\$700 million to the government, mostly in military aid. Although 25 percent of the security assistance included in this package is formally subject to human rights conditions, the conditions have not been enforced: the full amount of aid continues to flow to Colombia even though the government has failed to break ties between the military and abusive paramilitary groups.

The U.S. Congress has approved a doubling of U.S. troops and an increase in U.S. private contractors in Colombia for 2005. The troops and contractors are to provide logistical support and training to the Colombian military in counter-narcotics and counter-insurgency operations.

In February 2004, the Organization of American States (OAS) authorized the establishment of an OAS Mission in Colombia to “provide technical support to the verification of the ceasefire and cessation of hostilities, demobilization, disarmament, and reintegration initiatives.” The Mission has faced numerous obstacles, including lack of funding and refusal by paramilitary leaders to concentrate their forces in the demilitarized zone, which renders it impossible for the mission to perform its verification function. However, the OAS Mission has also been the subject of controversy, with critics charging that the Mission is becoming overly involved in the negotiations, improperly lending the OAS’s legitimacy to a flawed process.

The Office of the U.N. High Commissioner for Human Rights is active in Colombia, with a presence in Bogotá, Medellín, and Cali. Nonetheless, its relations with the government are difficult due to Colombia’s repeated failure to implement the office’s human rights recommendations.

## CUBA

The Cuban government systematically denies its citizens basic rights to free expression, association, assembly, movement, and a fair trial. A one-party state, Cuba restricts nearly all avenues of political dissent. Tactics for enforcing political conformity include police warnings, surveillance, short term-detentions, house arrests, travel restrictions, criminal prosecutions, and politically-motivated dismissals from employment.

In April 2003, authorities sentenced seventy-five dissidents to prison terms ranging from six to twenty-eight years, and all but thirteen—released in 2004 for humanitarian reasons—remain incarcerated at this writing. Raul Rivero, a poet and journalist, and Marta Beatriz Roque, a prominent independent economist—and the only woman sent to prison during the crackdown—were among the thirteen who were released.

### ***Legal and Institutional Failings***

Cuba's legal and institutional structures are at the root of rights violations. The rights to freedom of expression, association, assembly, movement, and the press are strictly limited under Cuban law. By criminalizing enemy propaganda, the spreading of "unauthorized news," and insult to patriotic symbols, the government curbs freedom of speech under the guise of protecting state security. The government also imprisons or orders the surveillance of individuals who have committed no illegal act, relying upon laws penalizing "dangerousness" (*estado peligroso*) and allowing for "official warning" (*advertencia oficial*).

The government-controlled courts undermine the right to fair trial by restricting the right to a defense, and frequently fail to observe the few due process rights available to defendants under domestic law.

### ***Trials and Releases of Political Dissidents***

The first major political trial since the 2003 crackdown was held in April 2004 in the central Cuban city of Ciego de Ávila. The trial involved ten defendants, among them Juan Carlos González Leiva, a blind lawyer who is the president of the Cuban Foundation for Human Rights (Fundación Cubana de Derechos Humanos). González Leiva was sentenced to four years of house arrest on charges of disrespect for authority, public disorder, disobedience, and resisting arrest. Several other defendants, including Virgilio Mantilla Arango, received prison sentences of up to seven years. The prosecution was based on a political protest that they held at a provincial hospital in March 2002.

In September 2004, Rene Montes de Oca Martija, the leader of Cuba's Pro Human Rights Party (Partido Pro Derechos Humanos de Cuba), was sentenced to eight months in prison for the crime of "contempt of authority."

Thirteen incarcerated dissidents were granted provisional release in 2004, ostensibly for humanitarian reasons. In addition to Raul Rivero, fifty-nine, and Marta Beatriz Roque, fifty-nine, they included librarian Roberto de Miranda, sixty-two, who suffered from serious health problems in prison, and independent journalist Manuel Vasquez Portal, fifty-two.

### ***Prison Conditions***

Prisoners are generally kept in abusive conditions, often in overcrowded cells. Prisoners typically lose weight during incarceration, and some receive inadequate medical care. Some also endure physical and sexual abuse, typically by other inmates with the acquiescence of guards. In October 2004, human rights advocate Luis Enrique Ferrer Garcia was reportedly stripped and beaten by police and prison officials in the Youth Prison of Santa Clara. The following month, dissident Juan

Carlos Herrera Acosta was reportedly beaten to unconsciousness by prisoners who called him “traitor, worm, coward.” Other incarcerated dissidents report receiving death threats and being subjected to other forms of harassment.

Political prisoners who denounce poor conditions of imprisonment or who otherwise fail to observe prison rules are frequently punished by long periods in punitive isolation cells, restrictions on visits, or denial of medical treatment. Dissident Oscar Elias Biscet was frequently punished in this fashion. These abusive conditions are particularly hard on older dissidents, some of whom are in their sixties and in poor health.

### ***Death Penalty***

Under Cuban law the death penalty is possible for a broad range of crimes. Because Cuba does not release information regarding its use of the penalty, it is difficult to ascertain the frequency with which it is employed. As far as is known, however, there have been no executions since April 2003.

### ***Human Rights Defenders***

Human rights monitoring is not recognized as a legitimate activity, but rather is stigmatized as a betrayal of Cuban sovereignty. No local human rights groups enjoy legal status. Instead, human rights defenders face systematic harassment, with the government placing heavy burdens on their ability to monitor human rights conditions. Nor are international human rights groups such as Human Rights Watch allowed to send fact-finding missions to Cuba. And Cuba remains one of the few countries in the world, and the only one in the Western Hemisphere, to deny the International Committee of the Red Cross access to its prisons.

## ***Labor Rights***

The government recognizes only one labor union, the Worker's Central of Cuba (Central de Trabajadores de Cuba, CTC). Independent labor unions are denied formal status and their members are harassed.

Workers employed in businesses backed by foreign investment remain under tight government control. Under restrictive labor laws, the authorities have a prominent role in the selection, payment, and dismissal of workers, effectively denying workers the right to bargain directly with employers over benefits, promotions, and wages.

## ***Key International Actors***

In mid-April 2004, the U.N. Commission on Human Rights voted twenty-two-to-twenty-one to adopt a resolution deploring the "actions which occurred last year in Cuba in respect to sentencing of political dissidents and journalists," a reference to the heavy sentences meted out to dissidents in April 2003. A number of Latin American countries voted in favor of the resolution.

The U.N. Educational, Scientific and Cultural Organization (UNESCO) awarded independent journalist Raul Rivero its annual press freedom award in May. Rivero, sentenced to a twenty-year term of imprisonment during the 2003 crackdown, was honored for his "brave and longstanding commitment to independent reporting, the hallmark of professional journalism."

The European Union continues to maintain its common position on Cuba, making improvement in economic and trade relations contingent on Cuba's progress on human rights. In October 2004, however, Spain's new ambassador to Cuba criticized E.U. policy toward the island and said that his government would work to thaw relations. A few days later, three European politicians—two Dutchmen and a Spaniard—who visit-

ed Cuba to meet with dissidents were arrested at Havana Airport, detained briefly, and expelled from the country.

The U.S. economic embargo on Cuba, in effect for more than four decades, continues to impose indiscriminate hardship on the Cuban people and to block Americans from traveling to the island. In early May 2004, President Bush announced new measures to tighten the embargo. The measures included stricter limits on cash remittances and on visits to family members. In October, for the thirteenth straight year, the U.N. General Assembly voted by an overwhelmingly margin to urge the U.S. to end the embargo.



## GUATEMALA

Eighteen years after the return of civilian rule and eight years after the signing of peace accords, Guatemala has made little progress toward securing the protection of human rights and the rule of law, essential features of a functioning democracy. Ongoing acts of political violence and intimidation threaten to reverse the little progress that has been made in recent years. With the United Nations concluding its ten-year verification mission at the end of 2004, efforts to establish new forms of international collaboration on human rights issues face strong opposition from powerful sectors within the country, as well as legal hurdles created by the Constitutional Court's highly restrictive interpretation of the Guatemalan constitution.

### *Impunity*

Guatemala is still suffering the effects of an internal armed conflict that was, in many respects, the region's most brutal. A U.N.-sponsored truth commission estimated that as many as 200,000 people were killed during the thirty-six-year war that ended in 1996. Government forces were responsible for the vast majority of the killings.

Guatemalans seeking accountability for these abuses face daunting obstacles. One is the weakness of a justice system that relies on prosecutors and investigators who receive grossly inadequate training and resources. The courts routinely fail to resolve judicial appeals and motions in an expeditious manner, allowing defense attorneys to engage in dilatory legal maneuvering. The army and other state institutions fail to cooperate fully with investigations into abuses committed by current or former members. The police do not provide adequate protection to judges, prosecutors, and witnesses involved in politically sensitive cases.

Of the 626 massacres documented by the truth commission, only one case has been successfully prosecuted in the Guatemalan courts. In

2004, a lieutenant and thirteen soldiers were found guilty of the 1995 Xamán massacre in which eleven civilians were murdered; they were sentenced to 40 years in prison each. By contrast, the prosecution of former military officers allegedly responsible for the 1982 Dos Erres massacre, in which 162 people died, has been held up for years by dilatory motions by the defense.

The few other convictions obtained in human rights cases have come at considerable cost. In the case of Myrna Mack, an anthropologist who was assassinated in 1990, it took over a decade to obtain the conviction of an army colonel, Valencia Osorio, for his role in orchestrating the killing. During that time, a police investigator who gathered incriminating evidence was murdered, and two other investigators—as well as three witnesses—received threats and fled the country. The conviction was subsequently overturned by an appeals court in 2003, only to be reinstated by the Supreme Court in 2004. However, Osorio was able to escape police custody and has not served his sentence.

### ***Clandestine Groups***

Over the past three years, there have been an alarming number of attacks and threats against Guatemalans seeking justice for past abuses. The targets have included human rights organizations, justice officials, forensic experts, plaintiffs, and witnesses involved in human rights cases. They have also included journalists, labor activists, and others who have denounced abuses of authority.

There is a widespread consensus among local and international observers that the people responsible for these acts of intimidation are affiliated with private, secretive, illegally armed networks or organizations, commonly referred to in Guatemala as “clandestine groups.” These groups appear to have links to both state agents and organized crime—which give them access to considerable political and economic resources. The Guatemalan justice system, which is ill-prepared to con-

tain common crime, has so far proven no match for this powerful and dangerous threat to the rule of law.

### ***Excessive Use of Force***

While political violence is no longer carried out as a matter of state policy, members of the national police still sometimes employ excessive force against suspected criminals and others. These cases usually entail the abuse of authority by poorly trained police officers.

In August 2004, for instance, national police used excessive force against workers who had occupied Nueva Linda, a private plantation on the Pacific coast, according to the National Human Rights Ombudsman. After the workers resisted police efforts to evict them from the property, a gun battle erupted, killing eleven people, including four police. Journalists who witnessed the confrontation reported that the police carried out several extrajudicial executions. They also reported being threatened and beaten by police.

### ***Workplace Discrimination***

Women and girls working in Guatemala's two female-dominated industries—the export-processing (maquiladora) and live-in domestic worker sectors—face widespread sex discrimination at the hands of private employers and the government. Domestic workers are denied key labor rights protections, including minimum wage guarantees and an eight-hour workday, and have only limited rights to paid national holidays. Younger women and girls, in particular, sometimes face sexual harassment and violence in the homes where they work.

Women and girls working in the maquiladora sector, though formally protected under the law, encounter persistent sex discrimination in employment based on their reproductive status, with little hope for government remedy. Guatemalan maquiladoras, many of which are suppli-

ers for well-known South Korean and U.S.-based corporations, discriminate against women workers in a number of ways—including requiring women to undergo pregnancy tests as a condition of employment; denying, limiting, or conditioning maternity benefits to pregnant women; denying reproductive health care to pregnant workers; and, to a lesser extent, firing pregnant women.

### ***Key International Actors***

The United Nations Verification Mission in Guatemala (MINUGUA) was scheduled to close its operations at the end of 2004. In preparation for that date, MINUGUA sought to strengthen the capacity of key state institutions to promote the goals of the 1996 peace accords and train young Guatemalan professionals as verifiers and promoters of the accords. The Office of the United Nations High Commissioner for Human Rights reached an agreement with Guatemala to establish an in-country office that would provide observation and technical assistance following MINUGUA's departure. However, the agreement, which still had not been ratified by the Guatemalan Congress at this writing, has faced significant opposition from some legislators.

The United Nations has also entered into an agreement with Guatemala to establish a special commission to investigate and promote the prosecution of the “clandestine groups.” The Commission for the Investigation of Illegal Groups and Clandestine Security Organizations (CICIACS) grew out of a proposal developed by the Guatemalan government and local human rights groups, in consultation with members of the international community. Both the U.S. and European diplomatic corps have supported the creation of the CICIACS and expressed their intention to help finance its operations. The agreement has not been ratified by the Guatemalan Congress, however, and its prospects for ratification have been greatly diminished by a finding of the Constitutional Court that several of its articles were unconstitutional. The government has said it would propose modifications to the initiative that would

make it consistent with the court's restrictive interpretation of the constitution.

The Inter-American human rights system has provided an important venue for human rights advocates seeking to press the state to accept responsibility for abuses. In 2004, Guatemala accepted state responsibility for several cases brought before the Inter-American Court of Human Rights, including the 1990 murder of anthropologist Myrna Mack and the 1982 Plan de Sánchez massacre.

## HAITI

The bicentennial of Haiti's independence, 2004 was a year of turmoil, lawlessness, and humanitarian disaster. The interim government, which took power in March, has been unable to impose its authority over large swathes of the country or uphold the rule of law. With only a small, demoralized, and poorly-trained police force, the government has had to rely on the U.N.-mandated multinational force to maintain security, but that force's numbers are insufficient for restoring public order and stability.

In responding to mounting violence, the Haitian police are responsible for frequent illegal arrests and, in some instances, extrajudicial executions. The justice system is in disarray, with even the most serious crimes going unpunished. Prison conditions remain deplorable.

Haiti also suffered humanitarian tragedy in 2004, further impoverishing and destabilizing the country. Tropical Storm Jeanne slammed through Haiti in September, killing at least two thousand people, flooding certain areas, and adding to the country's litany of troubles. Armed gangs, taking advantage of the lack of security, stole humanitarian assistance meant for victims of the storm. Aid groups threatened to suspend operations if their safety could not be protected.

### ***Violence, Lawlessness, and Instability***

In February 2004, rebel forces captured large sections of the country and pushed President Jean-Bertrand Aristide from office. The rebels, who began by taking over police stations in the northern city of Gonaives, included a solid core of former officers and soldiers from the country's disbanded army, as well as former paramilitaries responsible for innumerable atrocities during Haiti's 1991-1994 military government. Among their leaders was Louis Jodel Chamblain, one of the founders of the Revolutionary Front for Haitian Advancement and Progress (Front

révolutionnaire pour l'avancement et le progrès haïtien, FRAPH), who had been sentenced in absentia to life in prison for the September 1993 murder of activist Antoine Izmary, as well as for involvement in the 1994 Raboteau massacre.

The scene of the greatest violence was Saint Marc, a town an hour south of Gonaïves. During much of February, the town was terrorized by a violent pro-government death squad known as Bale Wouze, or Clean Sweep. Family members of the dead gave Human Rights Watch a list of twenty-four people who were killed in the violence, including Kenol St. Gilles, who was burned alive by Bale Wouze members on February 11.

Haiti's violence and instability did not end with the establishment of an interim government in March 2004. Despite the arrival of international military forces mandated to reestablish a stable and secure environment, much of the country remains under the control of irregular armed groups. The Haitian National Police—a demoralized and discredited force by the end of the Aristide presidency—is small, poorly trained, and under-resourced. Its personnel are outnumbered and outgunned by former soldiers, criminal gangs, and other irregular armed groups. Although a few weak attempts at disarmament have been made, the country remains awash with illegal weapons.

Former soldiers wanting back pay and the reinstatement of the army occasionally threaten to rise up against the government to enforce their demands. They have taken over police stations, former barracks, and other buildings in several cities and towns, painting the buildings yellow, the army's traditional color. They frequently have manned check-points, patrolled streets—sometimes in state vehicles—and taken over other government functions.

Armed gangs, some of which claim affiliation with the political party of former President Aristide, were responsible for a wave of escalating vio-

lence beginning in September 2004. Nearly two hundred people were killed in the months of September and October. On September 30, three police officers were reportedly shot to death in Port-au-Prince, with two of them later found decapitated.

### ***Police Abuses***

In responding to the wave of violence in September and October 2004, police arrested and detained people illegally, often carrying out arrests without warrants and failing to bring detainees before a judge within the forty-eight hour period mandated under Haitian law. Detainees included Yvon Fuille, the president of the Haitian Senate, and two other politicians associated with the Aristide government, who were arrested on October 2 at Radio Caraibes in Port-au-Prince. Indeed, hundreds of Aristide supporters were reportedly arrested on suspicion of involvement in violence. Whether the police have evidence to justify some of the arrests—like that of Father Gerard Jean-Juste, picked up on October 13 at his parish in Port-au-Prince—is far from clear.

Beatings and extrajudicial executions by police have also been reported. In November 2004, the National Coalition for Haitian Rights (NCHR), a nongovernmental human rights group, called for the establishment of an independent commission to investigate police responsibility for the October 26 killing of seven to thirteen youths in Fort National, a poor area of Port-au-Prince. According to reports received by NCHR, the youths were tortured by a “commando unit” of masked police officers before they were killed.

### ***Justice***

The justice system was essentially destroyed in February 2004, with court buildings in several cities and towns looted, burned, or both, and valuable court documents lost. The country’s prisons and jails were entirely emptied.



The new government has promised to rebuild the justice system and put an end to the impunity for which Haiti is notorious. Yet progress has been slow. Although the government arrested a number of people implicated in the February killings in Saint Marc, it has made few advances in prosecuting the case. And in August 2004, in a critical setback for justice, a jury acquitted former paramilitary leader Louis Jodel-Chamblain and ex-military police Capt. Jackson Joanis of the 1993 murder of Antoine Izmary. The trials were a hastily-conducted sham.

Prison and jail conditions are dire. Many detention facilities are still not in functioning condition; those that do hold prisoners are generally dirty and crowded, and often lack sanitary facilities.

### ***Election Conditions***

Interim Prime Minister Gerard Latortue has promised to hold elections in 2005. Yet unless the government and U.N. forces succeed in stabilizing the country, it is doubtful that Haiti will have the security conditions necessary for free and fair elections. In October 2004, further complicating progress toward elections, the chairwoman of the provisional electoral council resigned after a dispute with the council's treasurer over the alleged misappropriation of funds.

### ***Human Rights Defenders***

Human rights defenders, working in a dangerous, highly-politicized environment, face threats and intimidation. Anonymous death threats were reported by Renan Hedouville, the head of the Lawyers Committee for the Respect of Individual Liberties (Comite des Avocats pour le Respect des Libertes Individuelles (CARLI)), and Mario Joseph, a lawyer with the International Lawyers Office (Bureau des Avocats Internationaux (BAI)).

### ***Key International Actors***

Multinational troops arrived in Haiti just after President Aristide departed. In April 2004, the U.N. Security Council approved just over 8,300 peacekeeping troops for Haiti: 6,700 military personnel and 1,622 civilian police. The troop deployment in Haiti is headed by Brazil, which is seeking a permanent seat on the U.N. Security Council. Unfortunately, as of mid-October, the U.N. Stabilization Mission in Haiti (MINUSTAH) had far fewer personnel than allotted: a mere three thousand military troops and 650 civilian police. Besides Brazil, the countries sending troops included Argentina, Chile, Nepal, Peru, Sri Lanka, and Uruguay.

Despite Haiti's dire human rights and humanitarian conditions, the United States continues to deny Haitians on U.S. territory temporary protection from deportation back to Haiti. It also intercepts Haitians who flee their country and repatriates them immediately. In late February 2004, in a clear violation of international refugee protections, the U.S. Coast Guard dropped off hundreds of asylum seekers in the main port in Port-au-Prince, the site of violence and widespread looting.

The Caribbean Community and Common Market (CARICOM), a fifteen-member group of Caribbean countries, suspended ties with Haiti after President Aristide went into exile. In November CARICOM leaders decided to maintain the suspension, stating that it was based on "fundamental principles of respect for human rights, due process and good governance."

In October, the Inter-American Commission on Human Rights (IACHR) expressed grave concern over human rights conditions in Haiti.

## MEXICO

Several of Mexico's most pressing human rights problems stem from shortcomings in its criminal justice system. They include torture and other ill-treatment by law enforcement officials, and a failure to investigate and prosecute those responsible for human rights violations.

President Vicente Fox has repeatedly promised to address these problems and has taken important steps toward doing so—establishing a special prosecutor's office to investigate past abuses and proposing justice reforms designed to prevent future ones. Neither initiative has received adequate government support, however, and it is unclear whether President Fox will be able to advance these programs in the two years that remain in his presidency.

### ***Torture, Ill-treatment, and Police Brutality***

Torture is a persistent problem within the Mexican criminal justice system. A factor perpetuating the practice is that some judges accept the use of evidence obtained through violations of detainees' human rights. Prison inmates are subject to abuses, including extortion by guards and the imposition of solitary confinement for indefinite periods of time. Children in some juvenile detention facilities are forced to live in squalid conditions and are reportedly subject to beatings and sexual abuse. Foreign migrants are especially vulnerable to abusive practices by government agents.

Abusive police practices were evident in several high profile cases in 2004. In May, police in Guadalajara, Jalisco, clashed with protesters during the final day of the EU-Latin America summit and, several hours later, swept through the area around the protest, rounding up people as they sat in public parks, rode buses, walked down the street, and as they were being treated in the Red Cross clinic. Police beat some of the detainees during and after their arrests, and held over fifty people

incomunicado for two days. During this time, detainees were denied access to legal counsel and subjected to physical mistreatment and abuse. Several former detainees reported being coerced into signing false confessions as a result of torture and other abuses.

In March 2004, President Fox proposed reforms designed to fix features of Mexican criminal procedure that perpetuate and even encourage the use of torture by law enforcement officials. The new legislation would disqualify all evidence obtained illegally and allow confessions to be entered as evidence at trial only when they were made in the presence of a judge and defense counsel. The impact of these provisions was undercut, however, by language that could exempt suspects in organized crime cases from these and other due process guarantees. At this writing, the Mexican Congress had yet to vote on the bill.

### ***Impunity***

The criminal justice system routinely fails to provide justice to victims of violent crime and human rights abuses. The causes of this failure are varied and include corruption, inadequate training and resources, and a lack of political will. One prominent example is the unsolved murders of hundreds of young women and girls over the last decade in Ciudad Juárez, a city on the U.S. border in Chihuahua state.

The state's efforts to prosecute those responsible for the killings have been fraught with problems. In October 2004, a Chihuahua judge sentenced bus driver Victor Garcia Uribe to successive fifty-year prison terms for the murders of eight young women. Garcia was convicted on the basis of a confession that he said he made under torture and that he later recanted. There was no physical evidence linking García to any of the murders. In 2002, police gunned down García's lawyer, Mario Escobedo Salazar, under highly suspicious circumstances. Escobedo and another lawyer had reported receiving telephone threats for three months from unidentified male callers who warned them that they

would be killed if they continued representing García and another suspect. That other suspect died while in police custody. Three other individuals facing charges for some of the Juárez killings have also recanted confessions that they claim were coerced through torture.

A major shortcoming of the Mexican justice system is that it leaves the task of investigating and prosecuting army abuses to military authorities. The military justice system is ill-equipped for such tasks. It lacks the independence necessary to carry out reliable investigations and its operations suffer from a general absence of transparency. The ability of military prosecutors to investigate army abuses is further undermined by fear of the army, which is widespread in many rural communities and which inhibits civilian victims and witnesses from providing information to military authorities.

### ***The Special Prosecutor's Office***

In 2001, President Fox established a special prosecutor's office to investigate and prosecute past acts of political violence, including massacres of student protesters in 1968 and 1971, and the forced disappearance of hundreds of government opponents during the country's "dirty war" in the 1970s. For two years the office's progress was limited by insufficient cooperation from the military and inadequate access to government documents. But in November 2003, the special prosecutor won a landmark decision from the Mexican Supreme Court holding that statutes of limitations do not apply to old "disappearance" cases as long as the victims' bodies have not been found. He then obtained arrest warrants for several high level officials, and secured the arrests of Miguel Nazar Haro in February 2004 and Juventino Romero Cisneros in October 2004. Both are accused of participating in the forced disappearance of Jesús Piedra Ibarra in the 1970s.

But these advances have been counterbalanced by significant failures. All the other suspects have managed to escape arrest. There have been

no exhumations, nor any indication that the special prosecutor has made progress uncovering the fate of hundreds of “disappeared” people or in providing Mexico with a comprehensive account of the crimes that took place. The special prosecutor’s most ambitious move—the indictment of former president Luis Echeverría—was thrown out by a trial judge. The case is now before the Supreme Court.

### ***Labor Rights***

Legitimate labor-organizing activity is obstructed by collective bargaining agreements negotiated between management and pro-management unions. These agreements often fail to provide worker benefits beyond the minimums mandated by Mexican legislation, and workers sometimes only learn of the agreements when they grow discontented and attempt to organize independent unions. Workers who seek to form independent unions risk losing their jobs and are generally left unprotected by the government from retaliatory dismissals.

### ***Freedom of Expression***

Mexican laws on defamation are excessively restrictive and tend to undermine freedom of expression. Besides monetary penalties, journalists face criminal prosecution for alleged defamation of public officials. Journalists have occasionally faced violence at the hands of government agents.

### ***Right to Education***

Mexico has failed to ensure that tens of thousands of rural children receive primary education during the months that their families migrate across state lines to work in agricultural camps. While there is a federal program to provide primary schooling in the agricultural camps, a large number of parents choose to have their children work in the fields

rather than attend school. The failure to enforce child labor laws facilitates this choice.

### ***Key International Actors***

As part of a Technical Cooperation Agreement signed by President Fox, the U.N. High Commissioner for Human Rights maintains an in-country office that, in December 2003, produced a comprehensive report documenting ongoing human rights problems and providing detailed recommendations for addressing them. The Fox administration has committed itself to developing a national human rights program based on the report's recommendations, but at this writing had yet to do so. The administration's justice reform proposal incorporates some elements of those recommendations while ignoring others, such as the recommendation to end military jurisdiction over cases involving human rights violations.

The United States and Canada are, along with Mexico, signatories to the North American Free Trade Agreement and its labor side accord, which commits them to enforce their laws protecting workers' rights and grants them authority to hold one other accountable for failing to meet these obligations. Under the accord, when a government of one country receives a complaint of violations committed in one of the other two, it can investigate the charges. However, because the complaint process is convoluted and enforcement mechanisms are weak, the accord has had little impact on labor rights violations in Mexico.

Mexico has played a leading role at the international level in pressing for human rights promotion to be considered an integral part of counter-terror efforts. It sponsored resolutions to that end at both the U.N. General Assembly and Commission on Human Rights and successfully pressed the Commission to name an independent expert on the protection of human rights and fundamental freedoms while countering terrorism.

## PERU

Peru's progress in carrying out the recommendations of its truth commission, which reported in August 2003 on human rights violations committed during the country's twenty-year internal conflict (1980-2000), has been disappointingly slow. Movement toward prosecuting state officials responsible for the worst human rights violations has been obstructed by military courts. Civilian prosecutors have advanced significantly in only a small number of cases.

The inefficiency and inaccessibility of Peru's justice system, coupled with local government corruption and lack of transparency, have contributed to outbreaks of violence in rural areas, such as the lynching of a controversial mayor. Police use lethal force unjustifiably in dealing with public protests, sometimes with fatal consequences. Longstanding problems like torture and inhumane prison conditions continue to give cause for concern. Journalists in provincial towns and cities are vulnerable to physical attack and intimidation for criticizing local authorities.

### ***Confronting the Past***

Military courts insist on retaining jurisdiction over cases in which military personnel are implicated, a major obstacle to justice. In June 2004, the prosecutor investigating the "disappearance" and extrajudicial execution in 1992 of nine students and a teacher from the University of La Cantuta stated that military courts should have jurisdiction in the trial of Gen. (Rtd.) Nicolás Hermoza Ríos, who was army commander at the time of the crime. In August 2004 the Supreme Council of Military Justice, Peru's highest military tribunal, affirmed its prior ruling in August 1994, acquitting Hermoza, another military official, and former intelligence chief Vladimiro Montesinos of the crime. The following day, the Constitutional Court ruled that Peru's Constitution did not permit violations of human rights committed by military personnel to



be judged in military courts. Human rights lawyers are now pressing for the Cantuta case to be reopened in the ordinary courts.

In other cases, bureaucratic inefficiency, insufficient resources, and a lack of skilled investigators have contributed to delays. For example, a protracted investigation into circumstances of the 1986 prison massacre of El Frontón, which began in October 2002, continues to face serious difficulties two years later. Human rights lawyers representing relatives of the 122 prisoners who died in the massacre have questioned the identification of twenty-six bodies carried out by the Medical Legal Service (SML). Due to these delays, as of November 1, 2004, the prosecutor had yet to open a criminal investigation.

The special prosecutor's office mandated to investigate 159 cases of "disappearance" under a friendly settlement with the Inter-American Commission on Human Rights, as well as forty-three cases referred to it by Peru's truth commission, has filed charges in only five cases. None of the defendants is currently in detention. A local prosecutor in Junín charged General Pérez Documet, then military chief of Junín province, with the abduction and torture in 1991 in Huancayo of Luis Alberto Ramírez Hinostroza. Ramírez subsequently received repeated death threats and, in August 2004, was shot and wounded by unidentified assailants close to his home.

Another prosecutor charged with investigating human rights violations committed during the government of President Fujimori (1990-2000) has made greater progress. More than forty former agents of the Colina group, a death squad responsible for "disappearances" and extrajudicial executions in the early 1990s, are currently detained awaiting trial.

### ***Local Corruption and Access to Justice***

Although Peru is largely free of the political violence which wracked the country in the 1980s, there were serious outbreaks of violence in 2004

when irate townspeople vented their grievances against controversial local authorities, or when supporters of the authorities attacked critics. In a report published in September 2004, Peru's national human rights ombudsman named seventy-seven municipalities affected by conflicts between townspeople and local governments. In April 2004, a furious mob lynched Cirilo Robles, the mayor of Ilave, Puno, who was accused of corruption. Another government official was seriously injured. During the same month, men armed with planks, machetes, and other weapons attacked townspeople in Lagunas, on the Peruvian Amazon, injuring more than forty, some seriously. The townspeople had surrounded the town hall to prevent the mayor from evading an accounting audit. Local government corruption and the failure of the Peruvian justice system to investigate effectively allegations of corruption and abuse of power were contributory factors in such outbreaks of violence.

### ***Use of Excessive Force to Quell Demonstrations***

According to the nongovernmental National Human Rights Coordinating Group, eleven demonstrators have died as a result of excessive use of lethal force by the police and army since the government of President Toledo took office in 2000. In October 2004, members of the national police shot and killed two coca growers in San Gabán, Puno who were protesting the government's failure to pay coca producers for the cultivation of alternative crops. Eight others suffered gunshot wounds.

### ***Torture and Prison Conditions***

Criminal suspects held for interrogation in police stations are frequently tortured. Conditions in some prisons continue to be harsh. The Peruvian nongovernmental human rights group COMISEDH (Comisión de Derechos Humanos) documented thirty-three cases of torture between January and November 2004. Nine of the victims died.

Human rights groups have urged the government to close down the remote, high-altitude prisons of Challapalca, in Tacna, and Yanamayo, in Puno. After a visit to Challapalca prison in August 2002 the Inter-American Commission on Human Rights published a damning report stating that conditions there were inhumane, and that among other physical abuses new arrivals had been beaten and tortured with electric prods. So far, the Peruvian government has failed to implement the commission's long-standing recommendation that the prison be closed, although the number of prisoners held there has been reduced. About eighteen were still being held there as of November 2004.

### ***Attacks on Journalists***

Journalists and radio commentators in Peru's provinces are vulnerable to physical attack, intimidation, and harassment for criticizing local authorities. This pattern of abuse has been constant for many years and shows the precariousness of respect for press freedom in many Peruvian cities. In February 2004, Antonio De La Torre Echeandía, a journalist for Radio Orbita, was stabbed to death by two men who attacked him with knives while he was returning from a party in the town of Yungay. A few days earlier, De la Torre had broadcast accusations against local government officials. In March, the mayor, who was suspected of having ordered the assassination, was arrested and detained in the Huaraz prison. However, police delayed carrying out arrest warrants against two others implicated in the murder, including the mayor's daughter. In September, journalist César Castro Cano was stabbed and wounded in Cusco, where he had been investigating alleged mismanagement by a local government official.

## VENEZUELA

Venezuelan democracy passed an important test in August 2004 when it held, in a lawful and peaceful manner, a national referendum to determine whether President Hugo Chávez should remain in office. According to election authorities and international observers, a solid majority of Venezuelans voted in favor of the president's continued tenure. But President Chávez and his supporters in the National Assembly continue to take steps to undermine the independence of the country's judiciary and to threaten freedom of the press.

The country's political polarization has diverted attention from other pressing human rights issues, including a longstanding problem of police abuse. Extrajudicial executions of criminal suspects by both state and municipal police forces are common and all too often go unpunished. Cases of torture continue to be reported. Violence and anarchy prevail in many Venezuelan prisons. Refugees from neighboring Colombia, in areas close to the border, face legal insecurity, difficult living conditions, and sometimes threats to their lives.

### ***Independence of the Judiciary***

In May 2004, President Chávez signed a court-packing law that expands the number of Supreme Court justices from twenty to thirty-two. Although the new justices had not been appointed at this writing, the new law allows the governing coalition to use its slim majority in the legislature to obtain an overwhelming majority of seats on the country's highest court. The law also gives the governing coalition the power to remove sitting justices by nullifying their appointments.

A political takeover of the Supreme Court would compound the damage already done to judicial independence by policies pursued by the Court itself. The Court, which has administrative control over the judiciary, has failed to grant 80 percent of the country's judges security of tenure,

which is an essential ingredient of judicial independence. In March 2004, three judges were summarily fired after they ordered the release of people detained during anti-government protests.

### ***Freedom of the Press***

Venezuela has a vigorous and uninhibited media. Indeed, as part of the often heated and acrimonious debate between supporters of the government and its opponents, members of the media have been able to express strong views without restriction. Private television companies have often adopted blatantly partisan positions, airing news and debate programs extremely hostile to the Chávez government. In response, many journalists working for media that support the opposition have been subject to aggression and intimidation by government supporters. To a lesser degree, journalists working for media sympathetic to the government have also faced intimidation.

While journalists have a professional responsibility to be objective in their reporting, it is not the job of government to police such professional standards. On the contrary, the government has an obligation, no matter how critical or partisan the reporting, to defend press freedom by vigorously prosecuting perpetrators of attacks and acts of intimidation. In the majority of cases, the Chávez government has not done so.

In October 2004, the National Assembly moved to pass a government bill on the “social responsibility” of radio and television stations that would impose excessive restrictions on the content of these media. The draft legislation would introduce an array of restrictions on broadcasting content that, if enforced rigorously, would infringe upon basic norms of free expression. Under the guise of protecting children from crude language, sexual situations, and violence, the proposed law would subject adults to restrictive and puritanical viewing standards. The proposed law also contains loosely-worded rules on incitement to violence

and threats to public order that could penalize the stations' legitimate expression of political views.

In addition, the draft law provides for a regime of drastic punishments for infractions the likely effect of which would be to encourage pervasive self-censorship. If found responsible for infractions, the stations could be fined, ordered to suspend transmissions, or even have their broadcasting licenses revoked.

### ***Police Killings, Torture, and Ill-treatment***

Police continue to carry out extrajudicial executions of criminal suspects. According to the respected nongovernmental human rights group PROVEA, 130 people, most of them young male criminal suspects, were victims of extrajudicial execution by national, state, and municipal police forces between October 2002 and September 2003. About one in ten of the victims were children under the age of eighteen. In many cases, the police covered up executions by asserting that the victims were killed in exchanges of gunfire, despite contrary testimony by witnesses. Generally, the police responsible for killings escaped justice.

In early February and late March 2004, National Guard and police officers beat and tortured people detained during and after protests in Caracas and other Venezuelan cities. After demonstrators clashed with National Guard units and Chávez supporters, leaving thirteen people dead and more than one hundred wounded, security forces detained more than three hundred civilians. Detainees reported being beaten during and after their arrests with nightsticks, with the flat side of sabers, and with helmets, gunstocks, and other articles. Some reported that their captors hurled tear gas bombs into the closed vehicles in which they were seated, causing extreme distress, near suffocation, and panic, while others described how the powder from tear gas canisters was sprinkled on their faces and eyes, causing burns and skin irritation. Detainees also reported being shocked with electric batons while in cus-

tody and defenseless. The alleged abuses appeared to enjoy official approval at some level of command in the forces responsible for them.

### ***Prison Conditions***

Conditions in Venezuelan prisons are cruel, inhuman, and degrading. Overcrowding is a chronic problem and prisons are virtually controlled by armed gangs. Prison riots and inmate violence claim hundreds of lives every year. In 2003 PROVEA estimated the prison murder rate to be forty times the national average.

### ***Border Security and the Right to Refugee Status***

Lawlessness prevails along parts of Venezuela's 1,300 mile border with Colombia. Colombian paramilitaries and guerrillas, as well as Venezuelan armed groups and criminal gangs, appear to be responsible for execution-style killings, but so far such groups have operated with near-complete impunity.

According to the United Nations High Commissioner for Refugees (UNHCR), 2,691 people had applied for refugee status in Venezuela by summer 2004. But UNHCR officials say that the real number of refugees is far higher since most try to blend undetected into the population. In February 2004, Venezuela began using a newly-established asylum application process and in June began providing identification documents to recognized refugees to enable them to exercise their rights, including to work, study, and obtain medical treatment.

The Venezuelan National Refugee Commission granted temporary protection status to 292 indigenous Wayúu who fled to Venezuela in May 2004 following armed violence in their community of Bahía Portete, in La Guajira, Colombia. It was the first time that the Venezuelan government has granted this status. The temporary protection is valid for ninety days and renewable according to the security and protection

needs of the group. This status means they can remain in Venezuela and get government assistance through the National Civil Protection Office.

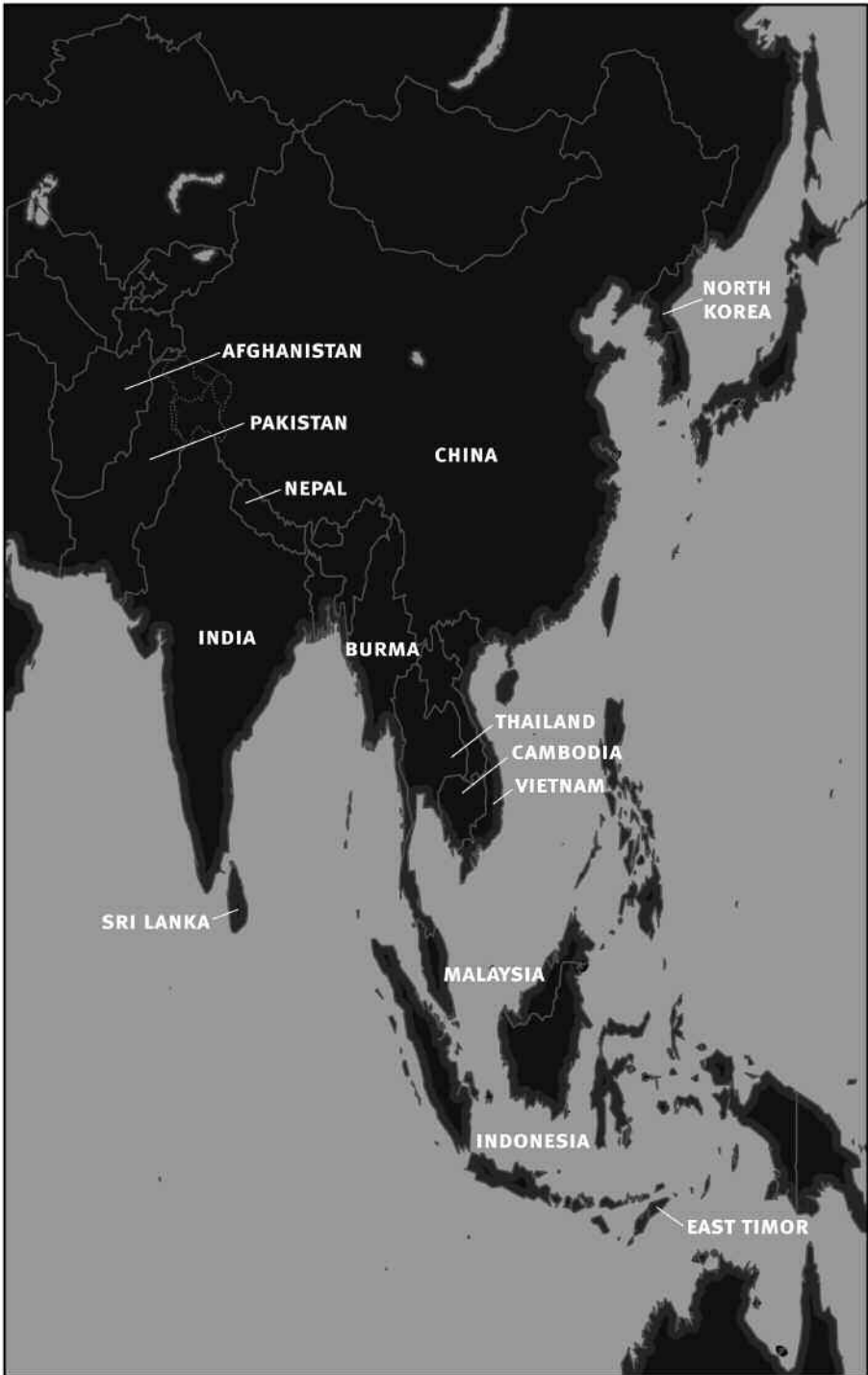
### ***Key International Actors***

The Organization of American States (OAS) played a key role in brokering the agreement between the government and the political opposition to find a peaceful and constitutional solution to the political crisis, helping set the stage for the August 2004 recall referendum. The U.S.-based Carter Center, along with the OAS, provided international observers to help ensure that the referendum took place without serious incident or disruption by partisans on either side. Both the Carter Center and the OAS validated the official results of the referendum, concluding that President Chávez had won a legitimate victory.

UNHCR organized a series of training workshops for the army units that patrol the border and provided officers with instruction on refugee rights, international refugee law, and the role of the military in refugee protection. UNHCR also provided the National Refugee Commission with continuing technical assistance, training, and expertise.







H U M A N  
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WORLD REPORT  
2005

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**ASIA**

## AFGHANISTAN

Despite some improvements, Afghanistan continued to suffer from serious instability in 2004. Warlords and armed factions, including remaining Taliban forces, dominate most of the country and routinely abuse human rights, particularly the rights of women and girls. The international community has failed to contribute adequate troops or resources to address the situation, and basic human rights conditions remain poor in many parts of the country, especially outside of Kabul.

Progress was made in stabilizing Afghanistan's system of governance. Afghans began exercising their right to participate in the political process by approving a new constitution in January 2004, and selecting Hamid Karzai to a five-year term as president in a generally peaceful election in October—the country's first universal suffrage, direct vote for the presidency. Afghans, including notable numbers of women, participated widely in both processes, but the legitimacy of both processes suffered due to inadequate preparation by the international community and the absence of sufficient security and monitoring.

These advances are offset by the blossoming Afghan drug economy and the continuing effects of widespread poverty. Afghanistan was the largest worldwide producer of opium and heroin in 2004. Escalating drug profits stifle efforts to reestablish rule of law and increase reconstruction and development efforts. Average per capita expenditures for Afghans—the amount of money an average Afghan spends on food and essential non-food items in one year—is only U.S. \$165. Literacy rates and school enrollment rates countrywide climb, but still remain extremely low, especially for women. And the country continues to suffer from extremely high levels of preventable morbidity and health problems.

U.S. forces operating against Taliban insurgents continue to generate numerous claims of human rights abuses against the civilian population,

including arbitrary arrests, use of excessive force, and mistreatment of detainees, many of whom are held outside the protection of the Geneva Conventions.

### ***Warlordism and Insecurity***

Political repression, human rights abuses, and criminal activity by warlords—the leaders of militias and remnants of past Afghan military forces, who were brought to power with the assistance of the United States after the Taliban’s defeat—are consistently listed as the chief concerns of most Afghans. However, the marginalization of two major warlords—Marshall Fahim, the first vice president and defense minister, and Ismail Khan, self-styled Emir of Herat—raised hopes that President Karzai and the international community had begun to reverse their policy of relying on warlords to provide security.

Local military and police forces, even in Kabul, have been involved in arbitrary arrests, kidnapping, extortion, torture, and extrajudicial killings of criminal suspects. Outside Kabul, commanders and their troops in many areas have been implicated in widespread rape of women, girls, and boys, murder, illegal detention, forced displacement, and other specific abuses against women and children, including human trafficking and forced marriage. In several areas, Human Rights Watch documented how commanders and their troops seized property from families and levied illegal per capita “taxes” (paid in cash or with food or goods) from local populations. In some remote areas, there are no real governmental structures or activity, only abuse and criminal enterprises by factions.

In July 2004, President Karzai dropped Mohammad Qasim Fahim from the vice president’s spot on his presidential ticket. The first vice president and minister of defense for most of 2004, Marshall Fahim, is a factional leader and for the last three years has resisted many efforts to dis-

arm his forces or to replace factional commanders whom he appointed to high-level positions in the ministry.

The western city of Herat descended into violence on two occasions after President Karzai dismissed the the main warlord there, Ismail Khan, from his post in September 2004. The factional violence led to the temporary suspension of U.N. and NGO humanitarian operations. Ongoing factional rivalries impede aid delivery and development in several provinces in the north and west of the country.

Many districts remain insecure because of violence caused by factions ostensibly affiliated with the government. The medical aid organization Médecins Sans Frontières (MSF, Doctors Without Borders), decided to pull out of Afghanistan after five MSF workers were killed in the north-west of the country in June 2004—a momentous decision given that MSF worked in Afghanistan through the worst violence of the early 1990's. Overall, nearly fifty aid workers and election officials were killed in 2004, far higher than in any previous period.

In the south and southeast of the country, Taliban remnants and other anti-government forces outside Afghanistan's political framework have continued to attack humanitarian workers and coalition and Afghan government forces. As a result of attacks, international agencies suspended many of their operations in affected areas, and development and humanitarian work has suffered as a result. In some areas—like Zabul and Kunar province—whole districts are essentially war zones, where U.S. and Afghan government forces engage in military operations against Taliban and other insurgent groups. Hundreds of Afghan civilians were killed in 2004 during these operations—in some cases because of violations of the laws of war by insurgents or by coalition or Afghan forces.

In many areas around Afghanistan, poppy production has reached record highs, and many factions—including Taliban and anti-govern-

ment forces—are suspected of engaging in drug trafficking. U.N. and U.S. officials estimated that in 2004 Afghan-produced opium and heroin accounted for approximately 75 percent of the entire world supply, and approximately 90 percent of that consumed in Europe. The drug revenue amounts to approximately U.S.\$2.5 billion—half of Afghanistan Gross Domestic Product. The inflated profits provide warlords with an independent source of income which make it especially difficult to establish rule of law.

### ***The Presidential Election and the Bonn Process***

On October 9, 2004, Afghanistan held its first-ever presidential election. Surprisingly few problems occurred on election day and over eight million votes were cast. But the international community failed to supply adequate numbers of international monitors to observe the election, and the majority of election sites were not adequately monitored. In many cases Afghans were able to vote relatively freely, but in many other places—especially rural areas—voters did not receive adequate civic education about the secrecy of the ballot and were likely threatened by local leaders how to vote. Independent political organizers unaffiliated with factions or their militia forces faced death threats and harassment and in many areas struggled just to organize. In the months before the election, Human Rights Watch documented continuing political repression by local factional leaders.

The presidential elections represented another major milestone in the political process initiated by the 2001 Bonn Agreement, an accord signed by representatives of the militia forces who fought with the U.S.-led coalition against the Taliban, representatives of the former King of Afghanistan, Zahir Shah, and representatives of various other exiled Afghan groups. The agreement brought President Karzai to power as the first interim leader of Afghanistan. Two national Loya Jirgas (grand councils) were held in 2002 and 2003, and a constitution approved, but

both processes were marked by widespread threats and political repression by warlord factions.

There has been some progress in realizing the aspirations of the Bonn Agreement. The Afghan government has gradually re-built some of the apparatus of state power in Kabul. Development efforts have begun in provinces outside of Kabul, including construction of roads, schools, and hospitals, contributing to the growth of Afghanistan's economy. And although the majority of school-age girls lack adequate educational opportunities, millions of girls have returned to school, and universities are functioning. Training has begun of a new Afghan army and central police force. The Afghan Independent Human Rights Commission, created under the Bonn Agreement, expanded its activities. Limited legal reform processes and training of judges and lawyers have begun.

However, many of the Bonn Agreement's most important provisions have been either forgotten or ignored. Militia forces occupying Kabul were never withdrawn from the city, no significant disarmament of militia forces nationwide has taken place (demobilization goals were reduced to a target of less than 40 percent before the October elections, which in any case was not met), and many militia leaders have retained their autonomous leadership over what are essentially private armies.

### ***Women and Girls***

Women and girls continue to suffer the worst effects of Afghanistan's insecurity. Conditions are better than under the Taliban, but women and girls continue to face severe governmental and social discrimination, and are struggling to take part in the political life of their country.

Afghan women who organize politically or criticize local rulers face threats and violence. Soldiers and police routinely harass women and girls, even in Kabul city. Many women and girls continue to be afraid to leave their homes without the burqa. Because many women and girls



continue to fear violence by factions, many continue to spend the majority of their time indoors and at home, especially in rural areas, making it difficult for them to attend school, go to work, or actively participate in the country's reconstruction. The majority of school-age girls in Afghanistan are still not enrolled in school.

### ***U.S. Military Operations***

U.S. and coalition forces active in Afghanistan under Operation Enduring Freedom since November 2001, continue to arbitrarily detain civilians, use excessive force during arrests of non-combatants, and mistreat detainees. There are also credible reports of Afghan soldiers deployed alongside U.S. forces beating and otherwise mistreating people during arrest operations and looting homes or seizing the land of those being detained.

Ordinary civilians caught up in military operations and arrested are unable to challenge the legal basis for their detention or obtain hearings before an adjudicative body. They have no access to legal counsel. Release of detainees, where it did occur, is wholly dependent on decisions of the U.S. military command, with little apparent regard for the requirements of international law—whether the treatment of civilians under international humanitarian law or the due process requirements of human rights law. Generally, the United States does not comply with legal standards applicable to their operations in Afghanistan, including the Geneva Conventions and other applicable standards of international human rights law.

### ***Key International Actors***

Without adequate international support, the government has continued to struggle in addressing Afghanistan's security and human rights problems. The central government has acted to sideline several abusive commanders, but in most cases the government has negotiated and cooper-

ated with leaders implicated in abuses, as have U.S. government officials in the country, who continue to be influential actors in Afghanistan's political processes.

In late 2003 NATO took over the U.N.-mandated International Security Assistance Force (ISAF), fielding between six thousand and eight thousand security troops. ISAF is still mostly limited to Kabul city, with a small outpost in the northern city of Kunduz. NATO leadership has repeatedly stated that it wants to expand its geographic scope, but member nations have not contributed enough additional troops and logistical support. As a result, planned expansion stages have been repeatedly postponed.

The United States, along with coalition partners including Germany, New Zealand, and the United Kingdom, has been expanding small Provincial Reconstruction Teams (PRTs) of fifty to one hundred troops to several areas, but they have had only limited successes in improving human rights protections and security. The small size of the teams, their vague mandates, and their sometimes close working relationship with local Afghan militias—the very forces who are creating abusive and insecure environments in the first place—have stymied further progress.

The United States, the most important and involved international actor in the country, has started addressing Afghanistan's security problems more seriously, but has not taken the steps necessary to lead other nations in providing security, troops, funding, and political leadership to secure Afghanistan's future. NATO member states and other potential troop contributors are also to blame for not providing more troops to ISAF and adequate overall funding for international efforts in Afghanistan.

The general failure of U.N. member states to provide an underlying security framework for reconstruction in Afghanistan has made it impossible for the United Nations Assistance Mission in Afghanistan

(UNAMA )to carry out many parts of its mandate.

But the leadership of UNAMA has also limited its criticisms of Afghan warlords and its efforts to monitor human rights and security. As a result of these decisions, there is little detailed and comprehensive human rights reporting by the international community in Afghanistan.

## BURMA

Burma remains one of the most repressive countries in Asia, despite promises for political reform and national reconciliation by its authoritarian military government, the State Peace and Development Council (SPDC). The SPDC restricts the basic rights and freedoms of all Burmese. It continues to attack and harass democratic leader Aung San Suu Kyi, still under house arrest at this writing, and the political movement she represents. It also continues to use internationally outlawed tactics in ongoing conflicts with ethnic minority rebel groups.

Burma has more child soldiers than any other country in the world, and its forces have used extrajudicial execution, rape, torture, forced relocation of villages, and forced labor in campaigns against rebel groups. Ethnic minority forces have also committed abuses, though not on the scale committed by government forces.

The abrupt removal of Prime Minister General Khin Nyunt, viewed as a relative moderate, on October 19, 2004, has reinforced hardline elements of the SPDC. Khin Nyunt's removal damaged immediate prospects for a ceasefire in the decades-old struggle with the Karen ethnic minority and has been followed by increasingly hostile rhetoric from SPDC leaders directed at Suu Kyi and democracy activists.

Thousands of Burmese citizens, most of them from the embattled ethnic minorities, have fled to neighboring countries, in particular Thailand, where they face difficult circumstances, or live precariously as internally displaced people.

### ***Depayin Incident***

On May 30, 2003, in Depayin in northern Burma, Suu Kyi's traveling party was attacked by a group of armed men associated with the Union Solidarity Development Association (USDA), a mobilization organiza-

tion created by the SPDC. According to eyewitnesses, police were present at the time of the incident, as were common criminals who had been released from prison for the purpose of taking part in the attack. The Burmese government has admitted to four deaths in the incident, while eyewitnesses have reported far more. As the government continues to prohibit any independent investigation into the incident, the number of casualties remains unknown.

Suu Kyi, as well as scores of members and supporters of the National League for Democracy (NLD) Party, were detained following the attack. They were held under article 10a of the 1975 State Protection Act, which permits the authorities to detain anyone considered a threat to state security for up to five years without charge or trial. U.N. sources reported that ninety-one of the NLD and pro-democracy detainees, never charged with any crime, were released within two months. Suu Kyi remained under house arrest at this writing.

### ***An Aborted Attempt at Reform***

In August 2003, former Prime Minister General Khin Nyunt launched what he called a “road map” for a transition to democracy in Burma. The SPDC pledged to eventually hold elections as part of a transition to a democratic government. The first step was the convening of a national constitutional convention, a process that had been stalled since 1996 after the NLD and other pro-democracy parties walked out, citing the SPDC’s domination and manipulation of the proceedings.

In May 2004, the National Convention began work. But the SPDC refused to release Suu Kyi and senior members of the NLD, as well as to reopen all NLD offices. As a result, the NLD and the Shan Nationalities League for Democracy (SNLD) and affiliated parties in the United Nationalities Alliance (UNA) decided not to take part in the National Convention. Without the participation of the NLD and other political parties that won the majority of seats in the 1990 elections, the

National Convention lost any serious legitimacy and genuine prospects for instituting meaningful reform.

The sudden ouster of General Khin Nyunt in October 2004 further diminished hopes for reform. The ousted prime minister and military intelligence chief had been willing to engage with Aung San Suu Kyi to break the political stalemate. Lieutenant General Soe Win, who was named Burma's prime minister after the dismissal, has stated publicly that "the SPDC not only will not talk to the NLD but also would never hand over power to the NLD."

### ***Political Prisoners***

In 2002, the International Committee of the Red Cross reported there were approximately 3,500 "security detainees" in Burma. Of these, at least 1,300 were believed to be political prisoners, including elected members of parliament. Most, if not all, were arbitrarily arrested for exercising their freedoms of opinion and expression. The right to a fair trial, including the right to access a lawyer, continues to be denied to most detainees, in particular those accused of political dissent. Torture and mistreatment of detainees is common, especially during pre-trial detention in military intelligence interrogation centers. Authorities continue to extend the detention of political prisoners who have served their prison sentences by placing them under "administrative detention." This practice is used even with elderly and infirm prisoners.

### ***Child Soldiers***

On June 4, 2004, the United Nations Committee on the Rights of the Child issued its concluding observations on Burma's compliance with the Convention on the Rights of the Child. The Committee identified a range of concerns, including the continued recruitment and use of child soldiers by Burma's armed forces.

Burma has more child soldiers than any other country in the world, accounting for approximately one-fourth of the 300,000 children currently believed to be participating in armed conflicts across the globe. A 2002 investigation by Human Rights Watch found that as many as seventy thousand children under the age of eighteen may be serving in Burma's national armed forces. Burma is believed to have an estimated 350,000 soldiers in its national army. Armed opposition groups in Burma also recruit child soldiers, although on a much smaller scale. Human Rights Watch documented the use of child soldiers by nineteen different opposition groups.

While the government still denies such systematic recruitment, it has for the first time acknowledged child soldiers in the army as an issue. Largely as a result of an October 2003 report to the United Nations Security Council by Secretary General Kofi Annan, the government formed a high-level "Committee to Prevent the Recruitment of Child Soldiers," and announced that a task force was being formed to ensure inspections for underage recruitment.

Government forces have released small numbers of child soldiers. In these cases, the parents had reported the recruitment to the ICRC or the International Labor Organization, requesting their intervention. For instance, four boys recruited in March of 2004 were released, apparently because of the ICRC's involvement.

### ***Violations against Ethnic Minorities, Particularly Women***

The Burmese army continues to commit gross abuses against civilians, particularly members of ethnic minorities associated with various resistance movements in the country. In its campaigns against ethnic minorities, the army engages in summary executions, torture, and rape of women and girls.

The SPDC's eight-year campaign of forcibly relocating minority ethnic groups has destroyed nearly three thousand villages, particularly in areas of active ethnic insurgency and areas targeted for economic development. Hundreds of thousands of ethnic minorities have been forced into as many as 200 internment centers, and those who have passed through these sites report forced labor, extrajudicial executions, rape, and torture committed by government troops.

There are an estimated one million internally displaced persons (IDPs) in Burma, and several hundred thousand Burmese refugees in Bangladesh, India, Malaysia, and especially neighboring Thailand. The Burmese government has refused international access to areas of ongoing conflict, cutting off humanitarian assistance to IDPs in violation of international humanitarian law.

In February 2004, the Human Rights Watch report *Out of Sight, Out of Mind* detailed the increasingly harsh policies of the Thai government against Burmese refugees and asylum seekers. Many such individuals are returned to Burma in violation of the internationally recognized principle of non-refoulement.

Local and international nongovernmental organizations have documented widespread and continuing sexual violence against ethnic women by the military in Burma, including new reports by the Women's League of Burma (WLB) and the Karen Women's Organization (KWO) in 2004. The KWO documented 125 cases of sexual violence committed by the SPDC's military troops in Karen State from 1988 until 2004, half committed by high-ranking military officers. According to this report, 40 percent of the cases were gang rapes. In 28 percent, women were raped and then killed. The WLB reported sexual violence in 2003 and 2004 in all provinces with significant ethnic minority populations as well as in central Burma. Abuses included rape of women and girls, gang rapes, murder, sexual slavery, and forced marriage. The report implicated senior and junior military personnel as



being perpetrators or complicit in the majority of documented rapes. The SPDC has denied the findings of these reports, and women's organizations have reported intimidation of survivors and witnesses.

### ***Key International Actors***

The attack and arrest of Aung San Suu Kyi and her supporters in May 2003 drew widespread international condemnation. Despite repeated visits to the country, the U.N. secretary-general's special envoy to Burma, Razali Ismail, faced resistance from the SPDC in his efforts to prompt renewed political dialogue with the NLD and national reconciliation. Various U.N. actors, including Paulo Sérgio Pinheiro, the U.N. special rapporteur on human rights in Burma, expressed deep concern over the absence of major opposition parties from the National Convention.

In July 2003, the Association of Southeast Asian Nations (ASEAN), which Burma joined in 1997 and is scheduled to chair in 2005, issued an unprecedented rebuke of a member state when it called on the SPDC to release Aung San Suu Kyi. Japan, Burma's largest single aid donor, suspended its development aid to Burma in the wake of the May 2003 attack.

This strong regional position has, however, changed rapidly. Both ASEAN and Japan have since maneuvered actively to convince the European Union to accept Burma as a new member of the Asia-Europe Meeting (ASEM). China and Thailand continue to be the SPDC's closest allies, politically and economically, although both countries have expressed some concern over the implications of General Khin Nyunt's dismissal.

The United States maintains economic sanctions on Burma. The Burmese Freedom and Democracy Act of 2003 bans all imports from Burma and reaffirms United States recognition of the NLD as the legit-

imate government. An accompanying executive order calls for the freezing of assets of senior SPDC officials.

## CAMBODIA

Political stalemate went hand in hand with only minor human rights improvements in 2004. The country suffered an eleven-month political deadlock over formation of a national government following inconclusive parliamentary elections in July 2003. King Norodom Sihanouk abdicated the throne due to his advanced age and was replaced by his son, Prince Norodom Sihamoni, in October 2004.

Authorities continue to ban or disperse most public demonstrations. Politicians and journalists critical of the government face violence and intimidation and are barred from equal access to the broadcast media. In addition, the judiciary remains weak and subject to political influence. Trafficking of women and children for sexual exploitation through networks protected or backed by police or government officials is rampant. The government continues to turn a blind eye to fraudulent confiscation of farmers' land, illegal logging, and widespread plundering of natural resources.

Despite an agreement between the U.N. and Cambodia to bring senior Khmer Rouge leaders to justice, serious doubts remain as to whether a tribunal established within the Cambodian court system can ensure fair and impartial prosecutions and trials.

### ***Political Violence and Intimidation***

All three national elections conducted in Cambodia since the signing of the Paris Peace Agreements in 1991 have been conducted in an atmosphere of violence and intimidation. Political violence continued after elections in July 2003. In October 2003 a radio journalist and a popular singer were killed, both of whom were affiliated with FUNCINPEC, the royalist party led by Prince Ranariddh. In January 2004, five political activists were murdered, including prominent labor leader Chea

Vichea. Another labor activist, Ros Sovannareth, was killed in May 2004.

A political standoff after the 2003 elections, in which no one party received the required two-thirds majority needed to form a new government, was resolved in July 2004, when FUNCINPEC entered into a power-sharing agreement with the Cambodian People's Party (CPP). The opposition Sam Rainsy Party (SRP) and some nongovernmental organizations (NGOs) questioned the legality of the new government, which was formed on the basis of controversial amendments to the Constitution.

### ***Weak Judiciary and Impunity***

Cambodia has made little progress in reforming its judicial system, which has been widely condemned for its lack of independence, incompetence, and corruption. Cases of politically related violence and crimes committed by government authorities or those with ties to high-ranking officials are often not prosecuted or even investigated. Chea Vichea's high profile murder case has been marred by reports of torture being used to extract confessions from the alleged suspects, threats against witnesses, and political pressure on the investigating judge, who publicly questioned the legality of the suspects' arrests and called for the case to be dismissed for lack of evidence.

The Cambodian Bar Association has become increasingly politicized. In September 2004 the prime minister and three other senior CPP government officials, none of whom are trained lawyers, were admitted to the Bar. In November, the Appeals Court nullified the results of a Bar Association election, in which a legal aid lawyer was elected president. The court ordered the defeated incumbent, a CPP supporter, to temporarily reassume the position while a new election was organized.

In mid-2003 four men were arrested in Cambodia on charges of being members of the Indonesia-based terrorist group, Jemaah Islamiya, which has links to al-Qaeda. As of this writing, the men still had not faced trial, far exceeding the legal pre-trial detention limit of six months.

In January 2004 the Cambodian government dropped extradition demands for the return from Thailand of political prisoner and SRP activist Sok Yoeun, whom the Cambodian government has accused of organizing a 1998 rocket attack on a convoy that included Prime Minister Hun Sen. Sok Yoeun, a UNHCR-recognized refugee, was released from Thai prison in January 2004 and allowed to resettle in Finland.

### ***Khmer Rouge Tribunal and the ICC***

After seven years of negotiations, in 2004 Cambodia approved an agreement with the United Nations to establish an internationally-assisted tribunal under Cambodian law to bring Khmer Rouge leaders to justice. However the Cambodian government's record of interfering with courts and intimidating judges, as well as the grossly inadequate training of many judicial officials, gives reason for concern that prosecutions could be politically influenced.

Pursuant to the agreement with the U.N., the government is to establish an extraordinary chamber to try senior leaders of the Khmer Rouge and those who were most responsible for genocide, war crimes, and crimes against humanity committed while the Khmer Rouge was in power (1975-79). Based in Cambodia, this "mixed tribunal" will be comprised of a majority of Cambodian judges working alongside international judges, with Cambodian and international co-prosecutors.

In 2002, Cambodia became the first Southeast Asian country to ratify the Rome Statute of the International Criminal Court. In June 2003,

however, Prime Minister Hun Sen agreed to a bilateral immunity agreement with the U.S. that exempts U.S. citizens from the authority of the court. The draft agreement is expected to be approved by the National Assembly by 2005.

### ***Restrictions on Freedom of Assembly***

The government placed strict new restrictions on freedom of assembly in January 2003. Since that time, other than during officially-prescribed electoral campaign periods, the government has denied virtually all requests for permission to demonstrate on the ground that such gatherings would jeopardize national security and public order. Authorities have rejected requests for rallies by students, victims of domestic violence, environmentalists, opposition parties, and garment workers.

During 2004, authorities banned, dispersed, or intervened during at least sixteen public demonstrations in Phnom Penh, sometimes using excessive or disproportionate force. In January 2004, for example, more than one hundred garment workers were injured when dozens of riot police beat protestors with batons and fired into they air as they marched into a rally of two thousand striking workers from the MSI Garment Factory.

### ***Freedom of Expression***

More than one hundred privately owned newspapers are published in Cambodia, including some affiliated with opposition groups. However Cambodia's reputation for having one of the freest presses in Southeast Asia has been tarnished by official attempts to silence free speech and block access by opposition parties to the broadcast media, the main source of information for Cambodia's largely rural society. Cambodian television stations are still owned fully or partly by the government. The government continues to deny a radio broadcast license to the SRP.

In 2003, Chou Chetharith, the deputy editor of the royalist radio station Ta Prohm, was shot and killed outside the station's Phnom Penh offices after Hun Sen publicly warned the station to stop broadcasting insults directed at the CPP.

### ***Conflicts over Land and Resource Rights***

Land confiscation continues to be a major issue throughout the country, with many land conflicts involving ownership claims by individuals or private concessions backed by military commanders or government officials.

Concessions granted to private companies by the government have led to increasing landlessness and destruction of the natural resources on which Cambodia's rural population depends for its livelihood. In October 2004 Hun Sen called for a review of major new land transactions and a moratorium on new concessions until a subdecree on concession policy is approved.

Volunteers and staff from human rights groups and environmental organizations have been threatened, attacked, arrested, and even killed. In November 2004, six people were wounded in a grenade attack when hundreds of villagers gathered to peacefully protest commencement of forest clearing in a long-disputed paper pulp concession granted by the government to the Pheaphimex Company in Pursat province. Later that month in Kratie province, community forestry activists were threatened and one was reportedly beaten by members of the military after villagers confiscated several chainsaws being used by illegal loggers in a wildlife sanctuary.

### ***Refugee Rights***

Vietnam's crackdown on ethnic minority Montagnards in its Central Highlands region across the border from Cambodia (*see* Vietnam) con-

tinues to generate a steady flow of refugees into Cambodia. While Cambodian authorities have taken some action to assist refugees when pressured, political considerations often prevail over refugee rights.

In March 2002 Cambodia closed both of its provincial refugee camps and began to refuse to accept new Montagnard asylum seekers from Vietnam. In a positive move, in July 2004 the government authorized the U.N. High Commissioner for Refugees (UNHCR) to travel to northeastern Cambodia to retrieve hundreds of Montagnard asylum seekers. By year's end UNHCR had registered close to six hundred new arrivals.

At the same time, however, in violation of its obligations under the 1951 Refugee Convention and the Convention against Torture, provincial authorities—under instruction from the Ministry of Interior—have continued to forcibly return hundreds of Montagnard asylum seekers back to Vietnam, where they face ongoing persecution and in some cases arrest, unfair trials, and torture. In addition, officials have harassed and threatened to arrest Cambodian villagers suspected of providing food or assistance to asylum seekers before they have come under UNHCR protection.

In September 2004 Cambodian authorities deported twelve Vietnamese members of the Cao Dai church. They had come to Phnom Penh from Vietnam to deliver a letter requesting religious freedom to international delegates at an ASEAN meeting. UNHCR was refused access to them before their deportation. In a positive move, seven North Korean asylum seekers who were detained for several weeks by Cambodian immigration police were allowed to seek asylum in South Korea in late September 2004.



## ***Torture***

Torture continues to be used with impunity in Cambodia, particularly by police officers attempting to extract confessions from suspects detained without access to lawyers. Under Cambodia's amended Criminal Procedure Code, suspects can be held in police detention—the period when police commonly use torture to extract confessions—for up to seventy-two hours. In June 2004 the deputy director general of the National Police publicly condoned the use of torture to obtain information from suspects during interrogation. Under pressure, he later retracted his statement.

## ***Human Trafficking***

Despite periodic police raids and temporary closure of brothels, powerful figures running human trafficking networks, and their accomplices—many of them government officials, soldiers, or police—continue to be largely immune from prosecution. The government provides little in the way of social services, counseling, or job training to child prostitutes “rescued” in high-profile raids, resulting in many returning to the hands of brothel owners or traffickers. Cambodian men, women, and children continue to be trafficked to Malaysia and Thailand for forced labor and forced prostitution.

## ***Key International Actors***

Cambodia receives more than half of its annual budget from foreign aid and loans. Cambodia's international donors have expressed concerns at the slow pace of legal and judicial reform, unchecked exploitation of natural resources, and corruption. In mid-2004 several donors, led by the Canadian ambassador, successfully pressed the government to authorize UNHCR to resume field operations in northeastern Cambodia.

Japan remains the largest bilateral donor to Cambodia and provided the bulk of the funding for the 2003 national elections, along with the European Union, Australia, New Zealand, and Canada. China is playing an increasingly influential role in Cambodia, both as a donor and an investor. The United States has pressed the government to address political violence and advocated that Khmer Rouge leaders be brought to trial but it has hesitated to contribute toward the costs of a tribunal. By December 2004, only three U.N. member states have publicly announced pledges towards the tribunal's projected three-year budget of US\$60 million: Australia (\$2 million), France (\$1 million), and Japan (\$3 million).

In 2003 the World Bank reduced its \$18 million loan for Cambodia's demobilization program and called for \$2.8 million to be paid back because of corruption in the administration of the program. In August 2004 the Bank issued a report harshly critical of rampant corruption within Cambodia's investment sector.

The Cambodia Office of the High Commissioner for Human Rights continues to downsize its staff and in 2003 closed all of its provincial offices. During a visit to Cambodia in November 2004 the U.N. Secretary-General's Special Representative for Cambodia highlighted problems with the government's land concession policies and called for an investigation into the grenade attack against villagers peacefully protesting a land concession in Pursat.

## CHINA

In late 2004, the Central Committee of the Chinese Communist Party (CCP) called for political reform within the Party in order to strengthen the Party's ability to lead the nation. Party leaders made clear that China is to remain a one-party state, but one based increasingly on the rule of law. While China has made progress in some areas in recent years—strengthening its legal system, allowing more independent news reporting, and sometimes tailoring public policy more closely to public opinion—it remains a highly repressive state.

The Party's 2004 promise to uphold the rule of law has been compromised by continuing widespread official corruption, Party interference in the justice system, and a culture of impunity for officials and their families. Authorities continue to censor news media. Civil society is also constrained and most NGOs are government-controlled. China prohibits independent domestic human rights organizations and bars entry to international human rights organizations. Chinese citizens who contact international rights groups risk imprisonment.

In late October and early November 2004, major riots by tens of thousands of people roiled Henan and Sichuan provinces. The riots were widely separated geographically and the issues precipitating them were different, but the riots, and the state response to them, highlighted growing rural unrest and Chinese leaders' preoccupation with social stability. Leaders continue to isolate areas of discontent, and aim to prevent information about social problems from spreading.

### ***Fifteenth Anniversary of the Tiananmen Square Crackdown***

June 4, 2004, marked the fifteenth anniversary of the massacre in Beijing, when China's leaders ordered the military to fire on civilians who were trying to prevent troops from entering the city and reaching protesters in Tiananmen Square. Fifteen years later, the government

still forbids any public commemoration of the event. Police harass and detain those dedicated to securing rehabilitation of victims, payment of compensation, or reconsideration of the official verdict.

During the sensitive 2004 anniversary period, officials again held well-known activists, including Ding Zilin, leader of the Tiananmen Mothers advocacy group, under house arrest. State Security officers subjected Dr. Jiang Yanyong to six weeks of intense thought reform. The seventy-two-year-old military doctor had gained international renown for exposing the official cover-up of the SARS epidemic in Beijing. He also had attended to victims the night of June 4, 1989, and, in February 2004, suggested in a private letter to the government that it should “settle the mistakes it committed” in 1989. Dr. Jiang was released on July 19, 2004, but remained under house arrest at this writing.

### ***China’s Legal System***

In March 2004, China amended its constitution to include a promise to ensure human rights. Although the constitution is not directly enforceable in China, the amendment signals a growing acknowledgement of human rights.

Despite efforts to strengthen the rule of law in China, the legal system itself remains a major source of rights violations. Many laws are vaguely worded, inviting politically motivated application by prosecutors and judges. The judiciary lacks independence: Party and government officials routinely intervene at every level of the judicial system in favor of friends and allies. Trial procedures favor the prosecution, and despite the public prosecution of a large number of judges, corruption remains a widespread problem. The criminal justice system relies heavily on confessions for evidence, creating institutional pressures on the police to extort confessions through beatings and torture. According to Chinese experts, legal aid services meet only one-quarter of the demand

nationwide. Defense lawyers may face disbarment and imprisonment for advocating their clients' rights too vigorously.

On a more positive note, China recently has begun to hold qualifying examinations for judges and has signaled its intent to amend laws to better protect suspects in detention. However, administrative detention, a common practice in China, still occurs without judicial process. Persons detained on suspicion of "minor crimes" such as drug use are sent to "reeducation through labor" camps for months or years without ever coming before a judge.

### ***Restrictions on Freedom of Expression***

The growing dynamism of the Chinese-language Internet and domestic media in China led to some efforts to impose tighter controls in 2004. Officials expanded the list of topics subject to censorship and introduced improved methods for enforcing compliance. In October 2004, the state also banned all reporting on rural land seizures by the government.

In September, *New York Times* research assistant and author Zhao Yan was arrested on charges of passing state secrets to foreigners, apparently for his work uncovering leadership changes in the Communist Party. In early 2004, authorities banned a best-selling non-fiction book, *Investigation of Chinese Peasants*, which documented cases of official corruption, excessive taxation, and police brutality in rural Anhui province. Numerous newspapers tested the limits of the possible in 2004, and some came under attack. Staff of the parent group of the *Southern Metropolis Daily* received long prison sentences on charges of corruption; the former editor-in-chief was fired. The charges were widely viewed as politically motivated, as the newspaper had been the first to report on several stories of national significance.

The tension between promoting Internet use and controlling content escalated in 2004, with Chinese authorities employing increasingly sophisticated technology to limit public and private expression. Despite the restrictions, the Internet is emerging as a powerful tool for the sharing of information and mobilization of social activism in China.

## ***HIV/AIDS***

China faces what could be one of the largest AIDS epidemics in the world. According to official statistics, 840,000 men, women, and children are living with HIV/AIDS, but the real number could be much higher. Many Chinese citizens lack basic information about AIDS, and some AIDS activists face state harassment and detention.

Chinese authorities have taken steps to address the AIDS crisis. In late 2003, national authorities promised to provide antiretroviral (ARV) treatment to all impoverished HIV-positive persons. The State Council, China's highest executive body, issued a circular in May 2004 ordering local officials to implement a range of AIDS prevention and control measures. A revised national law on the protection and control of infectious diseases, passed in August 2004, prohibits discrimination against persons with infectious diseases. But as documented in a September 2003 Human Rights Watch report, *Locked Doors*, lack of basic rights and abuses by local authorities have hampered efforts to help HIV-positive Chinese citizens.

At this writing, there still had not been an investigation of the government's role in the transmission of HIV to villagers in Henan and other provinces through unsanitary but highly profitable blood collection centers. No official has been held accountable; some who were involved in the scandal have been promoted. Henan authorities regularly detain HIV-positive activists in advance of visits by international dignitaries, and have recently built a prison to segregate detainees with HIV. They also continue to impede the activities of some NGOs that provide serv-

ices to people with AIDS: in 2004, Henan officials closed three NGO-run orphanages for AIDS-affected children, and briefly detained staff of the Dongzhen Orphans School. People living with HIV/AIDS in Henan continue to allege corruption and abuses in the government's distribution of ARV treatment.

### ***Labor Rights***

Chinese workers have yet to reap the benefits of the country's rapid economic development. Employers routinely ignore minimum wage requirements and fail to implement required health and safety measures. Many former employees of state-owned enterprises lost their pensions when their companies were privatized or went bankrupt. Millions of citizens who have left the countryside to seek work in cities face serious problems. Without official residence permits, these migrant workers lack access to basic services and are vulnerable to police abuse.

Workers are limited in their capacity to seek redress by the government's ban on independent trade unions. The only union permitted is the government-controlled All China Federation of Trade Unions. Some NGOs in the Pearl River Delta educate workers about their legal rights and assist them with lawsuits against employers, but they too are forbidden to discuss, let alone organize, independent trade unions.

Many regions have witnessed massive labor protests. In May 2003, after trials lacking basic procedural safeguards, Liaoning province labor activists Yao Fuxin and Xiao Yunliang were given seven and four-year sentences respectively. Family members report that both men are seriously ill. In October 2004, after flawed trials, five workers were sentenced to terms of between two and three-and-a-half years for destroying company property at a shoe factory in Guangdong during a massive protest.

## ***Forced Evictions***

A March 2004 Human Rights Watch report, *Demolished*, discussed how local authorities and developers are forcibly evicting hundreds of thousands of residents in order to build new developments. With little legal recourse, those evicted have taken to the streets in protest, only to meet severe police repression, detention, and imprisonment. Ye Guozhu, a prominent advocate, was arrested after he applied for formal permission to hold a protest march. A Shanghai court sentenced lawyer Zheng Enchong, who had defended many evicted residents, to three years in prison for “circulating state secrets” after he faxed information about his activities to an international human rights organization.

Legal experts and some government-controlled news media have openly criticized the government’s failure to protect housing rights. The government has responded with some policy and constitutional reforms, but widespread corruption and a weak judicial system obstruct implementation.

## ***Hong Kong***

In April 2004, the Chinese government unilaterally ruled out universal suffrage for Hong Kong until 2012-13 at the earliest. Through a reinterpretation of the Basic Law, Hong Kong’s mini-constitution, Beijing went a step further, reserving for itself the power to void any proposal for electoral change. Even the power to initiate reform, formerly in the hands of Hong Kong’s Legislative Council (LegCo), was ceded to Hong Kong’s chief executive, chosen by an election committee composed largely of Beijing appointees. China’s legislature, the Standing Committee of the National People’s Congress which is responsible for the changes to the Basic Law, has ignored repeated requests for consultation by representatives of Hong Kong’s electorate.



At the time of Hong Kong's 1997 incorporation into the People Republic of China as a Special Autonomous Region (SAR) under the principle of "one country, two systems," Hong Kong was promised a "high degree of autonomy." As a result of Beijing's newly self-arrogated powers, there is concern in Hong Kong, expressed in massive protest marches on July 1, 2003, and on January and July 1, 2004, that China will continue to erode basic human rights protections.

LegCo elections in September 2004 were marred by political interference from Beijing and intimidation of several prominent critics.

### ***Xinjiang and the "War on Terror"***

China used its support for the U.S.-led "war against terrorism" to leverage international support for, or at least acquiescence in, its own crackdown on Uighurs, a Turkic-speaking Muslim population in China's northwestern Xinjiang Uighur Autonomous Region. Some Uighur groups press peacefully for genuine political autonomy or for independence; others resort to violence. Chinese authorities do not distinguish between peaceful and violent dissent, or between separatism and international terrorism.

The crackdown in Xinjiang has been characterized by systematic human rights violations including arbitrary arrests, closed trials, and extensive use of the death penalty. In September 2004, the region's Communist Party leader reported that during the first eight months of the year fifty people were sentenced to death and twenty-two groups targeted for separatist and terrorist activities. Official sources subsequently clarified that none of the fifty were executed, but have provided no additional information on their fate.

Cultural survival for Uighurs, along with other ethnic groups on China's borders, is a constant struggle. Officials have curbed observation of traditional holidays and use of the Uighur language, and closely

control religious education and expression. Controls include a prohibition against those under eighteen entering mosques or receiving religious instruction at home; political vetting and mandatory patriotic education for all imams; restrictions on public calls to prayer; and instructions aimed at making Koranic interpretation consistent with Communist ideology.

## **Tibet**

For China, the term “Tibet” is reserved for the Tibetan Autonomous Region. However, many Tibetans speak of a “greater Tibet,” including Tibetan areas in Qinghai, Yunnan, Gansu, and Sichuan. More than 50 percent of ethnic Tibetans under Chinese authority live in these regions.

The Chinese leadership continues to limit Tibetan religious and cultural expression and seeks to curtail the Dalai Lama’s political and religious influence in all Tibetan areas. Severely repressive measures limit any display of support for an independent Tibet.

In 2002 a Sichuan provincial court sentenced Tenzin Delek Rinpoche, a locally prominent lama, to death with a two-year suspended sentence on what appear to have been trumped up charges of “causing explosions [and] inciting the separation of the state.” His alleged co-conspirator, Lobsang Dondrup, was executed in January 2003.

Tenzin Delek’s arrest and conviction represent the culmination of a decade-long effort by Chinese authorities to curb his efforts to foster Tibetan Buddhism and develop Tibetan social institutions. His case, documented in a March 2004 Human Rights Watch report, *Trials of a Tibetan Monk*, remains a focal point for Tibetans struggling to retain their cultural identity. Several of Tenzin Delek’s associates remain in prison. Close to a hundred others were detained for periods ranging from days to months, most for attempting to bring information about

the crackdown to the attention of the foreign community. Credible sources report that many of those held were subject to severe ill-treatment and torture.

### ***Religious Belief and Expression***

Although religious practice is tolerated, official Communist Party doctrine holds that religion, as a belief structure and an organizational arrangement, will eventually wither and die. Until such time, the Chinese government believes religion must be strictly controlled to prevent it from becoming a political force or an institution capable of competing with the state for the loyalty of China's citizens. The state's policy is to avoid alienating believers or driving them underground, but rather to harness their energies toward China's development along the lines envisioned by the Party.

Chinese officials curb the growth of religious belief and its expression in practice through a series of laws and regulations. To be legal, religious groups must register with and submit to close monitoring by the appropriate authorities, and even that option is limited to the five officially recognized belief systems: Buddhism, Daoism, Islam, Catholicism, and Protestantism. Registration brings monitoring and vetting of religious personnel, congregant activities, finances, and publications. In spite of the law, unregistered religious activity continues to flourish.

Religious groups not recognized by Chinese authorities are subject to stringent penalties under China's criminal law. Claims by Falungong spokespeople that practitioners face continuing mass incarceration and ill-treatment are difficult to assess because of lack of independent confirmation, but there is no doubt that authorities have targeted practitioners for imprisonment, "reeducation through labor," and abuse. During 2004, evidence began to accumulate that the same laws and regulations used against Falungong practitioners were being used to rein in

so-called house churches—evangelical Protestant groups that refuse to register with the government.

### ***The Rights of Women and Girls***

Women continue to be underrepresented in China's political leadership and in senior positions in business. A cultural preference for boy children, combined with state population control policies, has resulted in a shortage of women and girls in rural areas, creating a lucrative market for traffickers. While the state has cracked down on some trafficking rings, many Chinese women and girls, especially those from rural and ethnic communities, are kidnapped and either sold as wives or trafficked into the sex industry. During 2004, major stories in the domestic press also highlighted police brutality against suspected sex workers.

### ***Key International Actors***

China played an increasingly prominent international role in 2004. In the United Nations Security Council, China helped block renewal of a U.S.-backed resolution seeking immunity from international war crimes prosecution at the International Criminal Court (ICC) for troops from non-ICC states serving in any U.N. force. However, China was in part responsible for the Security Council's failure to impose sanctions on Sudan for its complicity in violence in the Darfur region. China has major oil interests in Sudan.

At the 2004 annual meeting of the Commission on Human Rights, China again blocked consideration of a resolution condemning its human rights record by calling for a "no-action" motion. In 2004, as it had in the past, China suspended its dialogue with the U.S. in retaliation for the American sponsorship of a resolution. During talks in Beijing in October and November, both countries agreed to discuss resuming regular dialogues. Human Rights Watch has called on all of China's bilateral dialogue partners to implement rights benchmarks and

establish a timetable for meeting those benchmarks, and ensure transparency about the process.

China's cooperation with U.N. human rights mechanisms has been thorny. After almost a decade of discussion, China extended an invitation to the U.N. special rapporteur on torture, but two weeks before the June 2004 visit was to take place, the government postponed it indefinitely. China has been unwilling to agree to the standard U.N. terms for such a visit, which include unannounced visits to prisons and confidential interviews with prisoners. The U.N. Working Group on Arbitrary Detentions (WGAD) visited China in September 2004. As it had after its previous mission in 1997, the WGAD urged China to bring national laws into compliance with international human rights standards. Although the WGAD noted more cooperation in 2004 than during 1997, it cut short its visit to Tibet's Drapchi prison after the state refused requests to meet with prisoners who were severely injured during and after the 1997 visit.

China has ratified a number of international human rights treaties including the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture, and the Convention on the Rights of the Child. It has signed but not ratified the International Covenant on Civil and Political Rights. China is due for its first review by the Committee on Economic, Social and Cultural Rights in April-May 2005.

The U.S. increasingly cooperates with China on counter-terrorism and anti-drug trafficking efforts and the U.S. Federal Bureau of Investigations maintains an office in Beijing. However, the U.S. in 2004 refused to hand over to Chinese authorities a group of Uighurs detained at Guantanamo Bay for fear they would face torture or execution.

The European Union is weighing whether to rescind an arms embargo imposed after the 1989 Beijing massacre. Human Rights Watch opposes

lifting the embargo until China addresses issues of accountability, reparations for victims, and trials for those responsible.

## **EAST TIMOR**

Since gaining its independence on May 20, 2002, after two-and-a-half decades of Indonesian occupation, East Timor has taken important steps to protect human rights. East Timor's new constitution includes significant rights guarantees and, with the support of the United Nations, the government has moved forward in a number of areas including policing. In December 2002 East Timor's first government, under the presidency of former guerilla fighter Xanana Gusmao, signed all main United Nations human rights treaties.

East Timor still faces myriad problems caused by the legacy of Indonesia's brutal occupation and the destruction of much of the country's limited infrastructure by withdrawing Indonesian troops following the U.N.-supervised referendum on independence in 1999. East Timor faces severe economic hardship, and has yet to rebuild much of what was destroyed. U.N. peacekeeping forces remain deployed in the country because of sporadic but at times lethal border raids by militias based in Indonesian West Timor.

Efforts to bring Indonesian military and militia leaders to justice for the killing of more than one thousand East Timorese after the 1999 referendum have been frustrated by lack of resources, poor cooperation from Indonesia, and systemic problems in East Timor's criminal justice system.

### ***Justice and Reconciliation***

Important obstacles to justice remain for victims of the violence that accompanied Indonesia's rule and eventual withdrawal from East Timor. In 1999 alone, an estimated 1,400 political murders were committed while a large U.N. mission, present in East Timor to supervise and monitor the independence referendum, stood helplessly by. Few perpetrators and no high-level officers have been prosecuted. There has been

no judicial accounting whatsoever for previous atrocities committed during Indonesia's twenty-four-year occupation of the former Portuguese colony.

In late 1999, the United Nations Transitional Administration in East Timor created the Serious Crimes Investigation Unit (SCIU) to investigate and prosecute cases in front of two Special Panels for Serious Crimes (Special Panels) of the Dili District Court. Now under the authority of East Timor's prosecutor general, the SCIU is responsible for preparing indictments against those responsible for crimes against humanity and other serious crimes committed in East Timor in 1999.

The two Special Panels are part of the Dili District Court system, and are comprised of one East Timorese and two international judges. They have exclusive jurisdiction over murder and sexual offenses that were committed in East Timor between January 1, 1999, and October 25, 1999, but also have jurisdiction over genocide, torture, war crimes, and crimes against humanity committed before 1999. The first Special Panel commenced operations in January 2001.

While the SCIU has been largely successful in prosecuting lower ranking East Timorese militia in Dili's district court, the Indonesian architects of the 1999 violence remain at large in Indonesia. International pressure and arrest warrants have failed to ensure extradition of these defendants to Dili for trial.

Among those wanted are former Indonesian minister of Defence and Armed Forces Commander Wiranto, six high-ranking Indonesian military commanders, and the former governor of East Timor who were indicted by the SCIU on February 24, 2003. All remain at large in Indonesia.

Calls in 1999 and 2000 for the establishment of an international tribunal were blunted when the U.N. secretary-general entrusted Indonesian



authorities with responsibility for pursuing justice for the 1999 crimes, believing that domestic trials should be the first recourse for East Timor's victims. However, despite significant international pressure and interest, trials of senior Indonesian officers in Jakarta failed to give a credible judicial accounting for the 1999 atrocities. Twelve of the eighteen defendants were acquitted. Four defendants who were found guilty received nominal sentences, which were all overturned on appeal. The appeals court upheld guilty verdicts for the two East Timorese defendants on trial, one of which was overturned by Indonesia's Supreme Court in November 2004.

These results have created widespread cynicism among the East Timorese public, who questions the fairness of a process that leads to the prosecution of relatively low-ranking Timorese in Dili while the sponsors of the violence remain free—and in many cases politically prominent—in Indonesia. East Timorese leaders, most notably President Xanana Gusmao, have publicly stated an unwillingness to pursue justice through the courts, instead preferring a reconciliation-based approach. However, Foreign Affairs Minister and Nobel Prize Laureate Jose Ramos Horta has publicly supported the idea of a U.N. commission to explore future options for justice.

Due to lack of donor support, the SCIU is scheduled to finish all pending investigations by December 2004, with trials slated to end by May 2005. As a result, the Special Panels are not likely to address the vast majority of political murders that took place in 1999.

At this writing, it was expected that by December 2004 or early 2005, U.N. Secretary-General Kofi Annan would announce the establishment of a commission of experts. The commission likely will be charged with assessing the successes and failings of both the Jakarta ad hoc trials on East Timor and the parallel process at Dili's Special Panels for Serious Crimes.

The Commission for Reception, Truth and Reconciliation in East Timor (Comissao de Acolhimento, Verdade e Reconcilio de Timor Leste, CAVR) is a national, independent, statutory authority mandated to undertake truth-seeking, facilitate community reconciliation, report on its work and findings, and make recommendations for further action. Complementing the work of the SCIU, the CAVR has been largely successful in its initial efforts to promote community-based national reconciliation, an ambitious task after twenty-five years of violence in East Timor.

East Timor's national judiciary and criminal justice system remain weak, under-resourced, and overburdened. As a result of insufficient staffing, the Court of Appeal was shut down for eighteen months in 2002 and 2003. Due to public frustrations with formal judicial processes, many serious crimes, including rape and domestic violence, are habitually referred to traditional customary law mechanisms rather than to the courts. Such mechanisms lack basic due process protections and regularly fail to provide justice for victims, especially victims of sexual violence.

### ***Police***

The National Police Service of East Timor (Policia Nacional de Timor-Leste, PNTL), overseen by the United Nations, has grown in strength and expertise. However, the service remains fragile and underdeveloped with inadequate training and resources to maintain law and order in a manner consistent with international human rights standards. Reports continue of excessive use of force by police when arresting suspects and abuse of detainees in police detention. The PNTL has now taken over full control of East Timor's thirteen districts from U.N. civilian police.

### ***Key International Actors***

The United Nations continues to have a presence in East Timor. Although armed U.N. peacekeepers are likely to remain in the country for the foreseeable future, the civilian arm of the United Nations Mission of Support in East Timor (UNMISET) started phasing out in May 2004, and the Mission is scheduled to finish in May 2005.

East Timor remains in desperate need of long-term international financial assistance and receives its largest financial contributions from Japan, Portugal, the United Kingdom, the European Union, the United States, and Australia.

East Timor continues to have cordial relations with Indonesia, its largest trading partner. Unresolved issues continue to be negotiated through a series of bi-lateral talks between the two countries, including the official border demarcation and how to resolve the ongoing problem of East Timorese refugees and missing and separated children in Indonesia.

## INDIA

The new coalition government led by the Congress party, which replaced the Hindu nationalist Bharatiya Janta Party (BJP) after elections in May 2004, has taken some important positive steps with regard to respect for human rights. These include repeal of the oft-abused Prevention of Terrorism Act (POTA) and a re-evaluation of federal government educational policies that have fostered communitarian resentments.

Attacks on civilians by militant groups and Indian security forces continued unabated before and after the change in government. Notwithstanding the repeal of POTA, the government continues to use other legislation to shield security forces from accountability. Indian military, paramilitary, and police forces have engaged in serious human rights abuses not just in conflict-zones such as Kashmir, but also when dealing with criminal suspects and detainees.

The Gujarat government's failure to bring to justice those responsible for massive communitarian riots in the state, in which thousands of Muslims were killed and left homeless, continues to be a source of tension throughout the entire country. However, the Supreme Court and the National Human Rights Commission have taken several positive steps to secure justice for the victims of the riots. The new government of Manmohan Singh also has to contend with the Indian government's systematic failure to protect the rights of Dalits, other marginalized castes and religious minorities. The Congress Party itself has failed to provide any justice to the victims of serious abuses against the Sikh community in Delhi and Punjab twenty years ago.

India faces a burgeoning HIV/AIDS problem, as people with HIV and their families face government and social discrimination.

## ***Rights of Dalits and Indigenous Tribal Groups***

Despite legislative measures to protect marginalized groups, discrimination based on caste, social, or religious grounds continues widely in practice. Local police often fail to implement the special laws set up to protect Dalits and members of tribal groups.

Dalits, or so-called untouchables, continue to face violence and discrimination in nearly every sphere of their lives. Abuses against Dalits range from harassment and use of excessive force by security forces in routine matters, to mutilations and killings by members of other castes for attempting to cross caste barriers. Dalit women are targeted with sexual violence. Not only do authorities regularly tolerate such discrimination and violence, in some instances they actively encourage it. In one widely noted incident in July 2004, for example, police used excessive force against Dalits who tried to participate in a religious festival in Tamil Nadu.

Indigenous peoples, or Adivasis, have suffered from high rates of displacement. Scheduled Tribes that make up 8 percent of the total population constitute 55 percent of displaced people. This has had a serious effect on the overall development of these communities, particularly tribal children. The government continues to use the Land Acquisition Act of 1894 to displace the indigenous peoples from their lands without sufficient compensation, as is evident in the Narmada Valley Development Project. Tribal groups who have converted to Christianity have been targeted for attack by extremist Hindu organizations.

## ***Impunity of Security Forces***

Indian security forces, including the military, paramilitary forces, and the police, routinely abuse human rights with impunity. The Indian federal government rarely prosecutes army and paramilitary troops in a

credible and transparent manner. The result has been an increase in serious violations by security forces throughout the country.

The government's repeal of the controversial Prevention of Terrorism Act (POTA) was a major step forward for civil liberties in India. POTA empowered security forces to hold individuals for up to 180 days without filing charges, broadening the scope of the death penalty, dispensing with the presumption of innocence by placing the burden of proof on suspects, and admitting confessions into evidence despite the frequent use of torture. The law was often used against marginalized communities such as Dalits, indigenous groups, Muslims, and the political opposition.

But POTA's repeal has not ended the legal impunity that security agencies enjoy. Laws such as the National Security Act, the Disturbed Areas Act, the Armed Forces Special Powers Act or the Armed Forces (Jammu and Kashmir) Special Powers Act have spawned abuses in various parts of the country, including many deaths in custody and widespread allegations of torture. These laws give security agencies unchecked powers of detention that often foster torture during interrogation.

For instance in Kashmir and Manipur states, the sites of long-standing insurgencies, Indian military and paramilitary forces have held suspects in army camps and barracks and have routinely tortured them, in violation of domestic and international laws.

In July 2004, Manipur state witnessed unprecedented civilian protests against the Armed Forces Special Powers Act after army troops sexually assaulted and killed a woman in custody. That Act provides security forces virtual immunity for crimes committed in the course of duty. The new government recently agreed to review the act.

Other laws such as the Public Safety Act and section 197 of the Criminal Code of Procedure also raise human rights concerns. Section

197 extends immunity to public servants by requiring government authorization to initiate the prosecution of public servants for crimes that result from the discharge of their official functions. In effect, it allows the government to shield security forces from any legal accountability.

In Kashmir, military, paramilitary, and police forces continue their practice of torturing detainees and custodial killings. There has also been a nationwide rise in allegations of extrajudicial executions by security forces, who typically justify their actions by claiming to have killed suspects in an exchange of gunfire.

### ***Kashmir Conflict***

Since November 2003, a cease-fire along the Line of Control in Kashmir has provided tremendous relief to residents on both sides of the de facto border. During the intermittent shelling, however, neither Pakistan nor India took adequate precautions to protect civilians. The violence inside Indian-controlled Kashmir continued.

Bomb and grenade attacks by militants in crowded market places constituted the intentional targeting of civilians. Attacks, apparently by separatist militants, on moderate Kashmiri leaders have hindered the peace process. Indian police and security services often use excessive force, and have been responsible for arbitrary detention, torture, and extrajudicial execution. Since 1989, when the insurgency began, thousands of people have disappeared at the hands of both militant and government forces.

### ***Legacy of Communal Violence***

Large-scale episodes of communal violence remain unpunished. This injustice continues to foster communal resentments throughout India. There has still been no accountability for the deaths of more than two

thousand Muslims in the western state of Gujarat during communal violence that erupted following an attack on a train carrying Hindu pilgrims in 2002. In *Discouraging Dissent*, a report released in August 2004, Human Rights Watch documented the continued discrimination, intimidation of witnesses, faulty investigation, and apparent interference from members of the BJP state government in efforts to prosecute those responsible for the anti-Muslim violence.

The Indian Supreme Court has already ordered two Gujarat cases to be retried in another state. The criminal justice system in Gujarat, the Supreme Court concluded, had been “abused, misused and mutilated by subterfuge.” Human rights activists and lawyers have petitioned for fresh investigations and trials in a number of cases where it was felt that the local courts, prosecutors and police were hostile to Muslim complainants. Despite these positive developments, rights activists in Gujarat continue to be harassed on the basis of what police claim are their “anti-national activities.” Witnesses, however, remain vulnerable to threats.

2004 marked the twentieth anniversary of Operation Blue Star, a focal point in the conflict between Sikh nationalists and state security apparatus in the Punjab in the 1980s; and the anti-Sikh riots in New Delhi, which resulted in more than three thousand Sikh deaths. In July, the National Human Rights Commission called for claims in cases of summary execution in Punjab. The assignment of individual criminal responsibility for those and other crimes committed during the period, however, remains elusive. Also in July, the Nanavati Commission of inquiry served former prime minister P.V. Narasimha Rao, who was home minister in the Congress Party government in 1984, a notice for his failure to act to prevent the attacks on Sikhs. Two others who have similarly been served notices have recently been appointed ministers in the new Congress government.



## ***Rights of Children***

India has the largest number of working children in the world, millions of whom work in the worst forms of child labor, including bonded labor. The Indian government knows about these children and is required by its own laws to protect them. Instead, for reasons of apathy, caste bias, and corruption, many government officials deny that they exist at all.

Both literacy and school enrollment rates overall have improved in the last decade, but according to UNESCO, approximately half of students completed grade five. Proportionately fewer girls than boys attend school, and those that do, drop out at higher rates. Dalits also have higher illiteracy and drop-out rates and face significant discrimination in education.

## ***Rights of Those Living with HIV/AIDS***

The government estimates that 5.1 million people in India are living with HIV/AIDS, though many experts suggest the number is much higher. People with AIDS, as well as those traditionally at highest risk—sex workers, injection drug users, and men who have sex with men—face widespread stigmatization and discrimination. People with AIDS are denied employment and access to education and healthcare. Those at high risk face police harassment and other state-sponsored abuse that undermines HIV prevention and AIDS care services for them. Married women are also at risk because they are frequently unable to demand condom use of their husbands, who may have extramarital sexual partners.

At least hundreds of thousands of children are living with HIV/AIDS. Many more are otherwise seriously affected by India's burgeoning epidemic—when they are forced to withdraw from school to care for sick parents, are forced to work to replace their parents' income, or are

orphaned (losing one or both parents to AIDS). Children affected by HIV/AIDS are being discriminated against in education and health services, denied care by orphanages, and pushed onto the streets and into the worst forms of child labor. Gender discrimination makes girls more vulnerable to HIV transmission and makes it more difficult for them to get care. Many children, especially the most vulnerable as well as the professionals who care for them, are not getting the information about HIV they need to protect themselves or to combat discrimination.

### ***Inadequate Protection against Gender-based Discrimination and Violence***

Women and girls confront discrimination and violence in practically every aspect of life. A strong preference for sons over daughters has led to sharply skewed gender ratios in several states. Sex-selective abortions, female feticide, and inadequate provision of food and health care to girls has led to ratios of less than eight hundred women for every one thousand men in some places. Despite several legal provisions for gender equality, women still struggle to realize equal rights to property, marriage, divorce, and protection under the law. Gender-based violence, including domestic violence, sexual harassment, sexual assault, and trafficking into forced labor and forced prostitution remain serious and pervasive problems in India. Domestic violence includes dowry-related abuses and “bride-burning.”

Activists continue to campaign for reform of rape laws to protect women and children from all forms of sexual violence. The pervasive understanding of ‘rape’ is that it occurs only when a stranger uses force on a woman. A marital exemption protects men from being prosecuted for raping their wives. Marital rape is not recognized or penalized unless the wife is under the age of fifteen or if she lives separately from her husband.

There is inadequate legal protection for abuse against girls, boys, and men, or for sexual violence between spouses. In the absence of a more suitable law, section 377 of the Indian Penal Code, which penalizes consensual sexual activity deemed “unnatural,” is also used to prosecute the sexual abuse of children and women.

This provision has also been used to penalize men having sex with men, and has been used as justification for harassment of HIV/AIDS educators. The Delhi High Court dismissed a legal challenge to section 377, dealing a disappointing set back for activists working to improve the rights of gay and lesbian people in India.

### ***Key International Actors***

India receives 60 percent of its aid from multilateral donors such as the World Bank. India decided in 2003 to stop receiving bilateral assistance from all but six countries, including the United States, the United Kingdom, and Russia. The decision is widely perceived as an effort to bolster India’s image as a world power. Increasingly, India has been providing significant amounts of financial and military aid to its smaller neighbors, but has not used its increasing influence to make public calls for better compliance with human rights standards.

The thawing of relations between India and Pakistan began in earnest in November 2003 with a ceasefire across the line-of-control. That was followed by a meeting between then-Prime Minister Vajpayee and President Pervez Musharraf of Pakistan in January 2004. The Congress government continued its predecessor’s policy of dialogue with Pakistan to resolve outstanding issues of conflict. The two countries’ leaders met in New York in September, where Singh and Musharraf reiterated a commitment to the bilateral dialogue to restore normalcy and a peaceful negotiated settlement in Kashmir.

The easing of tensions between India and Pakistan has allowed the United States to focus its dialogue with India on strengthening bilateral relations between New Delhi and Washington. U.S. Secretary of State Colin Powell visited India in March 2004. Human rights issues were not discussed. The increasingly warm relations between the two countries, despite the U.S. conferring the status of “major non-NATO ally” upon Pakistan, will likely continue under Congress Party leadership. Deputy Secretary of State Richard Armitage visited New Delhi in July, reaffirming to Indian leaders that the United States sees India as an important partner. India has also been strengthening its military-to-military ties, conducting joint exercises with United States and other NATO forces.

India is the largest provider of military assistance to Nepal, which is in the midst of a brutal civil war. India has not used its position of influence to push the Nepalese government to improve its human right records, and has resisted calls for a multilateral peace conference, presumably to avoid similar calls for resolving the Kashmir dispute.

India has been increasingly close to the brutal military government of Burma. A delegation of Burma’s political opposition was not allowed to enter India to attend a conference on human rights. In September 2004, the Indian government welcomed a delegation from the Burmese military government, but did not raise any concerns about Burma’s dismal human rights record. Thousands of Burmese continue to seek refuge in India, where they are not granted proper protections under international law.

## INDONESIA

Indonesia held national elections in April, July, and September 2004 resulting in a new parliament and new president. While Indonesia's first ever direct presidential election marked another step toward full democratization, significant barriers to rule of law and human rights remain in place.

Pressing human rights concerns include the resurgent power of the military in social and political affairs, ongoing impunity of security forces responsible for atrocities, abuses associated with armed conflict in Aceh province, repression in Papua, and disturbing signs of a return to intimidation of the press and criminalization of dissent.

Indonesia also faces a domestic terrorist threat, with more than two hundred civilians killed in bomb attacks since 2002 targeting western institutions: the Australian embassy (September 9, 2004), the Marriott hotel in Jakarta (August 5, 2003), and a nightclub frequented by Australians in Bali (October 12, 2002). Under immense international pressure, in particular from Australia and the United States, Indonesia has begun addressing this threat through criminal prosecutions and a slowly improving police force, although the perpetrators of some of the attacks remain at large.

### ***Elections***

Indonesia held parliamentary elections in April 2004, and two rounds of presidential elections in July and September (previously, members of parliament had selected the president). Despite voter intimidation in Aceh province, and widespread reports of "money politics" in all three elections, domestic and international observers deemed the elections notably peaceful and generally free and fair.

The April legislative election brought in a new parliament with the majority of seats won by the Golkar party of former President (and autocrat) Soeharto. This result was widely interpreted as motivated in part by the electorate's desire for a return to the security and stability of the Soeharto era after several years of turbulence and instability.

Indonesia's presidential election in July 2004 went to a second round run-off in September between incumbent Megawati Sukarnoputri and Susilo Bambang Yudhoyono, a former general and member of President Megawati's cabinet. Yudhoyono won convincingly on a platform of reform and anti-corruption.

### ***Impunity and the TNI***

The Indonesian armed forces (Tentara Nasional Indonesia, TNI) continues to violate international human rights and humanitarian law with almost complete impunity. Military operations in Papua and Aceh provinces continue to be characterized by undisciplined and unaccountable troops committing widespread abuses against civilians. Abuses include extra-judicial executions, forced disappearances, beatings, arbitrary arrests and detentions, and drastic limits on freedom of movement.

Torture of detainees in police and military custody is also widespread across the archipelago.

Indonesia's executive and judicial branches regularly fail to address such abuses. Indonesia's judiciary in particular is corrupt and subject to political interference.

To date there has been no legal accounting for the violence instigated by pro-Soeharto forces in a failed attempt to stave off his fall from power in 1998 or for the majority of atrocities committed during his more than three decades in office. Trials for the 1984 killing of civilians

by Indonesian security forces at Tanjung Priok in Jakarta finished with weak verdicts amid ongoing reports of political interference and witness intimidation.

Despite significant international pressure and interest, trials of senior Indonesian officers in Jakarta failed to give a credible judicial accounting for atrocities committed in East Timor in 1999. Twelve of the eighteen defendants were acquitted. Four defendants who were found guilty received nominal sentences, which were all overturned on appeal. The appeals court initially upheld guilty verdicts for the two East Timorese defendants on trial but one of these verdicts was overturned by Indonesia's Supreme Court in November 2004.

### ***Aceh***

In May 2003 the Indonesian government withdrew from peace negotiations and launched full-scale military operations in Aceh. An estimated forty thousand new troops were sent to the province to crush an estimated five thousand members of the Free Aceh Movement (*Gerakan Aceh Merdeka, GAM*) in Indonesia's largest military operation since the invasion of East Timor.

Three consecutive post-Soeharto presidents have failed to address the economic, social, governance, and justice-related grievances underpinning the fighting. The new war has led to widespread abuses against civilians with little prospect for a military solution.

Human Rights Watch has documented serious abuses by both sides in the context of the conflict. Dozens of interviews with Acehnese refugees in Malaysia make clear that Indonesian security forces continue to engage in widespread extra-judicial execution, torture, disappearances, and restrictions on movement, assembly, and association.

At this writing, Aceh remains closed to most diplomats, international aid workers, international press, and independent human rights monitors. Indonesian journalists working in the province have faced threats and reprisals from both Indonesia security forces and GAM. Indonesian lawyers and NGOs documenting abuses against the Acehnese have been accused by Indonesian security forces of being GAM sympathizers.

Despite these restrictions, Human Rights Watch interviewed three dozen Acehnese prisoners in 2004, all of whom had faced serious mistreatment while in detention; many had been tortured. All had been detained and convicted without basic due process rights and often on the basis of trumped up evidence or coerced confessions.

## ***Papua***

The Indonesian military regularly responds to low level attacks by the Free Papua Movement (Organisasi Papua Merdeka, OPM) with disproportionate force; unarmed civilians continue to be among those injured or killed in military reprisals. Arbitrary detention, torture, disappearances, and arson are widespread in this vast and isolated region of Indonesia.

Jakarta's decision in 2003 to divide Papua into three provinces, viewed by many as an effort to dilute Papuan political aspirations, was met by widespread local resistance. The province subsequently was divided into two provinces, with legislated "special autonomy" provisions largely put on hold.

Papua has seen a swelling of its population in recent years due to a large influx of economic migrants and civilians fleeing conflict in other parts of Indonesia. Tension between these groups is likely to rise unless addressed. Among other things, indigenous Papuans are predominantly rural and Christian while major immigrant groups are predominantly



town-based and Muslim, creating a volatile mix susceptible to manipulation by unscrupulous political leaders.

Papua has the highest HIV prevalence in Indonesia and discrimination against people living with HIV/AIDS is widespread.

### ***Political Prisoners***

Although political space for dissent increased enormously after the fall of President Soeharto, broadly worded laws limiting freedom of expression remain on the books and are being increasingly used by authorities to target outspoken critics. Soeharto's first two successors, President B.J. Habibie and President Abdurrahman Wahid, issued a series of amnesties to release most political prisoners convicted during the Soeharto era, but by 2003 at least forty-six new prisoners of conscience had been imprisoned—thirty-nine of them during President Megawati Sukarnoputri's tenure between July 2001 and October 2004.

### ***Indonesian Migrant Workers***

Hundreds of thousands of Indonesians migrate for work each year, and the money they send back to Indonesia is critical to the country's economy. These workers continue to endure abuses by labor agents and to confront corruption at every stage of the migration cycle. Women comprise over 75 percent of these migrant workers. Women migrants typically seek employment as domestic workers in Saudi Arabia, Malaysia, and other countries in the Middle East and Asia.

In addition to problems these workers encounter while abroad (See Malaysia), women domestic workers confront a wide range of human rights abuses during recruitment, pre-departure training, and return to Indonesia. Labor recruiters often fail to provide complete information about job responsibilities, work conditions, or where the women can turn for help. Some girls and women seeking employment become vic-

tims of human trafficking, as they are deceived about they type of work they will perform, fall into debt bondage, or are otherwise coerced into exploitative situations. Women expecting to spend one month in pre-departure training facilities in Indonesia are often trapped in heavily-guarded centers for three to six months without any income. Most have complained of overcrowded conditions and some reported inadequate food and water, as well as verbal and physical abuse. Indonesia has taken some positive steps to address this issue, but new migrant workers legislation is deeply flawed and officials have not vigorously implemented necessary protections.

### ***Press Freedom***

After the fall of Soeharto, Indonesia for a time was considered a center of media freedom in Southeast Asia. Critical reporting and commentary emerged on a scale unimaginable in the Soeharto era. However, the trend more recently has been toward a more restrictive environment, symbolized in 2004 by continuing far-reaching restrictions on and intimidation of journalists in Aceh and by the one-year prison sentence imposed on Bambang Harymurti, editor of the prominent independent weekly newsmagazine *Tempo*, for an article alleged to have defamed well-connected businessman Tomy Winata. In addition, private business interests and military officers increasingly file lawsuits and rely on a corrupt judiciary to influence coverage and in some cases impose potentially crippling monetary judgments on independent news providers.

### ***Human Rights Defenders***

Since the fall of Soeharto the climate for human rights defenders in Indonesia has improved. However, in Aceh human rights defenders still suffer threats and intimidation from security forces and GAM when monitoring and investigating human rights abuses.

On September 7, 2004 one of Indonesia's most outspoken and respected human rights defenders, Munir, died under suspicious circumstances on a plane to the Netherlands. The autopsy report, released in November, concluded that Munir had died due to arsenic poisoning. At this writing a police investigation was underway.

### ***Key International Actors***

Japan is Indonesia's largest aid donor, and in 2003 the Koizumi government played an increasingly important role in helping Indonesia address pressing problems, most noticeably the conflict in Aceh.

Indonesia's relationship with the United States continues to focus on joint efforts to fight terrorism. Although U.S. military assistance to Indonesia remains conditioned on accountability for human rights abuses, the U.S. has made it clear that co-operation in the war on terrorism is more critical than human rights to normalization of the relationship. At this writing, Indonesian failure to bring to justice those responsible for the shooting death of one Papuan and two U.S. citizens in Papua in 2002 continues to limit formal military cooperation. Initial police and nongovernmental organization investigations had indicated military involvement in the murders.

The United Nations has a strong presence in Indonesia concentrating on humanitarian and health programs in conflict areas. U.N. access to Aceh, however, remains severely restricted.

Indonesia's failure to successfully prosecute officers and officials responsible for atrocities committed in East Timor following the U.N.-supervised independence referendum there in 1999 has put the onus on U.N. Secretary-General Kofi Annan to act: Annan has said that he would "closely monitor progress" of the Indonesian response to the crimes in East Timor to see that it is a "credible response in accordance with international human rights principles." At this writing, it was expected

that in December 2004 or early 2005 Annan would announce the establishment of a Commission of Experts to assess the success and failings of both the Jakarta trials, described above, and the parallel process at Dili's Special Panels for Serious Crimes.

A number of U.N. special rapporteurs have requested to visit Indonesia to no avail, including the special representative of the secretary-general on the situation of human rights defenders, the special rapporteur on the promotion and protection of the right to freedom of opinion and expression, the special rapporteur on freedom of religion or belief, and the special rapporteur on torture.

Indonesia withdrew from formal International Monetary Fund supervision of monetary and fiscal policy at the end of 2003, but continues to require considerable external financial assistance. The Consultative Group on Indonesia (CGI) meeting, an annual conference of Indonesia's largest donors convened by the World Bank, continues to pledge significant sums, although donors increasingly are conditioning assistance on good governance and legal reform.

## MALAYSIA

Malaysia witnessed its first change in leadership in more than two decades when Abdullah Badawi took over from Prime Minister Mahathir Mohamad in October 2003. While there has been some progress since that time—noteworthy examples include the release from prison of former Deputy Prime Minister Anwar Ibrahim in September 2004 and the opening of a notorious detention facility to outside scrutiny in May 2004—significant obstacles remain in place.

Prominent human rights concerns in Malaysia include arbitrary detention of alleged militants under the Internal Security Act (ISA); restrictions on media freedom; constraints on judicial independence; and abuses against refugees and migrants.

### ***Arbitrary Detention of Alleged Islamic Militants***

The Malaysian government is holding more than eighty detainees under the ISA without charge or any type of judicial review. Over the years, the ISA has been used as a tool to crack down on political opposition and peaceful dissent. After September 11, 2001, the ISA took on new life with the arrests of scores of Islamists alleged to be connected to international terrorist groups. More than three years later, the Malaysian government has yet to publicly produce evidence against the detainees or bring any of them to trial.

Human Rights Watch investigations have revealed that police and security authorities subjected many of the detainees to serious abuses, including sexually humiliating interrogations, beatings, and sleep deprivation. In addition, the authorities have denied the detainees basic due process rights. In the first several weeks after their arrest, the detainees did not have access to lawyers and were threatened with punishment and indefinite incarceration for trying to legally challenge their detention.

Prime Minister Abdullah has taken some steps toward remedying the abuses under the ISA. For the first time in Malaysia's history, in May 2004, he permitted journalists to enter the notorious Kamunting Detention Center where ISA detainees are held. According to media reports, detainees spoke during the visits of abuses they had suffered after their arrest. The government announced that the Malaysian National Human Rights Commission (SUHAKAM) would conduct an investigation into allegations of abuse at the short-term detention centers where detainees typically are held for several weeks before being sent to Kamunting. At this writing, however, SUHAKAM had yet to report any findings. The government continues to bar independent monitoring or investigation of conditions inside Kamunting prison.

### ***Restrictions on Media Freedom***

The Malaysian media continues to face significant resistance and is muted in its criticism of government policy. The government maintains its control through a network of laws curbing free expression, as well as through direct day-to-day monitoring and control of the media.

Malysiakini, an independent news website, remains one of the few openly critical media outlets. While the new government of Prime Minister Abdullah has not indicated that it will impose new restrictions on the media, it has not repudiated the censorial policies of the Mahathir government.

### ***Independence of the Judiciary***

The Malaysian judiciary has struggled to regain its independence since the so-called "Operation Lalang" crisis of 1988, in which the government removed several senior judges deemed likely to challenge government policies. Time after time, in politically charged cases, Malaysia's judiciary has found in favor of the government, with judges aware that their careers would suffer if they ruled otherwise.

In September 2004, Malaysia's highest court ordered the release of Anwar Ibrahim from prison, potentially signaling a transition toward greater judicial independence. The former Deputy Prime Minister had served a nine-year sentence when the court granted his appeal and overturned the sodomy conviction against him. Anwar's trial had been widely criticized domestically and internationally for being politically motivated and marred by serious violations of due process.

The court will face another test of its independence in a politically charged case when it considers the appeal of human rights advocate Irene Fernandez. Fernandez was convicted in 2003 under Malaysia's restrictive press laws for "maliciously publishing false news" and sentenced to a year in prison. Fernandez was arrested in 1995 when Tenaganita, a nongovernmental organization headed by Fernandez, published a report documenting beatings, sexual violence, and inadequate food and water in Malaysia's immigration detention camps. Fernandez' seven-year trial, the longest in Malaysian history, became a symbol of the Malaysian government's hostile stance toward human rights defenders. At this writing, she was out on bail pending the outcome of her appeal.

### ***Deportation of Refugees***

In July 2004, the Malaysian Home Minister announced plans to round up and deport some 1.2 million undocumented migrant workers, the majority of whom are Indonesian. In 2002, a similar mass deportation program resulted in the death of dozens of Indonesian, including children, from dehydration and disease while stranded in transit areas waiting to find a way home.

Among those likely to be sent back to Indonesia are some ten thousand refugees from the war-torn Aceh region of Indonesia. These refugees are fleeing a brutal conflict marked by routine, grave human rights violations (*see* Indonesia), only to encounter further abuse in Malaysia,

where they are denied status as refugees, abused by Malaysia police, and then often sent back to Indonesia where their lives are at risk. Malaysia is not a signatory to the 1951 Convention on the Status of Refugees, and does not distinguish between Acehnese refugees and other illegal immigrants, even though the United Nations High Commissioner of Refugees (UNHCR) has designated all Acehnese refugees to be “persons of concern.” In 2003, Malaysia forcibly returned thousands of Acehnese refugees; such returns continued in 2004.

### ***Abuse of Migrant Workers***

Because of its economic success, Malaysia has long attracted migrants from across Asia. While it relies heavily each year on more than two million migrant workers from Indonesia, Bangladesh, the Philippines, and India to meet its labor demands, Malaysia fails to protect their basic rights.

Human Rights Watch research in 2004 focused on conditions faced by Indonesian women and girls who work as domestic workers in Malaysia. They typically work sixteen to eighteen hour days, seven days a week, without any holidays, and often are forbidden from leaving the houses where they work, even when not on duty. Some workers confront physical, verbal, and sexual abuse from employers and labor agents.

Indonesian domestic workers earn U.S.\$93-105 per month, less than half the amount that Filipina domestic workers and other low-wage workers make. Employers often fail to make complete payments or to pay at all. In the worst cases, deceived about the conditions and type of work, confined at the workplace, and receiving no salary, Indonesian women are victims of trafficking and forced labor.

The Malaysian government’s inadequate monitoring of workplace conditions and profit-motivated labor agencies prevent many domestic workers from reporting abuses or seeking redress through the



Malaysian justice system. Labor agencies do not uniformly provide domestic workers with information about their rights or, in cases of abuse, access to Malaysian and Indonesian authorities who could assist them with legal, health, and other support services. In many cases, labor agents are guilty of abuses themselves or actively obstruct domestic workers' access to information or help.

Indonesian domestic workers are excluded from several legal protections guaranteed other workers by Malaysia's employment laws and previous bilateral labor agreements with Indonesia. For example, they are excluded from section XII of Malaysia's Employment Act of 1955, which would otherwise entitle them to one day of rest per week, and limit work hours to eight hours per day and forty-eight hours per week. Malaysia's immigration laws and policies often prevent domestic workers from escaping abusive situations or seeking help from Malaysian authorities. Domestic workers who escape from abusive situations lose their legal status once they have left their employer's home, and may be classified as illegal immigrants, detained, and deported, instead of receiving access to help.

The upcoming deportation of over one million undocumented workers, and the proposal of enlisting help from volunteers to carry out immigration raids, only increases the likelihood that abused domestic workers, rather than being identified as individuals in need of protection and support, will be summarily deported.

### ***Key International Actors***

The September 11 attacks on the United States dramatically altered the relationship between the U.S. and Malaysia. Previously, the U.S. had been publicly critical of Malaysia's human rights record in general, and its misuse of the ISA in particular. But the U.S. "war on terror" led the U.S. to change its course and dramatically tone down its criticism.

Malaysia has cooperated extensively with the U.S. in counterterrorism efforts, regularly sharing intelligence information and offering access to ISA prisoners for interrogations. The countries collaborated on creation of the Southeast Asia Regional Center for Counter Terrorism, established in Malaysia in July 2003 with the assistance and training of the U.S. As a result of this cooperation, Malaysian-U.S. relations have improved significantly, and the U.S. has shown little desire to criticize Malaysia's human rights record. The U.S. practice indefinitely detaining terror suspects without charge or trial in the United States, at Guantanamo Bay, and elsewhere in the world, has weakened its desire, as well as its ability, to engage in effective human rights advocacy on behalf of administrative detainees in Malaysia.

In 2004, the Association of Southeast Asian Nations (ASEAN), of which Malaysia remains an influential member, assumed an increasingly prominent role in regional affairs. ASEAN facilitated trade negotiations among member states and between member states and non-member countries such as India and Japan, and, in September, provided a forum for member states to discuss increased cooperation and information sharing on security issues. Despite its increasing importance, ASEAN has failed to make human rights a priority, remaining silent on issues such as Malaysia's denial of due process rights to ISA detainees.

## NEPAL

The brutal eight-year civil war between rebels of the Communist Party of Nepal (Maoist) and government security forces raged on in 2004. Several serious encounters led to significant casualties on both sides. Both sides spoke publicly about resuming negotiations, without any real impact on the fighting.

Under intense international pressure to improve its human rights record, the Nepali government acknowledged “occasional aberrations” in 2004 and publicly renewed its pledge to abide by its human rights and humanitarian law obligations. In spite of this pledge, the government has not improved its conduct of the war. Its commitment to support the National Human Rights Commission (NHRC) has similarly gone unfulfilled. The government and its agencies continue to discount human rights workers as either pro-Maoist or naïve.

As the result of months of “anti-regression” demonstrations in Kathmandu, the highly unpopular government directly appointed by the king gave way to an unelected multi-party cabinet in June 2004. The government’s vague promises about holding elections soon were not satisfied as of this writing, and no election date had been announced.

The conflict and the political stalemate have had a devastating impact on the already desperately poor rural population. Nepal is among the poorest countries in Asia. Almost 40 percent of Nepal’s twenty-three million people live below the poverty line. Life expectancy at birth is just 59.6 years and infant and maternal mortality rates are among the highest in the region. The literacy rate is only 44 percent. The government’s limited capacity to provide essential health and education services has been severely curtailed by lack of access to Maoist controlled areas.

## ***Abuses Associated with the Civil War***

Civilians in Nepal are all too often caught in the middle of the civil war. Refusing to provide shelter to the rebels puts villagers at risk from Maoists who are ruthless in their punishments; providing such support, however, leaves them vulnerable to reprisal attacks from the state security forces. Human Rights Watch documented widespread abuses by both sides in 2004.

Summary executions of captured combatants and detained civilians are common in Nepal. According to the NHRC and other human rights organizations, government security forces have been responsible for approximately 2000 extrajudicial killings since 2001. In 2004, Human Rights Watch documented an ongoing pattern of killings which confirms these reports.

When people are killed during security operations, government security forces (operating in a joint structure as the Unified Command) almost always issue a statement identifying the dead as Maoist rebels killed during exchange of gunfire. Investigations into the circumstances of the deaths have often revealed that many individuals were already in the custody of the armed forces at the time they were killed.

According to the U.N. Working Group on Enforced and Involuntary Disappearances, Nepal has the largest number of enforced disappearances in the world. The NHRC, which closely monitors enforced disappearances, documented 662 cases of enforced disappearances involving Nepali security forces between November 2000 and November 2003. If anything, the crisis of disappearances in Nepal has become more severe since the breakdown of the last ceasefire on August 27, 2003—hundreds have been detained or abducted since then, and many remain missing.

Disappearances are reported throughout the country. In almost all cases, the disappeared persons were last seen in the custody of govern-

ment security forces. Those detained are held in informal places of detention: tents, government buildings, containers, and army training centers, making it virtually impossible for family members and lawyers to learn their fate or locate and gain access to them. The army's disregard of Supreme Court *habeas corpus* orders and its blatant lies to the courts have seriously undermined judicial oversight of detentions, one of the most important legal protections against "disappearances."

The Maoists also perpetrate serious abuses. The brutal summary execution of civilians is a favored tactic of the Maoists. Often, the executions are preceded by torture, in many cases in front of villagers and family members. The Maoists have assassinated or executed suspected government informants, local political activists or non-Maoist party officials, local government officials and civil servants, and individuals who refuse extortion demands from the Maoists. The Maoists also have executed off-duty army and police officers, often capturing them when they go to their villages to visit family members. In the vast majority of cases, the Maoists claim responsibility for the killings, explaining that the executed individuals are "informers," a vague charge which encompasses any act which defies Maoist dictates. Typically, the Maoists return to the village of their victim, informing the family or villagers of the killing.

The Maoists clearly use targeted killings to intimidate local villagers, ensuring that villagers know that deviance from Maoist demands will result in a brutal death.

### ***Use of Children***

Accounts gathered by Human Rights Watch indicate that the Maoists recruit children, making them carry ammunition and supplies to the front lines, and using them as cooks and porters.

Because of security concerns and difficulties in gaining access to Maoist-controlled areas, both government and international aid workers

have limited capacity to gather facts, provide protection, and assist former child soldiers with reintegration into society. While some child soldiers reportedly returned home after a ceasefire was declared on January 29, 2003, they were not officially demobilized. At the time, these children told journalists they were afraid that they could be re-recruited if the conflict resumed; what has happened to them since the breakdown of talks in August 2003 is unknown.

In addition to the use of children in combat, the Maoists have forcibly abducted students from schools for political indoctrination. This practice is well-reported and is readily admitted by the Maoists. Children and adults who have been abducted describe being given lectures on Maoism and on their rights as citizens, and being taught Maoist songs and dances. While most abducted children are returned days or weeks later, others remain unaccounted for. Some of the girls released after such abductions have reported sexual abuse to human rights groups.

The Maoist practice of calling either nationwide or regional “bandhs” (strikes) has had a paralyzing impact on most businesses and operations. Of particular concern are the forced closures of schools on strike days, which results in children missing an inordinate amount of school time.

### ***Violence and Discrimination Based on Gender and Sexual Orientation***

Gender-based violence—including domestic violence, sexual assault, and trafficking into forced labor and forced prostitution—remains pervasive and deeply entrenched in Nepal. Despite some positive legislative changes in 2002 providing women with improved rights to obtain abortions and to inherit parental property, legal discrimination prevents women from equal rights in passing citizenship to their children or to foreign spouses, from equal property rights, and from equal rights in marriage and divorce. There is no domestic violence law, and several limitations in the rape and sexual offense laws prevent victims from

seeking redress through the justice system. Despite the legalization of abortion, some women remain imprisoned on abortion-related offenses.

Nepali authorities continue to turn a blind eye to a persistent pattern of police abuse of *metis* (biological males who cross-dress); men suspected of having sex with men; women suspected of having sex with women; and HIV/AIDS outreach workers. In other cases, police have deliberately failed to protect such individuals against abuses. These abuses violate both Nepalese and international law, which protect the dignity and equality of all human beings. They also heighten the risk of HIV/AIDS for people and communities already marginalized and made vulnerable by social stigma.

### ***Key International Actors***

The government of Nepal has refused any international or foreign mediation of the civil war against the Maoists, and resisted strong pressure to allow a joint national and international commission to monitor human rights conditions in the country. It dangerously stereotypes human rights workers as leftists and therefore anti-government. When senior commissioners at the NHRC have received death threats, the government has provided little or no protection or cooperation.

During the February-August 2003 ceasefire, the international community increased its pressure on the government to respect human rights. The most significant international actors in Nepal are India, the United States, the United Kingdom, and the European Union. India has opposed a larger international monitoring or mediation role in Nepal because it opposes a similar international role in Kashmir. India is also battling its own insurgent Maoist groups. The United States has continued its policy of refusing to negotiate with Maoist organizations, and has cast Nepal's Maoists as enemies in the "war on terror." More recently, the U.S. passed a bill conditioning military assistance on the government's compliance with a commitment to cooperate with the

NHRC to resolve “disappearances.” The U.K. has continued its long tradition of military cooperation with Nepal, a relationship strengthened by the recruitment of Nepali “Gurkha” soldiers into the U.K. military.

The international community has supported the NHRC in its appeal to both the government and Maoists to agree to independent human rights monitoring in conflict zones. The two sides have agreed to neutral monitoring as a matter of principle, but neither side has signed a human rights accord allowing for such monitoring. On February 2, 2004, the E.U. issued a demarche to the Nepali government urging it to take the deteriorating human rights situation seriously. In March 2004, the government publicly pledged to abide by its obligations under human rights and humanitarian law. The pledge came days before anticipated condemnation of Nepal at the sixtieth session of the United Nations High Commission for Human Rights in Geneva. Although welcome, the timing of the pledge aroused serious suspicion, as it appeared to be timed to ward off a critical Item 9 resolution at the CHR hearings. Since then, the government has done little to fulfill its commitments.

Nepal continues to host over 100,000 refugees from Bhutan and has failed to make progress in finding a durable solution to the fifteen-year impasse. UNHCR is planning to withdraw assistance in 2005, leaving the fate of the refugees uncertain. This population is at high risk of statelessness.



## NORTH KOREA

The government of North Korea (The Democratic People's Republic of Korea, DPRK) remains among the world's most repressive governments. Leader Kim Jong Il has ruled with an iron fist and a bizarre cult of personality since his father, former President Kim Il Sung, died in 1994. Virtually every aspect of political, social, and economic life is controlled by the government. Although North Korea has acceded to the International Covenants on Civil and Political Rights and on Economic, Social, and Cultural Rights, it routinely and egregiously violates nearly all international human rights standards.

Basic services, such as access to health care and education, are parceled out according to a classification scheme that divides people into three groups—"core," "wavering," and "hostile"—based on the government's assessment of their and their family's political loyalty. There is no freedom of the press or religion. The judiciary is neither impartial nor independent. There is no organized political opposition, no labor activism, and no independent civil society.

No human rights organization has direct access to the country for research or investigation. Human Rights Watch has documented abysmal human rights conditions through interviews with refugees and escapees from prison camps.

According to U.S. and South Korean officials, up to 200,000 political prisoners are believed to be toiling in prisons, while non-political prisoners, the number of which is unknown, are also mistreated and endure at times appalling prison conditions.

North Korea's deadly famine in the 1990s reportedly killed as many as two million people. Hundreds of thousands of North Koreans crossed the border into China for both political and economic reasons and many now live in hiding from North Korean agents who capture and

repatriate them for the “crime” of leaving their country or from Chinese authorities who categorize them as illegal immigrants and forcibly return them to North Korea. Humanitarian groups working in China also report a worsening problem of trafficking of North Korean women. Many are abducted or duped into forced marriages, prostitution or outright sexual slavery, while some voluntarily enter such servitude to survive or make money. Chinese authorities also routinely harass aid workers providing assistance to these refugees. Repatriated North Koreans can face detention, torture, and even execution.

### ***Freedom of Press and Religion***

There is no freedom of the press in North Korea. All media are either run or controlled by the state. All TVs and radios are fixed so that they can transmit only state channels. The simple act of watching or listening to the foreign press—or tampering with TVs or radios for this purpose—is a crime that carries harsh punishment. All publications are subject to supervision and censorship by the state. There is no freedom of religion. All prayers and religious studies are supervised by the state, and often used for state propaganda. Independent worship is not allowed.

North Korean refugees who recently escaped the country have said that more knowledge of the outside world is slowly spreading by word of mouth from residents who watch Chinese TV channels despite the risk of being arrested.

### ***Refugees***

Thousands of North Koreans escape to South Korea every year, a small number compared to those seeking refuge in China. The vast majority of North Korean refugees in China crossed the border without state permission, which is required under North Korean law for travel for any purpose inside the country or abroad. Although the restriction on

movement has reportedly become more relaxed inside the country, authorities still consider it an act of treason to leave North Korea without permission.

If repatriated, North Korean refugees are interrogated by North Korean police who often use torture to extract “confessions.” If they are found to have crossed the border only once just to find food, they are usually released. However, if they are found to be “repeat offenders” or have had contact with westerners or South Koreans while in China, especially missionaries, they become subject to harsh punishments including terms in forced labor camps.

In the fall of 2004, hundreds of North Korean refugees were flown from Southeast Asia to Seoul via Vietnam. North Korea demanded that they be repatriated back to North Korea, accusing South Korea of kidnapping the refugees, and stopped all government-level talks. South Korea accepts thousands of North Korean refugees for resettlement every year, far more than any other country that legally admits North Korean refugees.

### ***Detention and Torture***

Those arrested in North Korea are divided into different categories, depending on the seriousness of their “crime,” and sent to one of the corresponding prison facilities. All individuals held in North Korean prisons are subjected to forced labor. No legal counsel is provided or allowed throughout the process. Those who are sent to prison face cruel, inhuman, and degrading treatment; many die in prison because of mistreatment, malnutrition, and lack of medical care. Torture appears to be endemic.

## ***Death Penalty***

Under North Korea's penal code, premeditated murder and so-called anti-state crimes such as treason, sedition, and acts of terrorism are punishable by death. During the famine in the mid-1990s, the North Korean regime added another crime to the list: theft of food. Numerous eyewitness accounts by North Korean refugees have detailed how executions are carried out publicly, often at crowded market places, and in the presence of children.

## ***Right to Education and Work***

North Korea's politically determined classification system restricts nearly all aspects of education, labor, and health care. Although all North Korean children are required to attend school for eleven years, it is generally children of the "core" group who are allowed to advance to college and hold prominent occupations. Those belonging to "wavering" or "hostile" groups have very limited or no choice in education or work.

Since the famine, even the compulsory education system is barely functioning in many parts of the country, as many teachers and students spend more time trying to find food than in classrooms. North Korea advertises itself as a workers' heaven, and has numerous trade unions in all industrial sectors, but the unions are all controlled by the state. Strikes and collective bargaining are illegal, as are all independently organized labor activities.

## ***Discrimination in Medical Care***

Access to medical care is also strictly based on the class system, as hospitals admit and treat patients depending on their social background. While hospitals for the elite class are equipped with modern medicine and facilities, those for the rest of the population often lack even very basic supplies such as bandages or antibiotics. Many North Korean citi-

zens, especially children, suffer from diseases that can be easily treated. According to testimonies from North Korean refugees, doctors at many hospitals are forced to conduct surgeries without anesthesia and recycle needles and bandages.

### ***Civil Society***

There is no organized political opposition in North Korea. The ruling Workers' Party controls the parliament, which has only symbolic power, and all other smaller parties are pro-government and state-controlled. There are no independent nongovernmental organizations of any kind, including human rights organizations. State elections are held periodically, but all candidates are state candidates. Voting is openly monitored by state officials, and results in an almost 100 percent voting rate and 100 percent approval rate.

Expression of dissent against government policy or doctrines is considered a serious offense against the state. For political crimes, whether actual or perceived, collective punishment of entire families is the norm. Even when the family members of political offenders are not sent to prison, their choice of schools, residence, and jobs becomes severely restricted, potentially for generations.

### ***Key International Actors***

North Korea's relationship with the international community is seriously complicated by its self-proclaimed possession of nuclear weapons and its dismal record on human rights and economic development. In this atmosphere, North Korea's major international interlocutors are its immediate neighbors, South Korea and China, both of which wish to avoid a major humanitarian catastrophe on the Korean peninsula, and Japan and the United States, which seek to curb North Korea's nuclear threat.

In late September 2004, North Korea announced that it had created nuclear weapons “to serve as a deterrent against increasing U.S. nuclear threats.” Six nations—North Korea, South Korea, the United States, China, Russia and Japan—have been holding talks for years with little result to address North Korea’s nuclear weapons program.

In the summer the same year, the United Nations Commission on Human Rights appointed Vitit Muntarbhorn, a Thai academic, as Special Rapporteur on North Korea. The move came after the Commission adopted a resolution for the second straight year calling on North Korea to respect basic human rights. North Korea has largely shunned talks with U.N. human rights experts, and has yet to engage in dialogue with Muntarbhorn.

In an unprecedented move, two members of the Committee on the Rights of the Child were able to visit North Korea in 2004. During their visit, they highlighted mistreatment of children returned from China, as well as issues of economic exploitation, trafficking, and juvenile justice, including cases of torture.

Separately, North Korea has been aggressively pursuing better diplomatic relations and foreign investment. In the latest move, North Korea invited British Foreign Office Minister Bill Rammell to Pyongyang in September 2004 to discuss its nuclear weapons program and human rights record. According to Rammell, North Korean officials admitted that Pyongyang attaches little importance to human rights and confirmed the existence of labor camps for “re-education,” a small step forward from previous blanket denials of any human rights abuse.

In October, the U.S. Congress passed and the president signed into law the North Korea Human Rights Act of 2004, calling for more Korean-language radio broadcasts into North Korea and increased funding for nongovernmental organizations that promote “human rights, democracy, rule of law and the development of a market economy.”

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## PAKISTAN

Since President Pervez Musharraf seized office in a military coup d'état five years ago, Pakistan's military has acted with increasing impunity to enforce its writ over the state and to protect its grip on Pakistan's economic resources, especially land. For instance, in the Okara district of the military's traditional stronghold of Punjab, paramilitary forces acting in conjunction with the army killed and tortured farmers who refused to cede their land rights to the army. Other pressing human rights concerns in the country include a rise in sectarian violence; legal discrimination against and mistreatment of women and religious minorities; arbitrary detention of political opponents; harassment and intimidation of the media; and lack of due process in the conduct of the "war on terror" in collaboration with the United States. A major military offensive against alleged Taliban and Al-Qaeda forces in the South Waziristan area bordering Afghanistan resulted in massive displacement of civilians and scores of deaths.

### ***Gender-based Violence and Discrimination***

Violence against women and girls, including domestic violence, rape, "honor killings," acid attacks, and trafficking, are rampant in Pakistan. The existing legal code discriminates against women and girls and creates major obstacles to seeking redress in cases of violence. Survivors of violence encounter unresponsiveness and hostility at each level of the criminal justice system, from police who fail to register or investigate cases of gender-based violence to judges with little training or commitment to women's equal rights.

Under Pakistan's existing Hudood Ordinance, proof of rape generally requires the confession of the accused or the testimony of four adult Muslim men who witnessed the assault. If a woman cannot prove her rape allegation she runs a very high risk of being charged with fornication or adultery, the criminal penalty for which is either a long prison

sentence and public whipping, or, though rare, death by stoning. The testimony of women carries half the weight of a man's testimony under this ordinance. The government has yet to repeal or reform the Hudood Ordinance, despite repeated calls for its repeal by the government-run National Commission on the Status of Women, as well as women's rights and human rights groups. Informed estimates suggest that over 200,000 cases under the Hudood laws are under process at various levels in Pakistan's legal system.

According to Pakistan's Interior Ministry, there have been more than 4,000 honor killings in the last six years. Nongovernmental groups recorded more than 1,300 honor killings in 2003. Proposed legislation on honor killings drafted in consultation with NGOs and the Human Rights Commission of Pakistan was sidelined in favor of a far weaker bill.

### ***Religious Freedom***

Sectarian violence increased significantly in Pakistan in 2004. While estimates suggest that at least 4,000 people, largely from the minority Shi'a Muslim sect, have died as a result of sectarian violence since 1980, the last five years have witnessed a steep rise in incidents of sectarian violence. For example, in October 2004, at least seventy people were killed in sectarian attacks perpetrated by both Sunni and Shi'a extremist groups in the cities of Multan and Karachi. In recent years, Sunni extremists, often with connections to militant organizations such as Sipah-e Sahaba Pakistan, have targeted the Shi'a. There has been a sharp increase in the number of targeted killings of Shi'a, particularly Shi'a doctors, in recent years. Those implicated in acts of sectarian violence are rarely prosecuted and virtually no action has been taken to protect the affected communities.

Discrimination and persecution on grounds of religion continued in 2004 and an increasing number of blasphemy cases were registered.



The Ahmadi religious community in particular was the target of religious extremists. Ahmadis also continued to be arrested and faced charges under various provisions of the Blasphemy Law for allegedly contravening the principles of Islam. Charges filed include “preaching,” distributing “objectionable literature,” and preparing to build a “place of worship.” Other religious minorities, including Christians and Hindus, also continue to face discrimination.

### ***Military Impunity***

In December 2003, in order to push through controversial constitutional reforms that increased his powers, General Musharraf acceded to widespread demands to step down as army chief as part of the process of returning the country to civilian rule. But in October 2004, he reneged on the pledge made to the country in a televised speech by securing the passage of the “The President to Hold Another Office Act.”

During President Musharraf’s tenure, Pakistan’s military increased its influence over the political and economic life of all Pakistanis. The starkest example of military impunity came from the brutal repression of a farmers’ movement in Okara district of Punjab province, where tens of thousands of tenant farmers have resisted efforts by the military to usurp their legal rights to some of the most fertile farmland in Pakistan. Pakistani paramilitary forces subjected the farmers to a campaign of murder, arbitrary detention, torture, “forced divorces,” and summary dismissals from employment. On two occasions, the paramilitaries literally besieged villages in the area of dispute, thus preventing people, food, and public services from entering or leaving for weeks on end. In Okara, senior military and political officials have either participated in or allowed violations to occur.

## ***“War on Terror”***

The conduct of the “war on terror” in Pakistan led to serious violations of human rights. Suspects arrested and held on terrorism charges frequently were detained without charge and subject to trials without proper judicial process.

In September 2003, Pakistani authorities detained thirteen young men and boys from Malaysia and Indonesia, the youngest of whom were under sixteen at the time of arrest, legally attending an Islamic school in Karachi. They were not alleged to have engaged in any illegal activity, but were arrested on the claim that they were being trained to engage in future terrorist activities. They were arrested by Pakistani security forces, held incommunicado, and interrogated by Pakistani and U.S. security personnel, and then shipped to their home countries. No charges have been brought against any of them.

Since March 2004, the Pakistan Army has engaged in an ongoing operation in Pakistan’s Federally Administered Tribal Areas (FATA) along the Afghan border, with particularly heavy fighting in the South Waziristan region. The Pakistan government did not apply international humanitarian law to the conflict, arguing that though the offensive was being conducted by its army, it was an anti-terrorist operation. The government used the draconian Frontier Crimes Regulations to justify the use of methods such as collective punishment, and economic blockades of civilians. While Pakistani authorities have prohibited most independent verification of the events in the South Waziristan, reports of extrajudicial executions, house demolitions, arbitrary detentions, and the harassment of journalists abound.

According to government sources, at least sixty-three foreign and local combatants were killed in the operation. In addition, as the “spring offensive” got underway, army and paramilitary troops reportedly evicted between 25,000 and 35,000 civilians from the area in and around the

village of Kalusha on March 16, 2004. Reports indicate that the Pakistan government made no arrangements for those evicted and scores of dwellings were destroyed in the subsequent fighting. Locals reported that upon their return they found belongings and cattle stolen and several homes arbitrarily converted into military check-posts.

In the immediate aftermath of the army operation, the Pakistan Army reported the capture of 215 fighters, of whom at least seventy-three were foreigners from Chechnya, China's predominantly Muslim Xinjiang province, Afghanistan, Uzbekistan, and various Arab countries. There has been no confirmation from the Pakistan government about the whereabouts of those arrested. Military operations are ongoing in South Waziristan .

### ***Arbitrary Arrest and Detention of Political Opponents***

The government continued to use the National Accountability Bureau (NAB) and a host of anti-corruption and sedition laws to jail political opponents or blackmail them into changing their political stance or loyalties or at the very least to cease criticizing the military authorities.

In April 2004, the president of an opposition party, Makhdoom Javed Hashmi of the Alliance for the Restoration of Democracy, was sentenced to twenty-three years in prison on sedition charges for reading an anti-Musharraf letter to assembled journalists. Meanwhile, Asif Zardari, husband of former Prime Minister Benazir Bhutto has begun his ninth consecutive year in prison. Initially the government filed twelve cases against Zardari, most based on charges of corruption and financial impropriety. Though he has been bailed in eight and acquitted in four of these, in December 2001 a thirteenth case was filed against him on charges of evading duty on the import of a second-hand car. Zardari awaits a bail hearing.

## ***Freedom of Expression***

The rights to free expression and dissemination of information were persistently undermined through the arrest of editors and reporters from local and regional newspapers on charges of sedition.

Rasheed Azam, a journalist and political activist from Khuzdar in Balochistan province, claimed he was abused and tortured, including being beaten while hung upside down and subjected to sleep deprivation. He was released after several months in custody though charges of sedition filed against him are still being processed. Similarly, Amir Mir, a journalist working for the high-profile Karachi-based Herald magazine was reportedly publicly threatened by President Musharraf on November 20, 2003. Two days later, three unidentified persons set Amir Mir's car ablaze outside his house.

Two French journalists, Marc Epstein and Jean-Paul Guilloteau, and their Pakistani assistant, Khawar Mehdi Rizvi, were arrested in Karachi on December 16, 2003. They were reportedly preparing a report on alleged links between Pakistani government agents and the Taliban operating in neighboring Afghanistan. The Frenchmen were granted bail and eventually allowed to leave Pakistan on January 12, 2004, after paying a fine. However, Mehdi, reportedly tortured in custody, remained incarcerated until March 29, 2004, when he was granted bail. Mehdi faces sedition charges.

While the Pakistani government did not formally restrict access to South Waziristan during the "spring offensive," journalists were repeatedly detained or prevented from reporting through tactics such as the destruction or confiscation of equipment. Journalists were eventually allowed limited access to the affected villages on March 28 upon the conclusion of the first phase of the operation. However, media access to FATA in general and South Waziristan in particular remains limited as military operations continue.

***Key International Actors***

Pakistan remains heavily dependent on the United States for economic and military aid. The U.S. has notably failed to press for human rights-related legal reform in the country, in exchange for Pakistan's support in the U.S.-led "war on terror." For its part, the government of Pakistan has excused its failure to uphold human rights and the rule of law by citing domestic political pressure from hard-line religious groups and militant organizations.

Pakistan's record of ratifying principal international human rights treaties remains poor. To date, it is signatory to only five international conventions, and has signed neither the International Covenant on Civil and Political Rights nor the International Covenant on Economic, Social and Cultural Rights.

## SRI LANKA

The most pressing rights issues in Sri Lanka continue to derive from the country's two-decades-old civil war. In April 2004, short but fierce fighting broke out between rival factions of the rebel Liberation Tigers of Tamil Eelam (LTTE), the first major hostilities in the country since a February 2002 ceasefire between LTTE and government forces. In the fighting, the LTTE's "Vanni" faction quickly defeated a breakaway group in the east led by Colonel Karuna Amman. In the aftermath, the Vanni faction launched intensive campaigns to re-recruit Karuna's former soldiers, which included some two thousand children. The LTTE has recruited thousands of children since the 2002 ceasefire.

Torture and mistreatment by government security forces and police continued to be a problem, as did harassment of Tamil civilians crossing government-controlled security check points.

### ***Child Soldiers***

Sri Lanka's twenty-one-year civil war has cost more than sixty thousand lives and has resulted in numerous atrocities by both the LTTE and government forces. The LTTE has a history of recruiting children—including by force—for participation in combat. The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, which came into force in February 2002, prohibits all use of children under eighteen by non-state armed groups.

Under an action plan agreed to in 2003 between the LTTE, the Sri Lankan government, and UNICEF, the LTTE was to release children from its forces back into the community as well as into transit centers co-managed by UNICEF and the Tamil Rehabilitation Organization (TRO), publicly identified as a front organization for the LTTE. An August 2004 Human Rights Watch investigation showed, however, that while the LTTE has released over one thousand children since agreeing

to the action plan, forcible recruitment of children has intensified and new recruits outnumber those released. The LTTE specifically targeted for re-recruitment the 1,800 or more child soldiers released by the Karuna faction after its April defeat.

### ***Political Killings***

Political killings by the LTTE targeting rival Tamil party members, suspected Karuna sympathizers, and journalists intensified in 2004. Human rights workers who criticize the LTTE have also been threatened.

On July 25, 2004, police found the bodies of eight persons shot dead while asleep in a government safe house outside Colombo. Most were believed to be senior aides to Karuna. Police investigating the killings said they appeared to have been committed by someone within the house. The LTTE declared that the perpetrators were “dissidents” within Karuna’s own faction.

The LTTE claimed responsibility for the public executions of Balasuntaram Sritharan and Thillaiampalam Suntarajan on July 8, 2004 at Illupadichai junction, saying the two men had been sentenced to death as pro-Karuna “traitors.” The Karuna faction is suspected in a number of political killings, including that of journalist Aiyathurai Nadesan on May 31, 2004, and Eastern University lecturer Kumaravel Thambaiyah on May 24, 2004.

Members of rival Tamil parties, particularly the ex-militant groups who refuse to accept the LTTE as the “sole representative” of the Tamil people, have been targeted. Killings in 2004 have included: Valli Suntharam, a 61-year-old trade union activist and member of the Eelam People’s Revolutionary Liberation Front (EPRLF), shot dead in Jaffna on September 27; Selvarajah Mohan, a 22-year-old Eelam People’s Democratic Party (EPDP) supporter, stabbed to death after being taken from his home in Jaffna district on September 24; Rajadurai

Sivagnanam, killed in Batticaloa district on September 22; and Somasundaram Varunakulasingham, a central committee member of the EPDP, shot dead in Colombo on September 23.

### ***Police Torture***

The police continue to torture detainees. In 2003, the National Human Rights Commission and the Police Commission agreed on a set of steps to remedy the situation, including ensuring that families and lawyers have access to detainees, displaying written summaries of detainees' rights in police stations, and holding officers in command responsible for torture in their stations.

However, cases of police torture continue to be reported. On November 5, 2004, twenty-one-year-old Don Mahesh Duminda Weerasuriya was illegally arrested and tortured by police officers at Panadura North Police Station who apparently wanted information about Weerasuriya's uncle. After being tortured at the police station, he was charged and held at Kalutara Prison where he was detained until November 10.

On November 23, a man who had won his court case based on charges of torture while in police custody, was shot and injured by an unknown assailant while on a bus. The victim, G.M. Perera, had repeatedly been pressured by the police to drop his case against them. Perera was due to give evidence against seven police officers in December.

Following the assassination of a high court judge on November 22, 2004, and the attempted assassination of Perera, the president of Sri Lanka announced the reintroduction of the death penalty for rape, murder, and narcotics dealing. The death penalty had been dormant in Sri Lanka for thirty years.



### ***Key International Actors***

At a June 2003 conference co-chaired by Japan, Norway, the United States, and the European Union, donors pledged a total of U.S.\$4.5 billion in post-war reconstruction and development aid to Sri Lanka. The aid was closely linked to the Sri Lankan government's progress in ending the use of child soldiers and rehabilitating former combatants, and ensuring greater minority participation and gender equity in government.

Increasingly, the donor community has been speaking out against continuing violations by the LTTE. In June 2004, the U.S. and the E.U. released a statement in which they reiterated the call for a political settlement to the conflict and specifically mentioned child soldier recruitment as a continuing problem. On October 1, 2004, the U.S. specifically called on the LTTE to stop its recruitment of child soldiers.

## THAILAND

The steady erosion of respect for human rights in Thailand that has characterized Prime Minister Thaksin Shinawatra's rule accelerated sharply in 2004. Thai security forces, increasingly able to act with impunity, engaged in brutal crackdowns against insurgents in the south and against alleged drug dealers and users.

The military crackdown against a steadily escalating insurgency in the country's predominantly Muslim southern provinces, site of long-simmering resentments due to economic and political marginalization, culminated in the death of eighty-six protesters at the hands of security forces in October 2004 and a retaliatory spate of bombings and beheadings of locally prominent Buddhists, apparently by Muslim insurgent groups.

The government's war on drugs resulted in some 2,500 extrajudicial killings, and seriously hampered efforts to provide HIV/AIDS treatment to injection drug users. The Prime Minister tried to restrict criticism by purging dissenting voices in the government bureaucracy and using government and private means to tighten control of the media.

### ***Violence in the South***

2004 witnessed some of the worst violence in the recent history of Thailand's southern provinces. The area's residents, who are predominantly Muslim and ethnically distinct from the mostly Buddhist Thai, have long complained about being marginalized economically and politically from the rest of the country. Since the area was placed under martial law in January, at least 550 people have been killed, some apparently by insurgent groups, some at the hands of military and paramilitary forces.

Nearly two hundred people were killed by military forces during two particularly violent incidents. On October 25, 2004, during the Muslim holy month of Ramadan, security forces killed at least eighty-six demonstrators in the Tak Bai district of Narathiwat province; six were shot by security forces and some eighty detainees died of suffocation during transit. The detainees' hands had been tied behind their backs and, still breathing, they were laid on top of one another in military trucks, in some cases stacked four deep.

In apparent retaliation for this incident, there have been several small bomb attacks and some thirty murders of Buddhists in the south, with at least three victims beheaded.

Prime Minister Thaksin, who had championed a tougher response to the insurgency in the south, appointed a special committee to investigate the events. At this writing, no prosecutions of security forces involved in the incident had been announced.

On April 28, 2004, lightly armed Islamic groups launched simultaneous pre-dawn attacks on police bases and checkpoints in several districts of Yala, Pattani, and Songkhla provinces in southern Thailand. Thai officials reported that 107 suspected assailants, most between fifteen and twenty years of age, and five security officers were killed after nine hours of violent clashes. Army and police sources unofficially put the number of dead assailants at more than 120. Approximately fifteen people were arrested.

At least thirty militants who had sheltered in the Kruesie Mosque were killed when military forces rushed them using grenades. A government-appointed commission concluded that the level of force and type of weapons used in the attack on the mosque was "disproportionate to the threat posed by the militants." Despite the commission's recommendations, there has been no accountability for any of the security forces involved in the attack.

### ***The Brutal War on Drugs***

The lack of accountability for the counter-insurgency campaign in the south reflects the growing impunity of Thai security forces. On February 1, 2003, Thaksin launched a national campaign that treated drug offenders as threats to social and national security. Within three months, 2,275 alleged drug offenders had been shot dead in apparent extrajudicial executions. At this writing, no serious government investigation had been conducted into the deaths. On October 3, 2004, Thaksin announced a new phase of the anti-drug campaign, promising “brutal measures” against drug traffickers.

### ***The HIV/AIDS Epidemic***

In the past, health experts praised Thailand’s response to the AIDS epidemic; government programs providing condoms and HIV/AIDS information in health clinics and brothels have prevented an estimated 200,000 HIV infections. The war on drugs has reversed some of those gains. Numerous drug users have reported arbitrary arrest, beatings, and detention by police officers. International experience shows that such mistreatment undermines HIV/AIDS programs by driving vulnerable populations into hiding.

Many drug users are coerced by the government to enroll in government-subsidized drug treatment programs. Many do so only after being arbitrarily arrested or threatened with arrest if they do not enroll. And many enroll even though they have never used illicit drugs or have quit using drugs before enrolling in treatment. In some cases, drug users choose not to seek treatment or discontinued it out of fear that identification as a drug user would result in arrest or murder.

## ***Human Rights Defenders***

Thailand's once-thriving human rights community has also faced government pressure and intimidation. In one of the most notable and alarming incidents, in March 2004 Somchai Neelapaijit, a prominent Muslim leader and human rights lawyer, was abducted in Bangkok and is presumed dead. Somchai had been repeatedly threatened after alleging police torture of separatist suspects in southern provinces where martial law was enforced and defending two alleged Thai members of the Jemaah Islamiyah, an Islamist group with alleged links to Al-Qaeda.

## ***Restriction on Freedom of Press and Freedom of Assembly***

Prime Minister Thaksin, who owes his own standing as one of Thailand's wealthiest citizens to his control of the Shin Corporation (a telecommunications empire now controlled by members of his family), has used government and private channels to mute Thailand's once-vibrant media.

Over the past three years the Thai Journalists Association and the Thai Broadcasters Association have documented more than twenty cases in which news editors and journalists were dismissed or transferred, or their work tampered with, to appease the government. The authorities have arbitrarily used work permits and visa renewals as effective tools for pressuring foreign journalists.

Most television and radio stations in Thailand are owned in full or in part by government agencies. The government also uses disbursement of corporate and government advertising to reward media outlets, both Thai and international, that follow the government line and to punish those that do not. It uses the withdrawal or termination of operating licenses, or threats of such, to rein in critical private broadcasters.

Media freedom in Thailand has been further undermined by large libel actions against prominent advocates and independent journalists. Shin Corp., for example, is suing editors of the *Thai Post* newspaper and media freedom activist Supinya Klangnarong over a story which charged the government with pursuing policies aimed at boosting interests of the prime minister's business empire.

The government also has clamped down on freedom of assembly, with regular reports of excessive use of force by police against critics of Thaksin's policies. On October 16, 2004, a 1,500-strong combined force of police and volunteer militias violently dispersed about one thousand protesting landless farmers rallying peacefully in Karbi province. The government dismissed findings of the National Human Rights Commission that the level of force and type of tactics used in the crackdown were disproportionate.

Before and during the Asia-Pacific Economic Cooperation (APEC) meeting in Bangkok last October, the government also banned some five hundred human rights and social activists from entering the country and threatened potential organizers of protests that security forces would have to take the "utmost decisive action."

### ***Refugee Protection***

In an apparent effort to forge friendship with Burma's military government, Thaksin has abandoned Thailand's longstanding humanitarian stance toward Burmese refugees, threatening the security of hundreds of thousands of such refugees. Under intense pressure from the Thai government, the Office of the United Nations High Commissioner for Refugees (UNHCR) has agreed to move Burmese refugees living in Bangkok and other urban areas to camps along the Thai-Burma border, and has stated that it will terminate financial assistance and cease the renewal of protection certificates for those who do not comply.

On January 1, 2004, UNHCR suspended its screening of new asylum seekers from Burma and the Thai government assumed responsibility for such screening. Because Thailand narrowly restricts its protection and assistance to “people fleeing fighting,” the government is likely to reject the applications of Burmese exiles and asylum seekers who are fleeing persecution for their pro-democracy activities in Burma. Those who are rejected would be classified as illegal immigrants and face the risk of being deported to Burma. A June 21, 2003 memorandum of understanding between Burma and Thailand gives the Burmese military junta a greater role in the deportation process, increasing the likelihood that deportees will be persecuted upon their return.

Burmese pro-democracy activists and asylum seekers, many of them holding the UNHCR person of concern status, have been arrested during peaceful demonstrations in Bangkok. In May 2004 more than forty demonstrators at the Burmese Embassy in Bangkok were arrested and threatened with deportation back to Burma, where they could face persecution.

### ***Key International Actors***

During Prime Minister Thaksin’s tenure, Thailand has lost some of its standing as a regional hub for human rights protection because of increasing restrictions on press freedom and the activity of environmental and human rights activists.

Thailand has increased its already close cooperation with the U.S. as part of the “war on terror,” leading President Bush to designate Thailand a Major non-NATO ally in October 2003. U.S. military and police officials cooperate with their Thai counterparts in counter-narcotics operations and border control operations, although both countries deny that the U.S. has any operational role in the increasingly bloody counterinsurgency campaign in southern Thailand. Thailand has enthusiastically pushed for greater counterterrorism cooperation among

member states of the Association of Southeast Asian Nations (ASEAN) as well as in the Asia-Pacific Economic Cooperation forum.

In August 2003, Thailand captured Riduan Isamuddin, better known as Hambali, suspected of leading Jemaah Islamiyah and helping to plan the September 11, 2001, terrorist attacks on the United States and a series of bombings targeting civilians in Indonesia. The United States took custody of Hambali and has kept him in an undisclosed location. The United States has not allowed Indonesian authorities investigating the terrorist attacks there to interview Hambali.

Thailand provided small but symbolically important assistance to the United States campaigns in Afghanistan and in Iraq, where a 450-strong Thai contingent suffered two casualties in December 2003. Thai troops withdrew from Iraq as part of their planned one-year commitment, at least partly in response to strong domestic criticism.

The U.N. special rapporteur on extrajudicial and summary executions has requested a visit to Thailand to complete an investigation into the October 25, 2004 killings of demonstrators in Narathiwat province.

Thailand has developed strong economic and diplomatic links with the brutal military government ruling Burma. Thailand has become a major investor in Burma and has cooperated with the Burmese government in curbing the political activity of Burmese refugees living in Thailand. Thailand has also defended Burma's dismal human rights record in important regional fora such as ASEAN, the Asia-Europe Meeting, and meetings of the Asia-Pacific Economic Cooperation.



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## VIETNAM

Human rights conditions in Vietnam, already dismal, worsened in 2004. The government tolerates little public criticism of the Communist Party or statements calling for pluralism, democracy, or a free press. Dissidents are harassed, isolated, placed under house arrest, and in many cases, charged with crimes and imprisoned. Among those singled out are prominent intellectuals, writers, and former Communist Party stalwarts.

The government continues to brand all unauthorized religious activities—particularly those that it fears may be able to attract a large following—as potentially subversive. Targeted in particular are members of the Unified Buddhist Church of Vietnam and ethnic minority Protestants in the northern and central highlands.

### ***Freedom of Expression***

Domestic newspapers and television and radio stations remain under strict government control. Although journalists are occasionally able to report on corruption by government officials, direct criticism of the Party is forbidden. Foreign media representatives are required to obtain authorization from the Foreign Ministry for all travel outside Hanoi.

Several dissidents and democracy activists have been arrested and tried during the last several years on criminal charges—including espionage and other vaguely-worded crimes against “national security”—for peaceful criticism of the government or calling for multi-party reforms. Legislation remains in force authorizing the arbitrary “administrative detention” of anyone suspected of threatening national security, with no need for prior judicial approval.

In July 2004 long-time human rights advocate Nguyen Dan Que, sixty-two, was sentenced to thirty months of imprisonment for “abusing dem-

ocratic freedoms,” for writing an essay, distributed over the Internet, about state censorship of information and the media. Other cyber-dissidents who have been sentenced to prison on criminal charges include: Pham Hong Son, Le Chi Quang, Nguyen Khac Toan, Nguyen Vu Binh, Pham Que Duong and Tran Khue.

### ***Internet Controls***

The government maintains strict control over access to the Internet. It blocks websites considered objectionable or politically sensitive and strictly bans the use of the Internet to oppose the government, “disturb” national security and social order, or offend the “traditional national way of life.” Decision 71, issued by the Ministry of Public Security in January 2004, requires Internet users at public cafés to provide personal information before logging on and has increased the pressure on Internet café owners to monitor customers’ email messages and block access to banned websites.

In April 2004 the government closed down Vietnam International News 24-Hour, an unlicensed website that had reprinted a BBC article about Easter demonstrations in the Central Highlands. In August 2004 the Ministry of Public Security created a new office to monitor the Internet for “criminal” content, a measure that appears to be aimed in part at intimidating people from circulating any information that authorities could deem to be a “state secret” or otherwise unauthorized.

### ***Freedom of Religion***

The government bans independent religious associations and permits religious activities only insofar as they are conducted by officially-recognized churches and organizations whose governing boards are approved and controlled by the government.

A new Ordinance on Beliefs and Religions went into effect in November 2004. It pays lip service to freedom of religion but strengthens government controls over religion and bans religious activities deemed to threaten national security, public order, and national unity.

Members of the banned Mennonite church have come under increasing pressure from the government. In June 2004, Pastor Nguyen Hong Quang, an outspoken Mennonite church leader, was arrested after publicly criticizing the government for detaining four Mennonites three months earlier. On two separate occasions during 2004, officials in Kontum province bulldozed a chapel of Pastor Nguyen Cong Chinh, superintendent of the Mennonite churches in the Central Highlands. In September, October, and November, police pressured Mennonites in Kontum and Pleiku provinces to sign forms renouncing their religion.

In both the central and northern highlands, government officials continue to ban most Protestant gatherings. Authorities have forced ethnic minority evangelical Christians to pledge to abandon their religion and cease all political or religious activities in public self-criticism sessions or by signing written pledges.

### ***Crackdown in the Central Highlands***

In the Central Highlands some ethnic minority Christians have rejected the government-controlled Evangelical Church of Vietnam and have sought to manage their own religious activities. Increasing numbers of ethnic minorities, collectively known as Montagnards, appear to be joining *Tin Lanh Dega*, or Dega Protestantism, which combines evangelical Christianity with elements of ethnic pride and aspirations for self-rule. Dega Protestantism is officially banned by the government.

In April 2004 peaceful demonstrations by Montagnards during Easter weekend in the Central Highlands turned violent when security forces and civilians acting on their behalf ambushed and attacked the demon-

strators with clubs, metal bars, and other crude weapons. At least ten Montagnards were killed and dozens wounded. Hundreds fled from their villages and went into hiding or attempted to flee to Cambodia (*see* Cambodia). Authorities dispatched additional police and military forces to the region and established security checkpoints along the main roads. Strict restrictions were placed on travel within the highlands, on meetings of more than two people, and on communication with the outside world.

### ***Repression of Buddhists***

Religious leaders of the banned Unified Buddhist Church of Vietnam (UBCV), which was the largest Buddhist organization in the country prior to 1975 and which does not recognize the authority of the government-controlled Vietnam Buddhist Church, face ongoing persecution. The government appeared to be easing up on the group in early 2003, when UBCV leader Thich Quang Do was released from two years of administrative detention and the prime minister visited UBCV Supreme Patriarch Thich Huyen Quang. However, in October 2003 the two UBCV leaders were once again placed under unofficial house arrest and eleven other UBCV leaders were taken into administrative detention. Tensions escalated in November 2004 when authorities prevented Thich Quang Do from visiting Thich Huyen Quang, eighty-seven, who was severely ill in hospital, and summoned him for questioning on allegations of “appropriating state secrets”.

In March 2004, UBCV dissident Thich Tri Luc (Pham Van Tuong) was released from prison and resettled in Sweden two months later. Thich Tri Luc, a UNHCR-recognized refugee, had been abducted by Cambodian and Vietnamese agents in Cambodia and taken to Vietnam in 2002.

Members of the Hoa Hao sect of Buddhism are subject to police surveillance and several were thought to remain in detention at this writ-

ing. The sect was granted official status in May 1999, although government appointees dominated the Hoa Hao Buddhism Representative Committee established at that time. In August 2004 Hoa Hao leader Le Quang Liem, eighty-four, was released from administrative detention after more than two years' under house arrest.

### ***Religious Prisoners***

At this writing, at least ten ethnic Hmong Christians were in detention in Lai Chau and Ha Giang provinces in the north. More than 124 Montagnard Christians continue to serve prison sentences of up to twelve years for their involvement in church activities or public demonstrations, or for attempting to seek asylum in Cambodia. Six Mennonites are serving prison terms ranging from nine months to three years for “resisting officers on duty,” after a half-day trial in November 2004. At least four Catholics, including Father Nguyen Van Ly and members of the Congregation of the Mother Co-Redemptrix, remain in prison for expressing criticism of Vietnam’s human rights record or for distributing religious books and holding training courses.

### ***Torture in Detention***

Prison conditions in Vietnam are extremely harsh. Human Rights Watch has received reports of solitary confinement of detainees in cramped, dark, unsanitary cells; lack of access to medical care; and of police beating, kicking, and using electric shock batons on detainees. Police officers routinely arrest and detain suspects without written warrants, and authorities regularly hold suspects in detention for more than a year before they are formally charged or tried.

Political trials are closed to the international press corps, the public, and often the families of the detainees themselves. Defendants do not have access to independent legal counsel. More than one hundred death sentences were issued in 2004, with twenty-nine crimes considered capital

offenses under the penal code, including murder, armed robbery, drug trafficking, many economic crimes, and some sex offenses.

### ***Key International Actors***

At the December 2003 Consultative Group meeting, Vietnam's international donors pledged more than U.S.\$2.8 billion in aid for 2004. While donors publicly have focused on economic growth, "good governance," and poverty reduction programs, they have increasingly expressed concerns about the government's imprisonment of dissidents, suppression of freedom of expression and of religion, and its poor handling of the crisis in the Central Highlands.

In June 2004 Japan, Vietnam's largest donor, reversed its traditionally circumspect stance on Vietnam's record on human rights and announced that its official development assistance to Vietnam would be linked in part to the government's respect for human rights and steps toward democracy. In contrast, fellow members of the Association of Southeast Asian Nations (ASEAN) made virtually no comment on Vietnam's human rights record.

The E.U. has criticized Vietnam's decision to classify information and statistics on executions as a state secret. More than 100 members of the European Parliament called on the E.U. and European Commission to highlight Vietnam's human rights record during the Asia-Europe Summit Meeting held in Hanoi in October 2004. During the meetings the Dutch Foreign Minister, on behalf of the E.U., called for the release of political and religious prisoners. In November, the U.K. Foreign Office raised concerns about the plight of non-recognized Buddhist and Protestant groups in its annual human rights report.

The U.S. re-established diplomatic relations with Vietnam in 1995 and approved a bilateral trade agreement with Vietnam in 2001. In 2001 and again in 2004, the U.S. House of Representatives approved the Vietnam

Human Rights Act, which would link future increases in non-humanitarian aid to progress on human rights. As of this writing the Senate had not approved the legislation. In 2003 the U.S. State Department cancelled its annual human rights dialogue with Vietnam because of lack of concrete results. In September 2004 the State Department designated Vietnam a “Country of Particular Concern” because of what it called Vietnam’s “particularly severe violations of religious freedom.”

In July 2004 Vietnam became one of fifteen countries, and the first and only Asian country, to receive financial aid from U.S. President George W. Bush’s emergency global plan for HIV/AIDS. In November, the deputy director of UNAIDS called on Vietnam to address continuing discrimination against people with HIV/AIDS, which she said was among the worst in the world.

In November 2004 the U.N. Working Group on Arbitrary Detention stated that the imprisonment of Nguyen Dan Que was arbitrary and in violation of international law.





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2005

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**EUROPE  
AND CENTRAL ASIA**

## ARMENIA

Although the international community has looked favorably upon Armenia for its economic reforms in 2004, the government has failed to improve its human rights record. The legacy of the 2003 presidential elections, which were marred by widespread fraud, dominates political life. An opposition boycott of Parliament, in response to the ruling coalition's refusal to debate a "referendum of confidence" in President Robert Kocharian, exemplified an increased polarization between the government and opposition.

The opposition led a broader campaign calling on President Kocharian to step down, triggering a countrywide government crackdown. The campaign peaked in a massive, peaceful protest on April 12, 2004, which the authorities dispersed using excessive force. Repeating a cycle of repressive tactics from the 2003 election, the authorities arrested opposition leaders and supporters, violently dispersed demonstrators, raided political party headquarters, attacked journalists, and restricted travel to prevent people from participating in demonstrations.

In response to international pressure, the government has released some opposition leaders detained during the crackdown, and has participated in discussions about cooperation with the opposition. The government has made limited attempts at reforms in other areas. It set up a council to fight corruption, a widespread, endemic problem in Armenia. Critics, including Transparency International, dismissed the measure as ineffectual, citing the council's lack of independence from the executive. The judiciary remains under the influence of the executive and torture and ill-treatment continue in places of detention.

### ***Freedom of Assembly***

The authorities restrict the right to freedom of assembly, effectively banning most opposition rallies. In May 2004, President Kocharian

signed a new law on public gatherings that Parliament had adopted despite criticism from the Council of Europe and the Organization for Security and Cooperation in Europe (OSCE) that the law did not comply with European human rights standards. Among other things, the law prohibits public gatherings in numerous specific locations and bans mass public events “for the purposes of election or referendum campaigning” if they interfere with traffic regulations. After the law came into force, the authorities denied the opposition permission to hold a rally in at least one case, and permanently banned public gatherings outside the presidential residence, the site of the April 12 protest.

Repeating a pattern established during the 2003 presidential election, the authorities restricted travel on major roads to Yerevan when opposition rallies were held in the capital from March to May 2004. Police set up roadblocks, stopped cars, questioned passengers, and denied permission to travel further to those they believed were opposition supporters.

### ***State Violence***

Torture and ill-treatment in police custody remain widespread in Armenia. In 2004, Human Rights Watch documented cases of torture of opposition supporters in police custody. Police beat and threatened to rape the detainees, later releasing them either without charge, or with petty charges punishable with fines or short periods of imprisonment under the Administrative Code. No officials were held to account for these incidents.

A dramatic low point in 2004 was the authorities’ use of excessive force to break up the April 12 demonstration. Police and security forces violently dispersed a peaceful crowd of about three thousand protesters who were calling for President Kocharian’s resignation. Security forces sprayed the crowd with water cannons and then beat protesters with batons, shocked them with electric prods, and threw stun grenades into

their midst. High-level government officials later claimed the violence was not excessive, though no investigation was carried out.

Security forces and unknown assailants have carried out a series of brutal attacks on journalists who were reporting on opposition rallies. Attackers confiscated and smashed journalists' equipment, significantly preventing television coverage of these events and their violent dispersal. Although there was evidence of the identity of attackers, the authorities charged only two men, who received a fine of less than U.S. \$200, in stark contrast to the custodial penalties imposed on opposition activists for lesser offences.

An environment of impunity for attacks against government critics continues. The authorities failed to bring to justice the perpetrators of at least four attacks on opposition leaders and a human rights activist in March and April 2004. On March 30, four unknown men assaulted Mikael Danielian, a human rights defender, punching and kicking him. Danielian spent four days in a hospital after the attack, which he believed was aimed at stopping him from monitoring the growing street protests by the political opposition. The General Prosecutor's investigation produced no results and was closed on June 1.

### ***Arrests and Raids***

As the opposition began a series of protests in late March 2004, the government resorted to its long-established tactic of detaining potential protesters under the Administrative Code for short periods of time for what is termed "administrative detention." From March to June, police detained several hundred people, for such offences as petty hooliganism and failing to carry out a police directive. The trials breached basic standards, including the defendant's right to a lawyer and to present evidence in his or her defense. Judges imposed penalties ranging from a fine to fifteen days in prison.

On March 30, the authorities stepped up the pressure on the political opposition, opening a criminal case against a coalition of opposition parties and its supporters. Prosecutors charged a handful of opposition party leaders with publicly calling for the seizure of power and publicly insulting representatives of government, keeping them in custody for up to several months. By September, the prosecutor general had dropped the charges and released all the accused men. In another example of political intimidation, on the night of April 12-13 security forces stormed the Yerevan opposition headquarters of the Republic Party, the National Unity Party, and the People's Party, arrested those present, and closed two of the headquarters for several days.

### **Media**

Although Armenia has a significant independent and opposition print media, the government continued to restrict full media freedom in the country. On April 5, 2004, the Russian television channel NTV had its broadcasting suspended throughout the country, after broadcasting footage of opposition protests. The official reason given for the suspension was "technical problems." By the end of September, NTV had not resumed broadcasting and the government had given its broadcasting frequency to another Russian channel that does not do news programming. In October, Kentron, a private Armenian television station, cancelled a Radio Free Europe and Radio Liberty (RFE/RL) news and analysis program three days after it began broadcasts. RFE/RL believed that a high-level government official had forced the cancellation. Local NGOs continue a campaign for broadcasting rights for A1+ television, which had been a highly popular and independent channel. The national broadcasting commission remains steadfast, however, refusing to grant licenses to A1+ and Noyan Tapan television channels, which were shut down in 2002 and 2001 respectively.

## ***Freedom of Religion***

There was some improvement for religious freedom in 2004 with the registration in October of the Jehovah's Witnesses, after a string of rejected applications. However, despite the authorities' promises to release all Jehovah's Witnesses imprisoned for refusing to perform military service, the courts continue to impose fresh prison terms. In September, according to the Armenian Helsinki Association, eight Jehovah's Witnesses were serving prison terms for their refusal to perform military service, and a further eight, five of whom were in custody, were awaiting trial for the same offences.

## ***Key International Actors***

The U.S. appears to be gaining influence in Armenia, which traditionally has looked to Russia for military and economic ties. The U.S. increased military aid and cooperation and, after initially refusing to involve itself, in 2004 Armenia agreed to send a small contingent of non-combatant military personnel to Iraq. The U.S. also designated Armenia as one of sixteen countries to be eligible for a multi-million dollar aid program called the Millennium Challenge Account. The U.S. stated that the flow of money was dependent on improvements in Armenia's human rights record.

The Council of Europe effectively engaged Armenia to roll back some of the government's more authoritarian practices in 2004. The council continued its scrutiny of Armenia's post-accession obligations, noting progress in complying with some commitments, such as abolition of the death penalty, while expressing disappointment in other areas, such as the conduct of the 2003 elections. In April, the council's Parliamentary Assembly passed a resolution under an urgent procedure, expressing concern about the government crackdown against opposition supporters that month. Armenia responded by releasing the opposition supporters

who were in custody on criminal charges and dropping the charges against many of them.

In September 2004, the European Union and Armenia met under the framework of the Partnership and Cooperation Agreement.

Unfortunately, the E.U. failed to use this forum publicly to encourage human rights improvements, issuing a press release that did not raise human rights concerns. In a step that could increase the ability of the E.U. to influence Armenia on human rights, it included Armenia in its European Neighborhood Policy, giving privileged ties with the bloc. Officials warned that economic benefits would not flow until at least 2007, when Armenia will have to have negotiated action plans on economic and political reforms.

## AZERBAIJAN

The Azerbaijani government has a long-standing record of pressuring civil society groups and arbitrarily limiting critical expression and political activism. It has done so with a new intensity following the October 2003 presidential elections, which international and domestic observers said were marred by widespread fraud.

Trials of opposition supporters, accused of the 2003 post-election violence, did not comply with fair trial standards and showed once again how the authorities use the criminal justice system to discourage government critics. An environment of impunity for government officials implicated in acts of torture, excessive use of force, and election fraud, shows that the government did not seriously attempt the reconciliation that the international community was urging after the political and human rights crisis surrounding the presidential elections. Freedom of assembly for groups seen to be associated with the political opposition remains severely curtailed and independent and opposition press face major barriers to their work.

### ***Post-Election Trials***

Over one hundred opposition party members and supporters were tried on charges relating to the post-election violence. Only four were released on bail, the rest remained in pre-trial detention for up to six months. Azerbaijani courts convicted all of the defendants, sentencing forty-six people to custodial sentences ranging from two to six years. The remainder were released on three- to five-year suspended prison sentences. On October 22, the Court of Grave Crimes sentenced seven opposition leaders to between two and a half and five years in prison for their role in the post-election violence. According to local observers, prosecution witnesses retracted their testimony in court, claiming that Ministry of Interior officials had tortured and coerced them into signing statements incriminating the defendants. Independent observers raised



serious allegations of procedural abuses, including defendants' restricted access to lawyers, and the admission of evidence in court that was based on confessions extracted under torture. Judges' failure to address these deficiencies called into question, as in the past, the independence of the judiciary.

### ***State Violence***

Torture, police abuse, and excessive use of force by security forces are widespread in Azerbaijan. Peaceful protests are frequently met with the use of force and arbitrary arrest. Severe beatings at police stations are routine and torture methods in pre-trial detention include electric shock and threats of rape. In 2004, the government failed to address these problems, perpetuating an environment of almost total impunity for security force abuses surrounding the October 2003 presidential elections. Although international interlocutors repeatedly called on Azerbaijan to investigate allegations of torture by the Organized Crime Unit of the Ministry of Interior, and security forces' use of excessive violence during the protests following the elections, at the time of writing the authorities had not prosecuted any cases.

### ***Political Prisoners***

Azerbaijan is making some progress toward releasing or retrying political prisoners, a long-standing problem. By July 2004, following several amnesties in late 2003 and early 2004, the government had released thirty-two political prisoners and agreed to retry eleven, from a Council of Europe list of forty-five. However, the Council of Europe and local groups maintained that additional political prisoners remain in custody, and that the recent imprisonment of opposition supporters, accused of the post-election violence, added to their ranks. The chance of a fair trial for political prisoners facing retrial remains slim because of the lack of an independent judiciary. The Council of Europe previously con-

demned retrials of political prisoners as a “sham” controlled by the presidential authorities rather than the judiciary.

### ***Civil Society Organizations***

The government attempts to tightly control civil society and pressures and harasses groups that are critical of government policies. In a dramatic example of this tendency, the authorities tried Ilgar Ibrahimoglu, the head of the Center for the Protection of Conscience and Religious Freedom, and a government critic, for alleged participation in the post-election violence. In April 2004, a Baku court found him guilty and handed him a five-year suspended prison sentence, despite serious allegations that the charges were falsified. While Ibrahimoglu was in custody, a court ordered the eviction of the Juma Mosque community, which Ibrahimoglu headed, from the mosque it had used since 1992. In June, police forcefully evicted worshippers from the mosque, detaining several of them. On July 30, police prevented the community from meeting at a private house, raiding the premises and temporarily detaining all twenty-six members present.

### ***Media Freedom***

Authorities use a variety of informal measures to prevent or limit news critical of the government from reaching the public. Major television outlets are either state-owned or affiliated and the government fully controls the issuing of radio and television broadcast licenses through a licensing board that consists entirely of presidential appointees. The opposition and independent media are under constant pressure, through limited access to printing presses and distribution networks, imposition of crippling fines from government-initiated defamation cases, and harassment of journalists. In 2004, *Hurriet*, an opposition newspaper affiliated with the Azerbaijan Democratic Party, had to suspend publishing due to financial burdens and government harassment leading to difficulties distributing and selling the newspaper outside of Baku. In addi-

tion, journalists and editors face the threat of physical assault by unknown attackers bent on intimidation. For example, on July 17, four masked men kidnapped the editor-in-chief of the independent *Baki Khabber* (“Baku News”) newspaper and demanded that he cease his journalism work, beating him for two hours before releasing him. Also at the end of July, an unknown assailant attacked a journalist for the *Monitor*, an independent weekly magazine. At the time of writing no one had been prosecuted for either attack.

### ***Key International Actors***

Construction on two new major oil and gas pipelines routed across Azerbaijan, Georgia, and Turkey is currently underway. The huge foreign investment in these projects has focussed international attention on issues of security and stability in the region, sometimes at the expense of human rights.

United States policy toward Azerbaijan has focused on military cooperation and oil interests. Since 2001, U.S. military aid and cooperation has increased significantly in Azerbaijan. Correspondingly, Azerbaijan has cooperated in U.S. military operations, with approximately 150 troops in Iraq and thirty in Afghanistan. The U.S. role in Azerbaijan has been marred by inconsistent and sometimes weak responses to rights abuses, particularly in response to the 2003 presidential elections.

In September 2004, the European Union (E.U.) and Azerbaijan met under the framework of the Partnership and Cooperation Agreement. Unfortunately, the E.U. failed to use this forum publicly to encourage human rights improvements, issuing a press release that did not raise human rights concerns. In a step that could increase the ability of the E.U. to influence Azerbaijan on human rights, the E.U. included Azerbaijan in its European Neighborhood Policy, which brings with it economic benefits. Officials signaled that these benefits would not flow

until at least 2007, when Azerbaijan will have begun to implement action plans on economic and political reforms.

The Council of Europe has played a constructive role in attempting to address human rights problems in Azerbaijan, pressing for the release of political prisoners, greater pluralism, and a devolution of political power away from the presidency. In January 2004, the Parliamentary Assembly of the Council of Europe (PACE) expressed concern about events surrounding the 2003 presidential elections and called on the government to rectify the abuses. In October, the PACE reviewed Azerbaijan's compliance with the January resolution, and stated that although some progress had been made, it was inadequate.

The European Bank for Reconstruction and Development (EBRD) is one of the largest multilateral investors in Azerbaijan, having committed more than U.S. \$473 million in projects. Although article 1 of the bank's founding document commits the EBRD to promoting democracy, human rights, and the rule of law, the Bank did not raise human rights concerns during the human rights crisis surrounding the 2003 presidential elections. Its board approved financing of U.S. \$125 million for the Baku-Tbilisi-Ceyhan oil pipeline in November 2003 and provided the government with \$41 million for road reconstruction projects in July 2004 with no conditions addressing democracy, human rights, or rule of law concerns.

The Organization for Security and Cooperation in Europe's Minsk Group, co-chaired by the U.S., France, and Russia, led talks on the conflict over Nagorno-Karabakh between Armenia and Azerbaijan; however, no breakthrough appears imminent.

## BELARUS

The government of Belarus failed to ensure free and fair election in 2004, in large part by attacking the independent media and undermining freedom of association. The situation worsened in the months leading up to October 2004 parliamentary elections and a simultaneous referendum to remove presidential term limits. Several independent newspapers were closed, and journalists jailed on libel charges.

Nongovernmental organizations (NGOs) and independent trade unions were given warnings or closed. Many opposition politicians were prevented from registering as election candidates. Some were arrested on trumped-up charges.

### *Elections*

The 110-member House of Representatives was elected in October without the election of a single representative from the opposition parties. According to official statistics, 77 percent of those who voted approved the lifting of presidential term limits. The results pave the way for President Alexander Lukashenka to stand for a third term of office.

The government took full advantage of defective electoral legislation to manipulate the election campaign and engineer the outcome of the vote. An Organization for Security and Cooperation in Europe (OSCE) observer mission to the October vote emphasized that the poll was undermined by problems with the election laws, including: the accreditation process for independent election observers; rules regarding early voting and the storage of the resulting ballots, and procedures for adjudicating electoral complaints.

In early 2004, authorities arrested three prominent opposition politicians on politically-motivated charges. Valery Levonevsky, a member of the coordination committee of “Free Belarus,” and his deputy Aleksandr

Vasilyev were convicted of defamation on September 7. Both received two-year prison sentences. Mikhail Marynich, who joined the opposition after resigning his post as ambassador to Latvia, is awaiting trial on charges of storing illegal arms.

Would-be candidates for the October elections were denied registration of their candidacy on questionable grounds. The Central Election Authority denied the candidacy of Mecheslav Grib, deputy chairman of the Belarus Social-Democratic Party, "Narodnaya Gramada," citing his failure to register company stock purchased in the early 1990s. It also rejected the candidacy of Vladimir Parfenovich of the Respublika parliamentary group, alleging that signatures on his registration petition had been falsified.

Those opposition candidates who did manage to register their candidacy faced difficulty campaigning. Election law entitles each candidate to a total of five minutes broadcast time during the course of the campaign. However, state-controlled media allowed many pro-government candidates more than five minutes, while limiting opposition candidates to the statutory period. State-run newspapers published articles designed to discredit opposition candidates in the run-up to the vote.

The October elections and referendum were marred by irregularities. Members of the opposition were barred from observing at voting stations during early voting and on election day. During the vote count, officials did not announce numbers out loud as votes were being tabulated, and observers had only a limited view of the counting process, making verification impossible. The OSCE observer mission concluded that the parliamentary elections fell significantly short of international standards. The OSCE did not monitor the referendum.

During the week following the October vote, opposition activists organized demonstrations to protest the official results. Belarusian police beat, detained and arrested dozens of protesters, among them Anatoly

Lebedko, the leader of the leading opposition party, the United Civil Party. Lebedko was hospitalized with severe injuries. He was discharged after receiving treatment.

### ***Human Rights Defenders***

The government continues to use presidential decrees to suppress human rights activities. Presidential Edict 24, introduced on November 28, 2003, allows for strict control over foreign financial assistance to NGOs, and prohibits foreign funding to educational and “political” activities. Any NGO, political party, or other organization, deemed to violate the decree can be shut down. Several NGOs have been closed down for alleged violations. Others received warnings from the Ministry of Justice. Two warnings in a year constitute grounds for closure.

At this writing, the Belarusian Helsinki Committee (BHC), a prominent NGO, faced closure on charges of alleged tax evasion. Although the Minsk Economic Court and the Court of Cassation acquitted BHC of tax violations on June 23, 2004, the Ministry of Justice decided on September 16 to file another lawsuit on the same charges, after BHC criticized publicly the October 17 referendum.

On January 29, 2004, authorities closed down the Independent Society of Legal Research (ISLR), citing repeated violations of the Law on Public Associations. Independent lawyers believe that the real reason was that ISLR members had defended other NGOs in court proceedings.

### ***Trade Unions***

Independent trade unions are under threat in Belarus. The sole remaining independent trade union federation, the Belarusian Congress of Democratic Trade Unions (known by its Belarussian-language abbrevia-

tion BKPD) and its affiliates face the constant threat of denial of registration or closure. The activities of unregistered unions are effectively illegal. BKPD union members risk dismissal and imprisonment, and pressure to join state-controlled unions. In March, authorities in Navapolatsk denied registration to the Free Trade Union (FTU), a BKPD member, for alleged deficiencies in application documents. The organization had been registered since 2002, but was required to re-register after amending its internal bylaws.

In September 2004, BKPD President Aleksandr Yaroshuk was sentenced to ten days in prison. Yaroshuk was convicted of defamation following the publication in the independent newspaper *Narodnaya Volya* (Will of the People) of his article criticizing the August 2003 decision by Supreme Court to liquidate the Trade Union of Air Traffic Controllers of Belarus. Authorities had pressured members of the union to resign before the court's ruling closed it down entirely.

### **Media Freedom**

All national television stations, and most radio stations, in Belarus are controlled by the state. Independent radio broadcasts are limited to non-political music and advertising. Citizens do not receive objective information from the state-controlled media. Re-broadcasted Russian television programs are often manipulated through the insertion of Belarusian footage presented as part of the Russian program.

The long-standing government pressure on independent newspapers intensified in the run-up to the October elections. Some printing houses were pressured to stop printing independent newspapers, damaging their circulation. Several large stores in Minsk refused to sell independent print media. On August 27, 2004, the Ministry of Information suspended the operations of the newspaper *Navinki* (The News) for three months, saying it had failed to inform authorities about changes in its publishing schedule, and published articles that the Ministry considered



to “jeopardize public morals.” The Ministry also ordered a three-month closure of the independent weekly *Novaya Gazeta Smorgoni* (The New Newspaper of Smorgon) on August 16, citing an alleged failure to comply with registration procedures.

Journalists who criticize the government face prosecution. On September 30, a court convicted Alena Rawbetskaya, the editor-in-chief of the independent newspaper *Birzba Informacii* (Stock-exchange Information), on defamation charges and fined her 1.3 million rubles (approximately U.S.\$630), after the paper criticized the upcoming referendum. On the day of the elections, Pavel Sheremet, a Russian journalist from Channel One television was arrested on charges of “hooliganism.” Channel One broadcast two documentaries immediately prior to the elections in which Sheremet described the Lukashenka government as dictatorial. Sheremet was later released and the case against him suspended pending additional investigation.

### ***Key International Actors***

In June 2004, the U.N. Special Representative on human rights defenders, Hina Jilani, expressed serious concern over restrictions on freedom of association in Belarus. She highlighted legislation permitting the authorities to deny registration to, and close down, NGOs without justification. Jilani also criticized the government’s actions against the Belarusian Helsinki Committee.

In September, the OSCE Office in Minsk criticized the prison sentences given to Valery Levanevsky and Aleksandr Vasilyev for allegedly defaming the president. In July, the OSCE condemned the closure of the private European Humanities University.

In February, the Parliamentary Assembly of the Council of Europe (PACE) published a report accusing high-ranking officials of involvement in the disappearances of former Interior Minister Yuri

Zakharenko, former Prime Minister Viktor Gonchar, former electoral commission chairman Anatoly Krasovski and journalist Dimitri Zavadski between 1999 and 2000. The report accuses the current Belarusian Interior Minister, Prosecutor-General and Sports Minister, as well as a high-ranking officer in the special forces, of involvement. PACE members demanded that the government investigate the disappearances. PACE criticized the detention of the human rights activists Tatsiana Reviaka and Hary Pahaniayla for distribution of its disappearances report. The body also expressed concern over the decision of President Lukashenka to hold a referendum on removal of presidential term-limits.

On April 8, 2004, the U.N. Commission on Human Rights adopted a resolution expressing concern about human rights in Belarus—including the key disappearance cases, flawed elections, and the continued harassment and closure of NGOs—and appointed a Special Rapporteur to investigate the situation in the country.

In September, the European Union issued a travel ban against the three government ministers and special forces officer named in the PACE disappearances report. The ban prevents the four from entering the E.U.

U.S. officials twice criticized the Belarusian government during 2004 for its actions against NGOs, independent journalists, and opposition politicians. The U.S. State Department has enacted a similar travel ban to that imposed by the E.U. The State Department expressed doubts that the results of the October referendum reflected the opinion of the Belarusian people, and on October 20, three days after the elections, President George W. Bush signed the Belarus Democracy Act, prohibiting U.S. financial aid to the Belarusian government, while authorizing assistance for NGOs and independent media.

## **BOSNIA AND HERZEGOVINA**

Entrenched ethnic divisions among the political elites in Bosnia continue to shape political and human rights developments in the country. While ethnic violence has for the most part ended, ongoing ethnic divisions among Bosnia's constituent peoples – Bosniacs (Bosnian Muslims), Serbs, and Croats – continue to impede progress in key human rights areas, such as war crimes accountability and the return of refugees and displaced persons.

### ***War Crimes Accountability***

For the first time in years, the NATO-led Stabilization Force (SFOR) did not arrest a single Bosnian citizen indicted before the International Criminal Tribunal for the former Yugoslavia (ICTY) in 2004. Nevertheless, SFOR intensified efforts to arrest Bosnian Serb wartime leader Radovan Karadzic, conducting several operations near Sarajevo and in remote mountain villages in the east of the country, where Karadzic was believed to be hiding. SFOR also arrested several individuals believed to belong to the network of persons who were helping Karadzic hide. Still, Karadzic remained at large as of October 2004.

Leading political and military figures in the wartime Croatian Republic of Herzeg-Bosnia – Jadranko Prlic, Bruno Stojic, Slobodan Praljak, Milivoj Petkovic, Valentin Coric, and Berislav Pusic – surrendered to the Tribunal on April 5, 2004. They are charged with crimes against humanity and war crimes committed against Bosnian Muslims in Western Bosnia and Herzegovina during the early 1990s.

Although officials in Republika Srpska (the majority Serb area of Bosnia) repeatedly agreed to cooperate with the ICTY, Republika Srpska continued to be the only area of the former Yugoslavia that has not surrendered a single war crimes indictee to the Tribunal. On October 15, 2004, the Republika Srpska Commission on Srebrenica

submitted to the Republika Srpska government a report concerning the 1995 events in Srebrenica and acknowledged for the first time that the Bosnian Serb Army had been responsible for the killing of more than seven thousand Bosniac men and boys. Republika Srpska authorities had previously claimed that only one hundred Bosniacs had been executed and that another 1,900 had died in combat or from exhaustion.

Local officials in each entity of Bosnia remain unwilling to prosecute members of the ethnic majority in their region for war crimes. Hundreds, possibly thousands, of war crimes committed in Republika Srpska have yet to be investigated and tried before the Republika Srpska courts. In May 2004, Republika Srpska opened the first war crimes trial ever against ethnic Serbs; eleven Serbs are accused of the illegal detention of Catholic priest Tomislav Matanovic in 1995, who was later found murdered. In the Federation of Bosnia and Herzegovina (the Bosniac majority area), there have been more indictments against members of the local ethnic majority, but these efforts have been plagued by a lack of support on the part of police and political elites, as well as poor cooperation between the countries in the region and entities in Bosnia and Herzegovina on judicial matters, and a lack of witness protection mechanisms.

At the end of 2004, the process of establishing a special war crimes chamber, as part of the State Court of Bosnia and Herzegovina, was nearing completion. The chamber, which is to be based in the Bosnian capital Sarajevo, is expected to try the most serious war crimes cases. As of October, however, the position of the special war crimes prosecutor had not yet been established.

### ***Return of Refugees and Displaced Persons***

According to the United Nations High Commissioner for Refugees (UNHCR), as of the end of August 2004, 1,001,520 out of a total of more than 2 million people forcibly displaced during the war had

returned to their home areas. Of these, 445,735 persons had returned to municipalities where they currently constitute an ethnic minority. UNHCR hailed the figures as a sign of success. However, these statistics would appear to show that the results of ethnic cleansing in the country remain largely intact.

The sharp decrease in minority returns that began in 2003 continued in 2004. Between January and the end of August, UNHCR registered 11,529 minority returns to pre-war homes, two-thirds less than in the same period in 2003. This trend reveals that, nine or more years after they initially fled, a decreasing number of people are willing to return to their pre-war homes. Limited economic opportunities in the areas of return, aggravated by ethnic discrimination in employment, are a principal impediment to return. What is more, nine years after the war ended, the homes of tens of thousands of families who had expressed a desire to return have yet to be repaired.

### ***Key International Actors***

The Office of the High Representative (OHR), which oversees civilian aspects of the 1995 Dayton Peace Accords, stepped up its efforts to advance the process of war crimes accountability. The OHR played a key role in establishing the special war crimes chamber in Bosnia's State Court and in drafting the legislation on witness protection, use of ICTY evidence in domestic proceedings, and the Office of the State Court Prosecutor, which was introduced in the Bosnian parliament in October 2004.

The ICTY issued a series of important, and in some cases controversial, judgments in cases arising from the war in Bosnia in 2004. Other important trials commenced or reached an advanced stage during the year. On April 19, the Appeals Chamber of the ICTY confirmed an earlier finding by a trial chamber that in July 1995, Serb forces had committed genocide in Srebrenica. The Appeals Chamber sentenced

Bosnian Serb Army General Radislav Krstic to thirty-five years of imprisonment. A trial chamber in the case of Bosnian Serb Radoslav Brdjanin, however, found that no genocide had occurred in 1992 in the area of Krajina, where Serb forces killed hundreds of Muslim and Croat civilians and expelled hundreds of thousands. In another controversial decision, on July 29, the Appeals Chamber reversed the majority of the trial chamber's March 2000 conviction of Bosnian Croat Tihomir Blaskic and reduced his sentence to nine years. He had initially been sentenced to forty-five years of imprisonment. While ICTY decisions have sometimes caused at least initial perplexity among some victim groups in Bosnia, the integrity of the proceedings before the tribunal and the legal reasoning underlying its decisions remained remarkable.

Other ICTY judgments in 2004 include the ten year prison sentence for Miroslav Deronjic, a Bosnian Serb guilty of crimes against humanity in eastern Bosnia in 1992, and the eighteen year prison sentence for Ranko Cesic, another Bosnian Serb, for crimes against humanity and war crimes committed in 1992 in the Luka prison camp near Brcko.

The court also tried two major cases against accused Bosnian Muslims. On July 23, the prosecution presented its closing argument and concluded its case against Bosnian Muslim generals Enver Hadzihasanovic and Amir Kubura, both charged with war crimes against Bosnian Croats and Serbs in Central Bosnia in 1993-94. The trial of Naser Oric, commander of the forces of the Army of Bosnia and Herzegovina in the Srebrenica area, for crimes against Serb civilians, began on October 6.

Along with the OHR, the ICTY initiated the establishment of the special war crimes chamber in Bosnia's State Court. In September, the Office of the Prosecutor made a motion to refer the cases against Bosnian Serbs Zeljko Mejakic, Momcilo Gruban, Dusko Knezevic, and Dusan Fustar, regarding the Omarska and Keraterm detention camps in northwestern Bosnia, to the war crimes chamber. The president of the ICTY requested additional information from the Office of the

Prosecutor on the ability of Bosnia and Herzegovina to provide fair trials before a competent court.

In June, the E.U. Council approved European Partnership, a document detailing short- and medium-term priorities for Bosnia and Herzegovina's preparations for further integration with the E.U., which had been identified in the European Commission's 2004 Annual Report. The human rights objectives, which serve as a checklist against which to measure progress, include: assuming full organizational and financial responsibility for the 2004 municipal elections; creating an effective judiciary (including establishing a single High Judicial and Prosecutorial Council for Bosnia and Herzegovina); adopting and bringing into force outstanding legislation supporting refugee returns; completing the transfer of the human rights bodies to Bosnian control; making progress on the merger of the State and Entity Ombudsmen; and, full cooperation with the ICTY, particularly on the part of Republika Srpska. On October 4, the Commission praised the conduct of the municipal elections and declared that Bosnia had fulfilled this political condition from the Partnership.

The E.U. police mission to Bosnia and Herzegovina (EUPM) continues the international policing operation in the country, which it took over from the United Nations in the beginning of 2003. At the June 28-29 summit in Istanbul, NATO announced that an E.U.-led peacekeeping force (EUFOR) would replace its Stabilization Force (SFOR) before the end of 2004. On July 12, the E.U. Council indicated formally that, beginning in December 2004, the E.U. would conduct a peacekeeping operation in Bosnia in order to contribute to a safe and secure environment in the country.

## CROATIA

Croatia made progress in 2004 toward membership in the European Union (E.U.) but did little to improve its still checkered human rights record. Key rights concerns include the government's continuing failure to pursue Croat suspects as aggressively as it does non-Croats in domestic war crimes trials, insufficient cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY), and slow progress toward the return of displaced and refugee Serbs.

The task of enhancing Croatia's human rights record now falls to the Croatian Democratic Union (HDZ), which took power following its victory in November 2003 parliamentary elections. Soon after taking office, Prime Minister Ivo Sanader made a series of policy statements intended to signal a new willingness on the part of the traditionally nationalistic HDZ to undertake necessary human rights reforms. The government's limited progress to date, however, has resurrected concerns among HDZ's key interlocutors—including the Serb members of the Parliament who support the HDZ minority government and the chief prosecutor of the ICTY—about whether it can deliver on its promises.

### ***Refugee Returns***

Between 300,000 and 350,000 Croatian Serbs left their homes during the 1991-95 war in Croatia, mostly for Serbia and Montenegro, and Bosnia and Herzegovina. By August 2004, the government had registered 112,162 Serb returnees. The actual number of returns is significantly lower because many Croatian Serbs leave again for Serbia and Montenegro or Bosnia after only a short stay in Croatia.

It took almost a decade for most minority refugees and displaced persons to repossess their houses, which had been occupied after they fled or were forced out of Croatia. The explanation lies in a pattern of



obstruction and discrimination by previous governments and local authorities. However, the process is now finally nearing completion. According to government data, the authorities returned 1,800 houses to their owners in the first seven months of 2004, with only 1,700 occupied houses still to be vacated.

There has yet to be tangible progress on the issue of lost tenancy rights in socially-owned property. Croatian authorities terminated the tenancy rights of tens of thousands of Serb families after they fled their apartments during and after the war. In June 2003, the Croatian cabinet adopted a set of measures to enable former tenancy rights holders in Zagreb and other big cities to rent or purchase government-built apartments at below-market rates. In August 2004 the government admitted that the implementation of the scheme had yet to begin.

A July 2004 decision by the European Court of Human Rights (ECtHR) on tenancy rights in Croatia may limit future progress in restoring Serb tenancy rights. In the *Blecic* case, the ECtHR upheld Croatian court decisions terminating the tenancy rights of a woman who had left Zadar shortly before the outbreak of hostilities in 1991 and had not returned to her apartment within the six-month period specified by Croatian law at the time. The misguided decision by the ECtHR appears to stand for the proposition—at odds with basic tenets of humanitarian law and refugee law—that a displaced civilian must return to a war zone to preserve property rights.

For the second consecutive year, reconstruction of damaged or destroyed Serb homes in Croatia has continued at a satisfactory pace. The government announced in 2003 that it would reconstruct 10,800 houses and apartments during 2004-05, most of them owned by ethnic Serbs. In March 2004, the government also extended, until end-September, the deadline for submission of reconstruction claims for those who missed the original 2001 deadline.

Economic opportunities for minority returnees are limited by employment discrimination in local government and other public sector employers. A December 2002 constitutional law on minority rights obliges the state to ensure pre-war levels of minority representation in local government and in state, county, and municipal courts, but the law has yet adequately to be implemented in most areas.

### ***Accountability for War Crimes***

The government's willingness to provide documentary evidence to the ICTY and its efforts to persuade ethnic Croat indictees to surrender to the tribunal were overshadowed by its failure to hand over Ante Gotovina, a Croatian Army general indicted for 1995 crimes against Croatian Serbs. On March 11, Croatian generals Ivan Cermak and Mladen Markac voluntarily traveled to the Hague, ten days after the government received the ICTY indictment against them. Both are accused of crimes against humanity and war crimes against Croatian Serbs in 1995. Similarly, six Bosnian Croat military and political leaders indicted by the ICTY flew from Zagreb to the Hague on April 5, two weeks before the European Commission was to issue an opinion on Croatia's bid for E.U. membership. All six are charged with participating in a joint criminal enterprise to forcibly expel Bosnian Muslims and Serbs from the self-declared Croat statelet of Herceg-Bosna during the Bosnian war.

Following the surrenders in March and April, ICTY Chief Prosecutor Carla Del Ponte stated that Croatia was cooperating fully with the tribunal. In her November 2004 report to the U.N. Security Council, however, Del Ponte revised her assessment, indicating that Croatia will be cooperating fully once Gotovina is handed over to the ICTY.

Accountability efforts in Croatian courts continue to fall short of international standards. In 2004, Croatian courts tried only two cases involving war crimes perpetrated against ethnic Serbs. On April 10, the Osijek

district court convicted one person and acquitted a second for the killing of nineteen Serb civilians in December 1991 by ethnic Croat forces in the village of Paulin Dvor. Despite evidence that others were involved in the killing, no one else has been indicted. On September 21, the county court in Karlovac reopened the trial of Mihajlo Hrastov, a former military police officer accused of killing thirteen Serb prisoners of war in 1991 and twice acquitted in the past.

While the prosecution of individuals responsible for atrocities against ethnic Serbs made little progress, trials against ethnic Serbs accused of war crimes continued throughout the country. Despite clear directives from Croatia's chief prosecutor that lower level prosecutors drop charges not supported by credible evidence and cease to bring cases in the absence of the accused, the courts in Zadar and Vukovar continued with such practices.

### ***Key International Actors***

On April 20, 2004, the European Commission issued a positive opinion on Croatia's membership application. The commission found that Croatia was a functioning democracy that largely respects fundamental rights. The European Council named Croatia as a candidate country for E.U. membership on June 18.

The E.U. continues to emphasize, however, that improved policies on the return of Serb refugees are a precondition for improved relations. The commission's April opinion stressed the need for additional efforts on minority rights, refugee return, judiciary reform, regional cooperation, and the fight against corruption. The European Partnership document, adopted by the E.U. Council on September 13, 2004, details short and medium term priorities for Croatia's preparations for E.U. membership. Key human rights priorities—in addition to those highlighted in the Commission opinion—include: implementation of the Constitutional Law on National Minorities, enhanced freedom of

expression and non-interference in the media, improved government cooperation with the human rights ombudsman, and full cooperation with the ICTY. The document fails to make reference to shortcomings in domestic war crimes trials, and the need to ensure justice regardless of the ethnicity of victims and perpetrators.

The Organization for Security and Cooperation in Europe (OSCE) mission to Croatia has continued to develop a dialogue with the government, while issuing reports critical of its return-related practices, minority rights record, and progress in domestic war crimes trials. In a July 2004 periodic report, the OSCE mission acknowledged the new government's expressed willingness to reconcile with the country's minorities, and welcomed progress in property reconstruction assistance to refugees and property repossession. The report, however, noted the slow progress in resolution of the issue of tenancy rights, and lingering problems in developing the rule of law, including the barriers to successful domestic war crimes prosecutions.

The OSCE mission has systematically monitored and reported on domestic war crimes prosecutions, identifying several areas—lack of impartiality, pressures on witnesses, weak inter-state cooperation, and the need for additional training of judges and prosecutors, among others—where further reforms are essential. The mission nevertheless concluded in June that efforts undertaken by the Ministry of Justice—including training by the ICTY for judges in the Zagreb, Osijek, Split, and Rijeka County Courts—made it likely that the Croatian courts would be adequately able to handle the limited number of cases that are expected to be transferred from the ICTY.

## EUROPEAN UNION

In a watershed year for European institutions, 2004 marked the expansion of the European Union (E.U.) from fifteen to twenty-five member states and initial agreement on a new Constitutional Treaty. A series of train bombings in Madrid on March 11, 2004, marked a more sinister milestone: the worst terrorist attack in modern European history, leaving 191 civilians dead and hundreds wounded. Such defining events leave Europeans with the challenge of protecting rights in a newly enlarged union and meeting the threat of terrorism while protecting Europe's long human rights tradition.

European governments and institutions did not rise to these challenges, instead continuing to scale back rights protections—in particular, for asylum seekers and migrants. They also missed the opportunity to distinguish European practice from the abusive actions of other countries by employing counterterrorism strategies that also violate fundamental rights, including the prohibitions against torture and indefinite detention.

### ***Asylum Seekers and Migrants***

Migration into the E.U. poses clear challenges for European governments, and few would question the legitimacy or urgency of policies to address these concerns. But the exclusive focus on combating illegal immigration in Europe reflects a disturbing and prevailing attitude that migrants have no rights. Consequently, regional and national policies and practices have focused on keeping migrants and asylum seekers out of Europe. The tragedies of September 11 and March 11 are used to justify such exclusionary practices. The labeling of migrants and asylum seekers as terrorists or national security threats has resulted in the “securitization of migration,” often to the serious detriment of migrants’ rights.

## ***Regional Developments***

Five years after the 1999 Tampere European Council, during which member states decided to establish the E.U. as an “area of freedom, security and justice,” the conclusion of the first phase of harmonizing regional asylum and immigration law in May 2004 reflected the further erosion of the right to seek asylum and of migrants’ rights more broadly. In December 2003, the European Parliament (E.P.) requested that the European Court of Justice (ECJ) review the legality of the Family Reunification Directive, adopted in September 2003. Human rights and children’s rights organizations shared the E.P.’s serious concern that the directive failed to guarantee the protection of family life enshrined in the European Convention on Human Rights, the E.U. Charter of Fundamental Rights, and the U.N. Convention on the Rights of the Child.

In March 2004, in an unprecedented move, Human Rights Watch together with other human rights groups called for the withdrawal of the proposed Asylum Procedures Directive, eventually adopted by the European Council in April 2004, because it clearly eroded the individual right to seek asylum. The directive failed to guarantee the right of asylum seekers to remain in a country of asylum pending an appeal and provided for a “safe country of origin” regime. The “safe country of origin” regime would result in a common list of safe countries of origin whose nationals would be tracked into an accelerated asylum procedure, often so brief as to deny asylum seekers full and fair hearings on their claims. The most alarming feature of the directive was provision for the use of the “safe third country” and “super safe third country” concepts, the result of which would prohibit access to asylum procedures for persons who traveled through a third country deemed “safe.” A “safe third country” would be one that has ratified the 1951 Refugee Convention and the European Convention on Human Rights, and has a functioning asylum system.

One positive development came in the form of the Qualification Directive, adopted in April 2004. The directive duplicates the definition of what constitutes a “refugee” provided in the Refugee Convention and includes an express obligation on E.U. member states to grant asylum to individuals falling within that definition. The directive also recognizes that non-state actors are often agents of persecution, and acknowledges child-specific and gender-specific forms of persecution. Those persons not recognized as refugees will be eligible for “subsidiary protection,” but human rights and refugee organizations have raised concern that persons granted other forms of protection will not be eligible for the same social benefits as recognized refugees.

### ***Implications of Enlargement***

The ten new member states admitted to the E.U. in May 2004—Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia—were confronted instantly with the challenge of becoming countries of final destination for asylum seekers, without having the means and the experience to deal with increased numbers of refugees. Long considered refugee-producing and transit countries (for asylum seekers making their way to the E.U.), the new member states’ asylum systems and immigration procedures are woefully under-developed and under-resourced to meet this challenge. Early reports indicate that few of the new member states have systems that can offer full and fair asylum determination procedures; detention regimes that comport with international standards; and policies in place to ensure that no person is sent back to a place where her or his life or freedom is threatened.

### ***Processing Migrants and Asylum Seekers Outside the E.U.***

Instead of responding adequately to criticism regarding the absence of human rights safeguards in the harmonization process or the need for such safeguards to be in place in the new member states, key E.U.

countries resurrected the previously discredited idea of processing claims for asylum outside the E.U. In August 2004, Rocco Buttiglione, then European Commissioner-designate of the Directorate-General for Justice, Freedom and Security voiced enthusiastic support for a German proposal to establish detention centers in North Africa to process asylum applications for protection in the newly-expanded European Union. While Buttiglione's nomination was ultimately defeated, proposals to process asylum seekers and migrants in select off-shore locations have gained momentum.

That momentum is somewhat counterintuitive given the negative reaction of Germany and key E.U. institutions to a similar proposal from the United Kingdom in early 2003. In March 2004, the European Parliament Committee on Citizens' Freedoms and Rights expressed concern that off-shore centers could violate an individual's right to seek asylum and could shift responsibility for migrants and asylum seekers to developing countries with scarce resources and poor human rights records. The committee stated that processing centers could undermine the 1951 Refugee Convention, the European Convention on Human Rights, and the key idea of responsibility-sharing.

The off-shore processing idea is not dead, however. It became apparent in 2004 that in the face of opposition to the earlier U.K. proposals, the E.U. had decided to take a more gradual approach aimed at the development of off-shore centers. In the meantime, the E.U. embarked on a project of *rapprochement* with potential host countries, including Libya. As a result, bilateral agreements were concluded in August 2004. They focused on combating illegal migration from Libya to Italy and into the E.U., and the E.U. agreed to lift an eight-year long arms embargo on Libya in October 2004.

In October, Italy expelled several hundred persons to Libya without a proper assessment of their asylum claims or any access to fair asylum procedures. These persons are believed to have been sent to detention



camps in Libya. Libya has not ratified the 1951 Refugee Convention, signed a cooperation agreement for a formal relationship with the United Nations High Commissioner for Refugees (UNHCR), or developed an asylum system in compliance with international standards. In addition to Libya's appalling human rights record with respect to its own citizens, reports regarding its treatment of migrants and asylum seekers raises special concern about placing processing centers there.

The German Ministry of Interior was also actively involved in supporting the revival of the idea of developing extraterritorial processing centers though its concrete proposals were not made available to the public. Although France, Spain, and Sweden rejected such proposals and called for "absolute caution" and "respect for human rights of refugees," in October 2004 the E.U. Informal Justice and Home Affairs Council considered five pilot projects proposed by the Commission to improve immigration and asylum regimes in Libya, Tunisia, Algeria, Morocco, and Mauritania.

### ***Role of the International Organization for Migration***

The operations of the International Organization for Migration (IOM), an independent intergovernmental organization with no formal human rights or refugee protection mandate, came under increasing scrutiny in 2003-2004. The organization's mandate states that it provides assistance to governments and migrants for only voluntary migrant returns, but Human Rights Watch's research revealed that some IOM field operations have placed migrants at risk of return to places where they face persecution. Human Rights Watch is also concerned about the role of the IOM as convener of the 5+5 Dialogue of the Western Mediterranean Forum and the Forum's emphasis on combating illegal migration. In September 2004, the IOM sent a special technical team to Libya to consult with the government about the management of illegal migration. The timing of the visit, coming on the heels of proposals to establish off-shore detention centers for the processing of asylum seek-

ers in North African countries, gives rise to concerns that IOM will be involved in advising Libya and the E.U. about the establishment and management of such centers in the future.

### ***National Developments***

Asylum policy and practice in the Netherlands and an aggressive program for the return of failed asylum seekers raised considerable alarm in 2003-2004. Concerns include the use of an accelerated (forty-eight hour) asylum determination procedure (AC procedure); the inappropriate treatment of migrant and asylum-seeking children; restrictions on asylum seekers' rights to basic material support, such as food and housing; and proposals for returning large numbers of failed asylum seekers, some in violation of international standards. The AC procedure is regularly used to process and reject some 60 percent of asylum applications. The brevity of the procedure affords applicants little opportunity to adequately document their need for protection or to receive meaningful legal advice, and the right to appeal is severely curtailed. To date, there has been no measurable change in the AC procedure to ensure that asylum seekers receive a full and fair hearing.

In light of such restrictive asylum policies, a key concern over the last year has been the increasing rate of migrant returns to states where failed asylum seekers would face persecution or a real risk of torture or ill-treatment. In early 2004, for example, the Dutch government revealed proposals to deny failed asylum seekers community-based social assistance and to place them in special centers prior to their "voluntary" return—or in detention centers pending their forcible deportation. Thousands of failed asylum seekers would be threatened with return over the next few years, including persons from countries where ongoing conflicts will threaten their safety, such as Chechens, Afghans, Liberians, some Somalis, and persons from Northern Iraq.

Human Rights Watch publicly challenged the Dutch returns plan in February 2004, arguing that it represented a further degradation of the Netherlands' commitment to the right to seek asylum and the principle of *nonrefoulement*, and signaled a continuing and disturbing trend on the part of Dutch authorities to depart from international standards in their treatment of asylum seekers and migrants.

### ***Counterterrorism Measures***

The climate of fear generated by the September 11 attacks in the U.S. and further exacerbated by the March 2004 Madrid bombings resulted in regional and national counterterrorism laws and policies permitting the indefinite detention of foreign terrorism suspects; extended periods of incommunicado detention; and the erosion of the absolute ban on torture, including the use of evidence extracted by torture and growing reliance upon so-called “diplomatic assurances” to return alleged terrorist suspects to places where they face a real risk of torture or ill-treatment.

### ***Indefinite Detention***

In the aftermath of September 11, the U.K. passed the Anti-Terrorism, Crime and Security Act (ATCSA), which provided for the indefinite detention of foreign terrorist suspects. In order to establish such a detention regime, the U.K. had to suspend (“derogate” from) some of its human rights obligations under the European Convention on Human Rights and the International Covenant on Civil and Political Rights (ICCPR) by formally declaring “a public emergency threatening the life of the nation.” The U.K. is the only Council of Europe and U.N. member state to declare such an emergency and to determine that the global threat from terrorism required it to abandon one of its core human rights obligations—the prohibition against indefinite detention without charge or trial.

Under the ATCSA, the Home Secretary can certify a foreign national as a “suspected international terrorist” if he has a “reasonable belief” that the person is a threat to national security and a “suspicion” that the person is an international terrorist or had links with an international terrorist group. Certification is based on secret evidence. Detainees can challenge their detention in the Special Immigration Appeals Commission (SIAC), a tribunal with limited procedural guarantees and a low standard of proof. Detainees are assigned a security-cleared barrister known as a “special advocate.” Classified evidence is heard during “closed” sessions attended by the special advocate. Detainees and their lawyers of choice are excluded from those sessions, and contact between the special advocates and detainees is limited.

Seventeen men in total have been detained under the ATCSA regime. To date, eleven men remain detained indefinitely without charge or trial. The treatment of detainees under the ATCSA in high security U.K. prisons also raises concerns that they have been subject to cruel, inhuman, or degrading treatment. Detainees have complained of long periods of isolation; lack of access to health care, religious observance, and educational services; lack of exercise; obstacles to visits from friends and family; and psychological trauma associated with not knowing when they will be released.

The indefinite detention regime has been criticized and challenged in U.K. courts. Two U.K. parliamentary committees—the Privy Council Review Committee (known as the “Newton Committee”) and the Joint Human Rights Committee—have called for the urgent repeal of the measures that allow for indefinite detention. In October 2002, upon a challenge that the indefinite detention regime discriminates against foreign nationals, the British Court of Appeal ruled that indefinite detention was compatible with U.K. and international law. In October 2004, a specially convened nine-judge panel in the House of Lords heard an appeal on the lawfulness of the derogation and the compatibility of the

legislation with other human rights obligations from which Britain has not derogated. That decision is pending.

### ***Incommunicado detention***

In Spain, the prolonged detention of foreign terrorist suspects has also given rise to serious concerns about procedural and other violations in the special detention regime. The Spanish Code of Criminal Procedure (*Ley de Enjuiciamiento Criminal*) provides for incommunicado detention for up to thirteen days, limitations on the right to counsel, pre-trial detention for up to four years, and secret legal proceedings (*causa secreta*). The proceedings governing the detentions of suspected al-Qaeda operatives apprehended in Spain since September 11, among others, were declared secret by the Audiencia Nacional, a special court that supervises terrorist cases. The imposition of secrecy can bar defense access to the prosecution evidence—except for information contained in the initial detention order—for the majority of the investigative phase. Human Rights Watch detailed its concerns with the Spanish counter-terrorism regime in a December 2004 report titled, *Setting An Example? – Counterterrorism Measures in Spain*. Many of those concerns have been echoed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), and the U.N. special rapporteur on torture.

### ***Evidence Extracted under Torture***

In August 2004, Britain's second highest court ruled that evidence obtained under torture in third countries could be used in special terrorism cases. The Court of Appeal held that the British government can use evidence extracted under torture as long as the U.K. neither "procured the torture nor connived at it." Such evidence can be used to "certify" foreign terrorist suspects and during appeals against indefinite detention in the SIAC. The court's decision undermines the global prohibition against torture. Article 15 of the Convention against Torture

explicitly prohibits the consideration of evidence obtained under torture in any legal proceedings. The House of Lords has been asked to review the question of use of evidence obtained under torture on appeal.

### ***Diplomatic Assurances No Safeguard against Torture***

European governments also contributed to the erosion of the ban on torture by relying on so-called “diplomatic assurances” to return terrorist suspects and foreigners labeled national security threats to countries where they were at risk of torture or ill-treatment. Diplomatic assurances are formal guarantees from the receiving government that it will protect a person from torture upon return. Under international law, the absolute prohibition against torture includes the obligation not to send a person to a country where he or she is at risk of torture or ill-treatment. Human Rights Watch’s research, detailed in an April 2004 report titled, *“Empty Promises:” Diplomatic Assurances No Safeguard Against Torture*, revealed that such assurances provide no guarantee against torture, which is practiced in secret and often denied by governments in states where torture is systematic or used to repress and intimidate particular groups. The report detailed cases where persons returned based on diplomatic assurances were in fact tortured or ill-treated, and highlighted cases in several European countries where the courts intervened and ruled that diplomatic assurances from governments in states where torture is a serious problem were not reliable. Schemes for “post-return monitoring”—that is, an agreement by the two governments involved that the sending government could deploy its diplomats to monitor a person’s treatment after return—did not provide an additional safeguard against torture.

Cases in which European governments have relied upon or attempted to employ assurances to effect a return have been documented in Sweden, the U.K., Germany, the Netherlands, Austria, Georgia, and Turkey, among others. In Sweden, the cases of two Egyptian asylum seekers expelled in December 2001 from Stockholm to Cairo based on

diplomatic assurances from the Egyptian government were of particular note. The Swedish authorities determined in 2001 that the men, Ahmed Agiza and Mohammad al-Zari, had a well-founded fear of persecution if returned to Egypt. Based on secret evidence never made available to the men or their lawyers, the Swedish government excluded the men from protection under the 1951 Refugee Convention and ordered their expulsions, based on assurances from the Egyptian authorities that the men would not be subject to the death penalty, subject to torture or ill-treatment, and that they would receive fair trials. The men were expelled from Sweden on the same day the decision to deny them protection was made.

It was subsequently revealed that the men were handed over to U.S. operatives at Bromma Airport in Stockholm; hooded, shackled, and drugged by these operatives; placed aboard a U.S. government-leased plane; and transported to Cairo. They were held in incommunicado detention for a full five weeks before the Swedish ambassador to Egypt visited them. The men have credibly alleged that they were tortured and ill-treated in those five weeks and that such treatment continued even after the Swedish diplomats began monitoring their treatment. A classified Swedish government monitoring report from January 2002 indicated that the men told the Swedish authorities about this abuse, but the Swedish government took no action and in fact deleted these allegations from its public reporting on the cases.

In October 2003, al-Zari was released without charge and he remains under constant surveillance by Egyptian police. Ahmed Agiza's April 2004 re-trial (he had been tried *in absentia* in Egypt in 1999 and sentenced to 25 years of hard labor) was conducted in a special military court. A Human Rights Watch trial monitor, present throughout the trial, documented numerous serious fair trial violations. In the course of the trial, Agiza told the court that he had been tortured in prison and requested an independent medical examination, which the court denied. The Swedish authorities were denied access to the first two of the four

trial hearings, and did not take action on Agiza's claims that he was tortured. Human Rights Watch criticized the Swedish government for violating its absolute obligation not to return a person to a country where they are at risk of torture and publicly called for an international, independent inquiry under the auspices of the United Nations to investigate all three governments' involvement in the men's abuse.

This disquieting trend was further substantiated by recent indications of the growing use of diplomatic assurances in Germany, the Netherlands, and the United Kingdom. Thus, although in May 2003 a German court rejected as insufficient diplomatic assurances offered by the Turkish government in the extradition case of Metin Kaplan, the leader of the banned Islamic fundamentalist group, "Caliphate State," Mr. Kaplan was subsequently deported to Turkey in October 2004. Similarly, in September 2004, the Dutch government decided to extradite Nuriye Kesbir, a high-level member of the Kurdistan Workers' Party (PKK), following diplomatic assurances from Turkey that she would not be tortured or ill-treated upon return and would receive a fair trial. In a letter to the Dutch Minister of Justice, Human Rights Watch detailed the real risk of torture and ill-treatment Kesbir would face upon return and stated that assurances from Turkey could not be considered reliable given Turkey's failure to implement adequate monitoring mechanisms to ensure that torture did not occur. In October 2004, during the House of Lords appeal on the lawfulness of the indefinite detention regime (see above), the British government indicated that it is actively seeking diplomatic assurances from states where there is a risk of torture to facilitate the removal from the U.K. of men currently subject to indefinite detention.

A number of international and regional actors have also criticized states' growing reliance on diplomatic assurances. In his October 2004 report to the U.N. General Assembly, the U.N. Special Rapporteur on Torture stated that assurances from governments in countries where torture is systematic cannot be relied upon and should not be employed to cir-



cumvent the obligation not to return a person to a country where he or she risks torture. Similarly, in his April 2004 report, the Council of Europe Commissioner for Human Rights. Gil Robles expressed concern that the use of diplomatic assurances in the Agiza/al-Zari cases did not provide the two men with an adequate safeguard against torture. The U.N. Human Rights Committee has also expressed concern about the adequacy of such assurances as an effective safeguard. The Agiza case is pending before the U.N. Committee against Torture.

At the regional level, the European Court of Human Rights was presented with the opportunity to reaffirm the absolute nature of the prohibition against returning any person to a country where she or he would be at risk of torture or prohibited ill-treatment in *Mamatkulov and Askarov v. Turkey*, a case for which Human Rights Watch and the AIRE Centre submitted an *amicus curiae* brief. In its brief, Human Rights Watch documented the systematic practice of torture in Uzbekistan, a conclusion echoed by a February 2003 report by the U.N. special rapporteur on torture. Human Rights Watch also questioned the reliability of the diplomatic assurances proffered by the Uzbek authorities as well as the follow-up monitoring of the assurances by the Turkish government, which was limited to one prison visit by Turkish officials (more than two years after the men were returned) and reliance on medical certificates from prison doctors employed by the state and alleged to be implicated in acts of torture. A decision is expected in the *Mamatkulov* case before the end of 2004.

## GEORGIA

Georgia's new president, Mikheil Saakashvili, was elected in January 2004, after campaigning on a platform of radical reform. His predecessor, Eduard Shevardnadze, was ousted in November 2003, as a result of peaceful mass demonstrations against fraudulent parliamentary elections. In March 2004, a coalition of parties aligned with Saakashvili won a landslide victory in repeat parliamentary elections. With this strong mandate, the new government began a campaign against corruption and for territorial integrity.

The government's reform agenda is delivering mixed results on human rights. The environment for religious freedom—a long standing concern—has improved. However, torture and ill-treatment in pre-trial detention remain widespread. Chechen refugees also remain vulnerable to state discrimination and abuse by Georgian security forces.

### ***Mixed Results on Reform***

In February, the new government rushed several constitutional changes through Parliament. One change empowered the president to appoint and dismiss judges. This change—which contravenes international human rights norms—increases the president's influence over a judiciary which already lacked independence. There have been incidents of police violence towards peaceful demonstrators, creating an environment less conducive to freedom of assembly than under Shevardnadze. The media remains relatively free, although media previously aligned to the opposition now support the government, as does the state owned media, leaving very few outlets without a pro-government orientation. In a positive move, the government appointed Sozar Subeliani, a human rights activist and former journalist, to the Ombuds office on September 15. The post had been empty for twelve months.

The government is engaged in a highly publicized fight against corruption, with frequent arrests of high profile figures. Georgian nongovernmental organizations (NGOs) and others are concerned that the authorities are selectively targeting individuals for political reasons, and that the law is not being applied equally to all. Allegations of due process violations are common, and some of those detained for corruption allege torture and ill-treatment.

### ***Georgia's Regions***

During the first months of 2004, tensions over tax and customs revenues, political freedoms, and law and order issues, between the central government and Aslan Abashidze, the autocratic leader of the autonomous republic of Adjara, escalated almost to the point of armed conflict. The human rights situation in Ajara deteriorated, with regular reports of beatings, detentions, and harassment of those critical of Abashidze and his government. In May, after negotiations led by Russia, Abashidze backed down and left Ajara. Since then, reports of abuses in Ajara have declined dramatically, particularly those concerning freedom of the press and freedom of association. Tension between Georgia and the breakaway republic of South Ossetia also worsened during 2004, resulting in sporadic armed clashes. Negotiations in August between Georgia, South Ossetia, and Russia calmed the situation, at least temporarily. Both sides accuse the other of torturing members of their security forces who were taken prisoner. Human Rights Watch has insufficient information to substantiate the claims.

### ***Religious Freedom***

During the last four years of the Shevadnadze government, Georgia experienced an increase in religious intolerance towards non-traditional religious groups, including Baptists, Jehovah's Witnesses, and Evangelists. These groups faced hate speech and violent attacks by organized groups of Orthodox Christian vigilantes. The state failed to

respond adequately, and sometimes even cooperated in the attacks, which consequently became more frequent and pervasive. The attacks and hate speech subsided prior to the November 2003 elections, leading to speculation about how closely the government controlled the violence. In 2004, there were some reports of intimidation and violence against religious minorities, although at significantly reduced levels to previous years. This decrease has improved the environment for freedom of religion.

In a positive move against impunity, the police arrested Vasili Mkalavishvili and seven of his followers in March. Mkalavishvili has led many violent attacks on religious minorities. However, the police used excessive force during the arrest, which was broadcast on television. At this writing, Mkalavishvili remained in custody awaiting trial. The new government has failed to bring to justice the perpetrators of scores of other attacks, and at times, appears to fuel religious intolerance through the use of nationalist rhetoric aimed against “alien influences,” a veiled reference to non-traditional religious groups.

### ***Torture***

Torture in detention and due process violations remain widespread in Georgia. There are continuing reports of the practice of isolating detainees in circumstances that amount to incommunicado detention, and restricting access to defence counsel. Judges sometimes ignore torture allegations. There were reports of several deaths in custody under suspicious circumstances, an increase from previous years. Reports of torture in detention include beatings, cigarette burns, threats of rape, and the use of electric shock. The authorities prosecute the perpetrators of torture in some cases. However, in many cases, the perpetrators are not brought to justice.

In a case that exemplifies the more troubling aspects of the government’s fight against corruption, the former chair of the State Audit

Agency, Sulkhan Molashvili, alleged he was subject to torture in pre-trial detention following his arrest in April on corruption charges. An independent forensic expert confirmed signs of torture on Molashvili's body after his arrest, including cigarette burns, and injuries consistent with the use of electric shocks. The Tbilisi city prosecution office opened an investigation into the torture allegations on July 5, 2004. In mid-July the Tbilisi city prosecutor stated that the investigation showed that the wounds had been inflicted either by Molashvili himself or other prisoners. At the time of writing, the investigation is on-going.

In October, in response to increasing reports of torture, Minister of Internal Affairs Irakli Okruashvili discussed with NGOs and the Ombuds office a plan to set up independent monitoring groups to supervise arrests and detention facilities. At this writing, the plan was yet to be implemented.

### ***Chechen Refugees***

Chechen refugees in Georgia remain vulnerable to abuse. They lack adequate housing, medical care, and employment opportunities. The refugees are subject to police harassment and threats of *refoulement*. Georgian authorities suspect some refugees of involvement in terrorism, and abuses take place during counter-terrorism operations. In May, Chechen refugees in the Pankisi Valley went on a hunger strike for over a week, protesting police harassment, including unauthorized and intimidating house searches. In August, following Russia's unilateral closure of the border and pressure from Moscow about the presence of "terrorists" in the Pankisi Valley, masked Georgian security forces carried out raids against homes occupied by refugees and Kists (ethnic Chechens from Georgia). Up to twelve men were detained and accused of illegally entering Georgia. All were released within several days without charge.

In February 2004, two Chechens, Khusein Alkhanov and Bekhan Mulkoyev, were released from custody after a Georgian Court refused to extradite them to Russia on terrorism charges, citing the fact that Alkhanov is a refugee and a dispute about Mulkoyev's identity. The men went missing soon after their release, and later appeared in Russian custody. Human rights groups in Georgia suspect that Georgian authorities aided the Russian security forces' detention of these men, in breach of Georgian law and international standards prohibiting return in cases where there is a risk of torture.

### ***Key International Actors***

The World Bank and European Commission co-sponsored a donors' conference in June 2004. In a move illustrative of the huge international support enjoyed by Georgia, the international community pledged U.S. \$1 billion in aid over the next two years at the meeting. The donors stated that the aid was to promote economic reform, improve governance, and combat poverty.

In June, the European Union (E.U.) pledged to double its financial assistance to Georgia over the next three years and announced the inclusion of Georgia in its European Neighborhood Policy. The policy offers financial benefits subject to Georgia's compliance with jointly negotiated political and economic criteria.

In May 2004, the Council of Europe Committee for the Prevention of Torture visited Georgia, completing a trip interrupted by the upheaval in November 2003. Members of the Committee found that prison conditions were disastrous and encouraged the authorities to develop a plan to improve them.

The relationship between the U.S. and Georgia continues to strengthen. In May 2004, Georgia was deemed eligible to apply for a further large aid package under the Millennium Challenge Account. In

November, Saakashvili stated that as a result of Georgia's engagement in peacekeeping operations, the U.S. would fund a new, large scale military assistance program. Just prior to this, Georgia agreed to increase the number of Georgian troops in the coalition forces in Iraq from 159 to 850. The U.S. reconfirmed a commitment to combat terrorism in Georgia. A State Department spokesperson claimed that past U.S. military assistance had been successful in reducing a terrorist threat in the Pankisi Valley, but failed to mention human rights concerns associated with past operations there. In 2002, the U.S. assisted in training Georgian security services for counter-terrorism operations in the Pankisi Valley. That year, Georgian security services carried out operations there that breached international human rights standards.

In the wake of the Beslan atrocity in North Ossetia, Russia has stepped up pressure on Georgia over Chechens seeking refuge in the Pankisi Valley, claiming that they are operating terrorist bases there. In October, Georgian Minister of Internal Affairs Irakli Okruashvili agreed to hand over a list of all residents in the Valley to unspecified Russian officials. Russia remains a key player in the negotiations over the status of the breakaway republics of South Ossetia and Abkhazia.

## KAZAKHSTAN

Mired in an international corruption scandal and taking a heavy hand to its political rivals, the government of Kazakhstan has done little to dispel critics' perceptions of its policies as increasingly predatory and authoritarian.

Corruption is pervasive in Kazakhstan. In 2004 Transparency International gave Kazakhstan one of its worst ratings, and identified it as part of a global phenomenon of oil-rich states with excessive levels of corruption. The Kazakhgate oil funds corruption scandal, which began in 1999, has tarnished the government's reputation at home and abroad.

President Nursultan Nazarbaev wins international praise for taking half-steps toward human rights reform and for refraining from further backtracking, though he has presided over few improvements in practice. Instead, the government continues its aggressive persecution of independent media and the political opposition. State antagonism toward critical media was particularly heated in advance of September 2004 parliamentary elections.

### ***Persecution of Independent Media***

The government of Kazakhstan has made some preliminary moves to improve its poor reputation with respect to media freedoms. For instance, in January 2004 it paroled Sergei Duvanov, an independent journalist and fierce government critic convicted in 2003 on questionable rape charges. President Nazarbaev also vetoed a highly restrictive media law after it was widely criticized abroad and deemed unconstitutional by the country's Constitutional Council.

But these moves do not indicate a policy shift. Kazakh television, the main source of news for the country's population, remains dominated either by government or pro-government media. The government's



fierce intolerance for critical media reached new heights in the run-up to parliamentary elections. On July 22, 2004, the president ordered foreign media to include praise of the government and its policies along with any criticism, and reportedly said that his lawyers were prepared to sue foreign media who “discredit the country.”

Indeed, the government uses politically motivated lawsuits to intimidate and shut down domestic media that are critical of the government or cover such sensitive issues as corruption. One such lawsuit resulted in the closure of a leading opposition newspaper, *SolDat* (Let Me Speak), in July 2003. In 2004, a bizarre set of events resulted in the closure of the *Assandi Times*. On June 2, 2004, a fake version of the *Assandi Times* filled with stories that misrepresented the political opposition was circulated throughout Almaty. The editorial staff issued a statement that disavowed the fake edition of the paper and expressed the staff’s belief that “the presidential administration or...people close to it” were responsible. The administration sued for defamation. The court found in favor of the government, fined the newspaper, and ordered its bank account and property seized. This effectively closed down the main opposition newspaper in the country just two months prior to parliamentary elections. In August, the paper regrouped and began publishing under its former name, *Respublica*.

Critical newspapers are also the targets of anonymous violence presumably aiming to intimidate dissent. In August 2004, the office of an independent newspaper in southern Kazakhstan was attacked by unidentified men who threw Molotov cocktails through the windows. The incident, which did not cause injuries or the destruction of the office, was nonetheless reminiscent of the firebombing of the *Respublica* premises two years earlier. The editor of the paper speculated that the attack may have been in retaliation for the newspaper’s coverage of the parliamentary election campaign or its pieces about local organized crime.

### ***Persecution of Political Opponents***

The government harasses members and supporters of Kazakhstan's opposition political parties, including through arbitrary criminal and misdemeanor charges and threats of job dismissal, often aimed at preventing the individuals from running for public office.

The continued incarceration of Galimzhan Zhakianov, the leader of the Democratic Choice of Kazakhstan (DVK), revealed the government's resistance to genuine political competition. Zhakianov was convicted in 2002, following an unfair trial on charges that have been widely viewed as politically motivated. In August 2004, authorities transferred him to a low-security settlement, where he remains under police supervision. Security officials have repeatedly tried to "convince" him to drop out of political life altogether in exchange for his release. In apparent response to his refusal, authorities are threatening new criminal charges against Zhakianov. He has also been denied his rights to reside in his home town and work while under the supervision of the settlement authorities.

DVK co-founder Mukhtar Abliazov was also apparently pressured to disavow his political affiliation and halt his political activities as a condition for release from prison in May 2003.

### ***Obstacles to Political Participation***

President Nazarbaev's government was rightly applauded for registering several key opposition parties, including the DVK. However, the government failed to provide the level playing field necessary for free and fair parliamentary elections in September 2004.

The Organization for Security and Cooperation in Europe (OSCE) and the Council of Europe found that the elections "fell short" of interna-

tional standards, citing unbalanced election commissions and media bias favoring pro-presidential parties.

Local groups also voiced concern about the lack of voter education regarding the introduction of electronic voting, the disqualification of the leader of the centrist Ak-Zhol party, and unconfirmed reports that the pro-presidential Asar party, headed by Nazarbaev's daughter, coerced people on the government payroll to join the party or risk losing their jobs.

The OSCE and the Council of Europe criticized the vote count, citing compromised voter lists, voters turned away at the polling station, and the significant discrepancy between paper and electronic voter lists. In many cases domestic observers were reportedly "denied full access to polling station procedures, in spite of new legislation which allows them access." International observers noted with dissatisfaction that the government failed to implement a number of positive changes that had been introduced with the April 2004 election law.

In the end, President Nazarbaev's Otan party swept the elections, claiming forty-two of seventy-seven possible seats. The pro-presidential AIST and Asar parties were in second and third place respectively. The official tally gave the DVK no seats in parliament.

### ***Nongovernmental Organizations (NGOs)***

In 2003 the government attempted to pass legislation specifying that NGOs must be found by the government to be engaged in "useful" activity in order to obtain registration. President Nazarbaev withdrew the bill in October 2003 only after it met with almost universal condemnation from the local and international human rights communities.

But local NGOs report continued government harassment through intimidating visits and threats by security and law enforcement agencies,

arbitrary investigations by the tax police, and surveillance by law enforcement and security agents.

### ***Fueling the AIDS Epidemic***

Human rights abuse against injection drug users and sex workers in Kazakhstan is fueling one of the fastest-growing AIDS epidemics in the world and threatening the country's economic and social development. Human Rights Watch has documented instances of police brutality, lack of due process, and harassment and stigmatization that drive drug users and sex workers underground and impede their access to life-saving HIV prevention services.

The government of Kazakhstan has failed to review government legislation regarding HIV/AIDS in order to bring it into compliance with international standards on HIV/AIDS and human rights. It has not expanded prevention and treatment services for all persons affected by HIV/AIDS, nor has it addressed abusive police practices toward drug users, in particular toward those seeking to access, or who have accessed, needle exchange services for HIV prevention.

### ***International Cooperation***

The government has taken several half-steps toward better compliance with international standards, but still needs to follow through to make these steps meaningful. For instance, the government at last signed on to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, but failed to ratify these instruments.

Similarly, the government extended an invitation to the U.N. Special Rapporteur on the Independence of Judges and Lawyers, who visited the country in June 2004. Local and international rights groups called for caution in assessing this move as progress, noting that true progress

would be made only if and when the Kazakh government implements the Special Rapporteur's resulting recommendations.

The government took an important step toward abolition of the death penalty when it adopted a moratorium on state executions in January 2004.

### ***Key International Actors***

The OSCE plays an active role in advocating for improvement in Kazakhstan's rights record. On July 22, 2004, the OSCE representative for media freedom, Miklos Haraszti, expressed his organization's objections to the heavy fine against the *Assandi Times*. "My first concern is that this decision will force *Assandi Times*, a major opposition news outlet, out of business, de facto annihilating the newspaper," he said.

Following a July 2004 Cooperation Council meeting between the European Union and Kazakhstan regarding the parties' Partnership and Cooperation Agreement (PCA), the E.U. cautioned that "a positive assessment of the [September parliamentary] elections would be an essential consideration in any decision on the bid of the Republic of Kazakhstan to hold Chairmanship of the OSCE in 2009." The bulk of the E.U. statement, however, failed to hold Kazakhstan to the standards set forth in the PCA and instead essentially praised the Nazarbaev government for its half-measures toward reform.

The U.S. government certified in 2004 that Kazakhstan had complied with the human rights standards on which military and other assistance is conditioned. In May 2004, the U.S. State Department announced that Kazakhstan had made "significant improvements in the protection of human rights in the last six months."

## KYRGYZSTAN

Kyrgyzstan moved further from its reformist past and ever closer to joining the ranks of the more authoritarian states of Central Asia. Since the country's last national elections in 2000, the government has been closing space for political competition and civil society. President Askar Akaev's chief political rival, Feliks Kulov, remains imprisoned on arbitrary grounds, and the government is presiding over the steady erosion of the independent media, violations of free assembly, and unfair elections.

### *Independent Media*

Almost all of Kyrgyzstan's national television stations, the source of news for most people in the country, are run by the government, the president's relatives, or supporters of the president. The lone exception has been the television station *Pyramida*, which in the past occasionally gave airtime to government critics. But even this relative independence was compromised after new investors obtained a significant interest in *Pyramida* in 2004. Rumors that President Akaev's son was behind the deal increased fears that the station would be unwilling to broadcast critical content.

The November 2003 opening of a U.S.-funded independent printing press has helped to bolster the independent print media, but the government uses heavy-handed lawsuits to intimidate and silence these outlets. A particularly outrageous example of such tactics was a complaint filed by the government newspaper *Vicherny Bishkek*, along with several other private and pro-government newspapers, against the independent newspaper *MSN*, formerly known as *Moya Stolitsa-Novosti*. The complaint, filed with the government's antimonopoly agency, said that *MSN* was charging too little for its newspaper, thereby undercutting the competition. The antimonopoly agency ruled that *MSN* had committed

“monopolistic actions,” ordered the paper to raise its prices, and recommended that the complainants sue the paper for damages.

Recent years have seen a pattern of physical attacks by unknown assailants on the children of independent journalists and human rights activists. The most recent of these was an April 24 attack on Chingiz Sydykov, the twenty-one-year-old son of Zamira Sydykova, editor-in-chief of the independent newspaper *Respublica*. Sydykov sustained serious injuries.

### ***Nongovernmental Organizations (NGOs)***

Fear spread throughout the Kyrgyz human rights community after rights defender and political activist Tursunbek Akunov went missing. As of November 22, 2004 his whereabouts remained unknown. Akunov, the leader of the Human Rights Movement of Kyrgyzstan and a former presidential candidate in 2000, was last seen on November 16, 2004, when he allegedly told his wife he was going out to meet with officers from the National Security Services (NSS, formerly the KGB). Following his disappearance, the NSS denied that any meeting took place or that it had Akunov in custody. In the days before he went missing Akunov was actively campaigning for President Akaev’s resignation from office.

Government officials use aggressive tactics to disrupt the work of NGOs. In April 2004 local officials in Issyk-Kul province reportedly obstructed the convening of several meetings on human rights organized by NGOs. The Bishkek Helsinki Group was essentially dissolved after its two leading members were forced to flee the country in 2003 because of government persecution.

In September 2003, the Ministry of Justice stripped the leadership of a prominent human rights group, the Kyrgyz Committee for Human Rights (KCHR), of its registration, instead recognizing an alternate

executive body using the KCHR's name. On July 3, 2004, unknown men broke into the home of Ainura Aitbaeva, the daughter of KCHR chairman Ramazan Dyryldaev, and beat her, rendering her unconscious. KCHR also reported that a car tried to run over Aitbaeva when she was walking with her husband on the evening of November 4. The car hit Aitbaeva lightly, but the couple escaped uninjured.

In October 2003, the government re-registered the Coalition for Democracy and Civil Society, an election monitoring and civic education group, following a significant international outcry. The government had denied the group re-registration three times in September 2003.

### ***Freedom of Assembly***

The state failed to resolve contradictions in the law regarding whether advance written notification and permission are necessary for holding public assemblies. The vagueness of the law allows for its arbitrary enforcement. For instance, the authorities allowed a protest against the Renton group, a company that allegedly defrauded investors, to proceed. Police also did not intervene when protestors allegedly publicly burned signs and threw condoms at officials during a demonstration against a sex-education text.

However, police commonly disband demonstrations in support of the political opposition. For example, on April 15, 2004, dozens of peaceful protestors gathered in Bishkek to call for the release of Feliks Kulov. Participants say they provided the authorities prior notification, but police intervened before the march could begin, detaining eighteen people, including leading civil society activists. Ironically, they were held at the Pervomaiskiy District Police Department, the site of a pilot project of the Organization for Security and Cooperation in Europe (OSCE) to aid and reform the police. One of the department's police officers punched rights defender Aziza Abdirasulova, who was observing



the demonstration as part of a project monitoring the right to free assembly in Kyrgyzstan. Several protestors were charged with holding an unsanctioned march and fined before being released.

### ***Political Participation***

The government refused to release political prisoner Feliks Kulov, head of the opposition Ar-Namys party, who was President Akaev's chief rival in the 2000 presidential election. The Ministry of Justice stated that Kulov will not be released before November 2005. Presidential elections are scheduled for October 2005.

Revelations that opposition members of parliament were under surveillance shocked the country. On January 14, 2004, listening devices were found in the government offices of several leading opposition parliamentarians. Such surveillance of citizens is illegal in Kyrgyzstan, except in cases of ongoing criminal investigation and with the sanction of the prosecutor's office. A parliamentary report accused the NSS of illegally placing the listening devices; the NSS denied responsibility. The report revealed that prominent civil society leaders were also the targets of illegal surveillance operations during past years.

### ***Elections***

While dozens and even hundreds of political rivals fought for positions in local council elections in the cities, many local council seats in villages went uncontested in the October 10, 2004 election. Rural apathy may be explained partly by the fact that villages are virtual "information-free zones" and receive little or no news. Many village residents simply may not have been aware that local councils' responsibilities were recently increased to include authority over local budgetary matters and so did not view them as significant. Potential candidates may have been dissuaded from running because of the new 1,000 som (about U.S. \$24) fee imposed this year.

The Coalition for Democracy and Civil Society reported problems with the composition of the elections commissions and inaccuracies in voter lists—some of which reportedly included the names of people who had left the country or died. Independent monitors were prevented from entering at least one polling station, and there were also complaints that police stationed themselves inside polling places.

Pro-presidential parties swept the elections. The opposition won only a handful of local council seats.

Parliamentary elections will be held in February 2005, and developments to date, including the conduct of local council elections, bode badly for a free and fair vote. The new pro-government party *Alga, Kyrgyzstan!* (Forward, Kyrgyzstan!), reportedly run by President Akaev's daughter, has been accused by numerous and credible sources of forcing people paid from the state budget—teachers, doctors, government officials, students—to become members of the party, under threat of losing their jobs.

## ***Torture***

Police torture is widespread in Kyrgyzstan. The most commonly reported forms of torture and ill-treatment are beatings, asphyxiation, threats of sexual violence, and deprivation of food and sleep.

In November 2003, the Criminal Code of Kyrgyzstan was amended to specifically outlaw torture, creating penalties of three to five years of imprisonment. However, Ministry of Justice and Ministry of Internal Affairs (MVD) officials failed to acknowledge the extent and gravity of Kyrgyzstan's torture problem or to formulate a plan to resolve it. The MVD controls temporary detention facilities in police stations while other places of pre-trial detention and prisons have been transferred to Ministry of Justice jurisdiction.

### ***Key International Actors***

U.S. officials were rightly proud of the positive contribution made by the new independent printing press they established in Kyrgyzstan. U.S. diplomats continued efforts to ensure that Akaev would relinquish the presidency in 2005.

The U.S. continued to station 1,150 troops at Manas airbase for operations in Afghanistan. Kyrgyzstan appeared to try to leverage Russia as a counterweight to U.S. influence, even allowing the Russians to establish a military base in Kant, outside Bishkek. Economic and political relations with China also grew closer during the year.

In September 2004 Kyrgyzstan hosted a meeting of the Shanghai Cooperation Organization (SCO) at which members—Russia, China, Kyrgyzstan, Kazakhstan, Uzbekistan, and Tajikistan—vowed to make economic cooperation and counter-terrorism priorities.

The E.U. failed to take serious issue with Kyrgyzstan's deteriorating human rights record during its annual meeting regarding the parties' Partnership and Cooperation Agreement (PCA). A statement issued on July 13, 2004, said only that the E.U. welcomed measures by Kyrgyzstan toward further democratization and that the parties "reaffirmed their commitment to tackling terrorism in accordance with fundamental principles of human rights."

There were serious, persistent concerns that the OSCE's project to provide material support to Kyrgyz police lacked sufficient human rights or reform focus and might serve only to reinforce an abusive government agency. The assistance is part of a pilot project meant to be replicated in other former Soviet countries.

## MACEDONIA

By the end of 2004, almost all provisions of the August 2001 Framework Peace Agreement (known as the Ohrid Agreement), which ended the 2001 armed conflict between ethnic Albanian insurgents and Macedonian government forces, had been implemented. Certain provisions of the agreement, however, remained controversial and served to exacerbate tensions among Macedonia's ethnic minorities. In general, discrimination against national minorities, including in particular ethnic Albanians and Roma, and police violence continue to be problems in the country.

### ***Implementation of the Ohrid Agreement and Its Implications for Minority Rights***

Although ethnic tensions between the Macedonian majority and Albanian minority reached a climax during the 2001 armed conflict, relations remained tense throughout 2004, especially as the redistricting plans called for by the Ohrid Agreement were under consideration. In addition, other unresolved concerns—such as the ongoing situation of displaced persons from the conflict and the absence of a successful disarmament program—continue to plague inter-ethnic relations.

On August 11, 2004, the parliament passed a Territorial Organization Act, the last of a package of legislative initiatives required by the Ohrid Agreement. By increasing the powers of administrative districts and decreasing their number from 123 to seventy-six in 2008, the act decentralizes the country by giving more powers to local government and increases the representation of ethnic Albanians in local government. According to the last census held in 2002, ethnic Albanians make up 25 percent of the population in Macedonia. New administrative districts will be created by joining Albanian rural areas with majority Macedonian districts, thereby increasing the number of districts in which the ethnic Albanian population will comprise more than 20 per-

cent of the population (in Kiãevo and Struga to more than 50 percent). As a result, Albanian language will become a second official language in these districts (as stipulated in the Ohrid Agreement), and members of the Albanian minority will be able to elect a larger number of local government representatives.

The introduction of the Territorial Organization Act by the government in August 2004 exacerbated the already existing tensions between the majority Macedonian and minority Albanian populations. Some ethnic Macedonian groups feared that the plan would lead to a division of the country along ethnic lines and ultimately make it easier for ethnic Albanians to secede and unify with neighboring Kosovo. Many Macedonians organized demonstrations against the Act, some of which became violent. For example, the media reported that forty protestors and police officers were injured during anti-redistricting riots in the town of Struga on July 22, 2004. Ultimately, charges were filed against more than fifty people in connection with the disturbances. Contributing further to inter-ethnic tensions, a referendum was called by the World Macedonian Congress to overturn the redistricting plan. However, the referendum, which took place on November 7, 2004, failed due to low voter turn out.

Three years after the end of the armed conflict, the government has still not succeeded in fully disarming the ethnic Albanian population, contributing to a worsening of the security situation in areas populated predominantly by Albanians.

There are still 1,900 persons who remain internally displaced as a result of the 2001 conflict. The Macedonian Helsinki Committee reported that security is no longer the primary obstacle to return. Instead, the main obstacle appears to be the poor economic situation of the internally displaced, who need financial assistance in order to replace basic household items and farming supplies that were destroyed during the conflict.

Despite the ethnic tensions discussed above, implementation of the Ohrid Agreement has contributed to some positive developments regarding minorities. According to the Macedonian Helsinki Committee for Human Rights, during the three years since the Ohrid Agreement was signed, there has been an 80 percent increase in the employment of minorities. As a result, for example, Albanians have obtained a level of representation in the state administration that is closer to their share of the overall population. In addition, after years of controversy regarding the Albanian-language Tetovo University, it received legal recognition in February 2004. Furthermore, pursuant to the Ohrid Agreement, a constitutional amendment was adopted that requires a “double majority” for laws related to ethnic minorities: the majority of all parliamentary deputies and the majority of all deputies representing ethnic minorities must support such a law in order for it to be adopted.

### ***Police Abuse***

Police abuse and violations of defendants’ procedural rights continued to be a serious problem during 2004. From January to September 2004, the Macedonian Helsinki Committee reported at least nineteen cases of people who were interrogated by the police without being informed of their rights or the reason for the interrogation. What is more, in the course of their detention and/or interrogation, individuals often reported being ill-treated. Local nongovernmental organizations also reported widespread impunity for police abuses, with the judiciary often responding ineffectively and slowly to complaints of ill-treatment.

The Macedonia government has committed its police and military forces to support the global campaign against terrorism. However, in one bizarre and troubling case, the former Macedonian interior minister, Ljube Boskovski, is currently under investigation along with several others for smuggling an Indian and six Pakistani refugees into the country and then killing them in 2002. Boskovski and the other suspects are

also accused of having altered the scene of the crime in an attempt to make it appear as if the seven men were armed Islamic militants who had planned an attack on Western embassies, the aim of which was to show Macedonia's contribution to the global war on terrorism. Boskovski was arrested in August 2004 and is currently under investigation in Croatia.

### ***Roma Rights***

Roma continue to be the most disadvantaged and marginalized minority in Macedonia and are often victims of police abuse and other discrimination. To date, the Macedonian government has failed to adopt affirmative policies that would improve the situation of Roma and generally tends to neglect the concerns of the Roma population.

Although police brutality is not limited to ethnic minorities in Macedonia, reports by human rights groups suggest that Roma are particularly vulnerable to police abuse. For the most part, Roma have been unsuccessful in obtaining redress for police brutality.

### ***Key International Actors***

The worst cases of human rights violations committed during the 2001 armed conflict between the Albanian National Liberation Army and Macedonian security forces are being investigated by the Skopje-based bureau of the International Criminal Tribunal for the former Yugoslavia. However, to date no indictments on Macedonia have been issued.

The E.U. and the North Atlantic Treaty Organization (NATO) are among the most active and influential international actors with regard to Macedonia's human rights policies. Macedonia applied for E.U. membership on March 22, 2004. Throughout the year, the E.U. and NATO exerted pressure on Macedonia to pass the Territorial

Organization Act discussed above in order to complete the implementation of the Ohrid Agreement, which the E.U. has set as a condition for beginning accession negotiations.

NATO monitored the security situation in Macedonia throughout 2004 and concluded that there had been significant progress towards stability in the country. Specifically, NATO pointed not only to Macedonia's success in showing that ethnic communities can live peacefully together, but also to improvement in equitable representation of ethnic minorities. NATO has stressed that respect for international human rights standards as required by the Ohrid Agreement, as well as reforms of Macedonia's defense structures, are preconditions for it to gain membership in the NATO alliance.

The activities of the Organization for Security and Cooperation in Europe (OSCE) in Macedonia focus primarily on police training and election monitoring. The OSCE monitored the presidential elections on April 28, 2004, and concluded that they were largely in compliance with international standards. However, although the OSCE did raise concern about several electoral irregularities, the Macedonian authorities failed to condemn these irregularities publicly or take steps to investigate or remedy them. The OSCE also carried out several studies on Macedonian local government and encouraged the decentralization of the state.

In the months leading up to the referendum to overturn the Territorial Organization Act, the U.S. said that a "yes" vote would be contrary to the "word and spirit" of the Ohrid Agreement. The U.S. urged Macedonia to complete the implementation of the agreement to increase its chances for membership in the Euro-Atlantic structures.

Eager to maintain good relations with the United States, Macedonia signed a Bilateral Immunity Agreement with the U.S. government, which protects U.S. troops and the troops of its allies from extradition



to the International Criminal Court (ICC). With this move, Macedonia joined the U.S. and a number of other countries in their efforts to undermine the authority of the ICC and its mandate to prosecute war crimes, crimes against humanity, and genocide.

## RUSSIA

In 2004 Russia endured the worst terrorist attack in its modern history. The year also saw further erosion of fundamental rights that underpin the country's fledgling democracy. Now entering its sixth year, the bloody war in Chechnya continues unabated with both sides committing numerous and unpunished human rights abuses. The government once again failed to take on Russia's numerous entrenched human rights problems, including widespread police torture and violent hazing in the armed forces.

### ***Political Rights and Freedoms***

Throughout his first term in office, Russian President Vladimir Putin kept Russia experts guessing about the role of democracy and human rights in his vision for Russia's political development. While speaking of a commitment to democracy, he presided over slow but deliberate moves to marginalize opposition forces. While Putin expressed support for the free press, his administration gradually established control over television channels and other key news sources. By his reelection in 2004, both the political opposition and independent television had been obliterated. Yet Putin continues to present himself as a believer in democracy and human rights—and most of the international community continues to believe him.

In September 2004, a few days after the worst terrorist attack in Russia's history ended in the massacre of hundreds of children, their parents and teachers at a school in Beslan, North Ossetia, Putin revealed his vision. In a speech to the nation, he linked terrorism to the collapse of the Soviet Union and the deficiencies of Russia's transition to democracy, and announced a package of political measures that would take the Kremlin's already overwhelming dominance of Russian politics to a new level. The proposals would give the president de facto power to appoint governors, even more sway over the parliament, or State Duma, and

increase the executive's influence over the judiciary. Though many Russians were privately unhappy with these proposals, checks and balances on the president's power had already eroded so badly there was no force capable of stopping the proposals.

Russia's political institutions may have been flawed and dysfunctional when Putin came to power in 1999, but public debate of policy issues, one of the great achievements of *glasnost* and a basic element of any democracy, was vigorous. Political parties of different persuasions clashed regularly in parliament over issues ranging from foreign affairs to agricultural policy. The electronic and print media, though dominated by oligarchs who used them as tools to promote their own interests, presented a wide variety of different opinions. Regional governors were a force to be reckoned with, and the courts had gained a degree of real, though limited, independence from the executive. Finally, a sophisticated and expanding community of nongovernmental organizations (NGOs) had started playing a role in policy-making.

Four years on, this picture is dramatically different. Public debate on key policy issues has all but disappeared. The pro-presidential United Russia party controls more than two-thirds of all seats in the State Duma, enough to adopt any law or even change the constitution. Opposition parties have been either decimated or eliminated altogether, partially a result of the deeply flawed elections of December 2003. During this election campaign and the presidential election that followed, television media shamelessly promoted United Russia and a few other Kremlin-favored parties while constantly vilifying the opposition.

After a two-year long assault on the independent electronic media, all television stations are firmly under Kremlin control, as are most radio stations. Television news has become monotone, perpetually portraying the president in a positive light and avoiding criticism of his policies. Most programs featuring live debate on political issues have been cut.

Only a small number of newspapers and internet publications provide some plurality of opinion, but their readership is marginal.

After convincing regional governors to give up their seats in Russia's senate as a concession to Putin early in his presidency, the Kremlin gradually destroyed them as an independent political force. Through intensive meddling in gubernatorial election campaigns, using its sway over television media and its enormous administrative resources, the Kremlin effectively made the gubernatorial candidates dependent on its support. By September 2004, the governors' power had been reduced to such an extent that not one of them dared publicly to criticize Putin's proposal to scrap gubernatorial elections.

It is conventional wisdom that the executive has also sought to increase its influence over the judiciary. Opinion polls show that few Russians believe that the courts are independent. The Kremlin's use of selective criminal prosecutions against perceived opponents, like Mikhail Khodorkovskii, and scientists working with foreigners on sensitive topics, has put considerable pressure on the courts. Indeed, in several of these cases, like that of arms researcher Igor Sutiagin, the courts have recently found defendants guilty on highly dubious charges. In another such case, the Supreme Court overturned scientist Valentin Danilov's acquittal of espionage charges and ordered a retrial, at which he was found guilty. After Beslan, Putin proposed establishing executive control over the nomination of members of a key Supreme Court body that supervises the hiring and dismissal of judges—another erosion of the independence of the judiciary.

Until recently, the NGO community was the only part of civil society that had not faced any significant meddling by the Kremlin. However, in May 2004 Putin used his state-of-the-nation speech to launch an attack on NGOs. He accused them of "receiving financing from influential foreign foundations and serving dubious groups and commercial interests," and of forgetting "about some of the most acute problems of

the country and citizens.” Just days after the address, the Ministry of Foreign Affairs accused humanitarian organizations in Chechnya of using their missions as a cover for anti-Russian activities. One of the central Russian television stations, TVC, devoted an hour-long prime-time program to denouncing the work of human rights groups, accusing them of what the presenter called their “hatred” for Russia. Along the same lines, a political analyst close to the Kremlin, Gleb Pavlovskii, rebuked rights activists for being “engrossed” in Western ideals.

The day after President Putin’s state-of-the-nation address, on May 27, masked intruders ransacked the office of a major human rights organization in Tatarstan that provides legal support for victims of torture. The group continues to face harassment from law enforcement agencies, as do many other regional human rights NGOs. In October, an influential member of parliament called for an investigation into the Committee of Soldiers’ Mothers, Russia’s oldest and most widespread grass roots human rights organizations, which helps victims of violent hazing in the Russian military.

## ***Chechnya***

The Chechnya conflict entered its sixth year, with the Kremlin continuing to insist that it was successfully restoring peace in the republic. However, the assassination of pro-Moscow Chechen president Akhmad Kadyrov in May 2004, and a series of terrorist attacks linked to the conflict, belied Russia’s claims of normalization. As in earlier years, Russian troops committed hundreds of enforced disappearances and extrajudicial executions, and tortured detainees on a large scale. They did so with almost complete impunity. Official statistics released in September reveal that since the beginning of the Chechen war in 1999, a total of twenty-two servicemen are serving active prison terms for crimes committed against civilians. Russian troops also stepped up their pattern of harassment of Chechen applicants to the European Court of Human Rights.

Chechen rebels were responsible for numerous direct and indiscriminate attacks on civilians, both inside Chechnya and elsewhere in Russia. They conducted devastating terrorist attacks, including the hostage-taking and murder of several hundred people at a school in Beslan. They also assassinated Akhmad Kadyrov and numerous local Chechen leaders working with the Russian authorities.

### ***Entrenched Problems***

The government failed to make use of Russia's current economic prosperity to reform state institutions that have entrenched human rights problems. Despite his image of a can-do leader, Putin's administration has not devised or implemented sound strategies to deal with systematic hazing practices in the armed forces, torture and ill-treatment of criminal suspects by police, poor treatment of children in orphanages, and inhumane treatment of persons committed to psychiatric institutions. The administration also failed to take effective steps to fight a rapidly spreading HIV epidemic that is being fueled by human rights abuses. The only area where truly significant reform has taken place is in the prison system, where overcrowding has eased.

### ***Key International Actors***

The international community believed for years that Putin's lip service to democratic principles was sincere. Although many Western leaders expressed concern about Putin's plans to abolish gubernatorial elections, several continued to insist that Russia was on the right track. Neither the U.S. nor E.U. governments developed a strategy for Russia that spelled out diplomatic or economic consequences for Russia's turn toward authoritarianism. Although a European Commission document in early 2004 frankly assessed the situation in Russia and observed that the E.U. can "influence developments in Russia if it is ready to take up difficult issues... in a clear and forthright manner," for too long the E.U. did not follow this observation.

The Parliamentary Assembly of the Council of Europe continued to be one of the few international bodies willing to frankly assess and openly discuss the situation in Chechnya. It adopted sharply worded resolutions in October that called for a real accountability process for crimes committed in the conflict. In October, the European Court of Human Rights held hearings on the first six applications by Chechens. The U.N. Commission on Human Rights failed for the third consecutive time to adopt a resolution expressing concern over the situation in Chechnya. Despite repeated requests, the U.N. Special Rapporteurs on torture and extrajudicial executions were not able to visit Chechnya.

## **SERBIA AND MONTENEGRO**

Serbia and Montenegro is taking some small steps to promote human rights, however, its progress is limited by continued impunity for those who committed war crimes. The government is unwilling to cooperate fully with the International Criminal Tribunal for the former Yugoslavia and efforts to prosecute war criminals before domestic courts are inadequate. Additionally, the government has failed to respond effectively to attacks against ethnic minorities.

### ***International Criminal Tribunal for the former Yugoslavia (ICTY)***

Serbia and Montenegro's cooperation with the ICTY took a marked turn for the worse after the December 2003 parliamentary elections and the establishment of a new Serbian government dominated by the nationalistic Democratic Party of Serbia (DSS). Serbian Prime Minister Vojislav Kostunica openly opposes the arrests of suspects indicted by the ICTY, arguing that they should surrender voluntarily.

On October 9, 2004, former Bosnian Serb army general Ljubisa Beara, charged with genocide for crimes committed against Bosnian Muslims in Srebrenica in 1995, was transferred to the ICTY. Serbian officials insisted that Beara surrendered voluntarily, notwithstanding the claims by the ICTY Office of the Prosecutor that Beara was arrested. As many as fifteen ICTY indictees remain at large in Serbia and Montenegro, or traveling back and forth between Serbia and Montenegro and Republika Srpska (Bosnia and Herzegovina). They include Ratko Mladic, the former general of the Bosnian Serb army, and Bosnian Serb wartime leader Radovan Karadzic.

The government has been particularly obstinate in its refusal to transfer to ICTY custody three former army and police generals—Nebojsa Pavkovic, Vladimir Lazarevic, and Sreten Lukic—indicted for war crimes in Kosovo in 1999. Prime Minister Kostunica and his cabinet



continue to insist that the ICTY should allow them to be tried in Serbia. The political climate in Serbia and Montenegro—where the men are widely regarded as patriots—and the absence of a genuinely independent judiciary make the chances of a credible prosecution being mounted against them in Serbia very slim.

### ***Domestic War Crimes Trials***

The prosecution of war crimes cases before domestic courts in Serbia is hampered by a lack of political will on the part of the authorities, and the unwillingness of the police to provide evidence to the prosecutor's office. The creation of a special war crimes chamber in 2003 appeared to signal an increased seriousness of purpose. But during 2004 the chamber heard only one trial, yet to be completed at the time of this writing, in a case arising from the November 1991 killing of 200 Croats, near Vukovar, Croatia. In addition, Sasa Cvjetan was convicted in March 2004 by the Belgrade district court for killing fourteen Kosovo Albanian civilians in March 1999 in Podujevo, Kosovo. Cvjetan was sentenced to twenty years' imprisonment.

Current legislation in Serbia contains only rudimentary witness protection mechanisms. The government has drafted a new law on protection of witnesses and other participants in criminal trials, but as of November 2004 the draft law had yet to be enacted.

The office of the special war crimes prosecutor with five prosecutors, and the special war crimes unit within the Serbian police, with eight inspectors working on war crimes investigations, both remain severely understaffed. The office of the special war crimes prosecutor is reportedly preparing several cases pertaining to war crimes in Kosovo in 1999. However, the security situation in Kosovo, coupled with a lack of initiative on the part of the office of the special war crimes prosecutor, has prevented it from getting access to ethnic Albanian witnesses in Kosovo.

The office has yet to prepare any cases arising from crimes committed in Bosnia or in Croatia.

### ***Ethnic and Religious Minorities***

The government failed adequately to respond to the explosion of ethnic and religious violence in Serbia in March 2004. It is similarly failing to address a year-long wave of low-level violence against non-Serbs in the Vojvodina region in northern Serbia.

On March 17, mobs burnt down mosques in Serbia's biggest towns, Belgrade and Nis. The violence was sparked by reports from Kosovo of widespread rioting and attacks on minorities by ethnic Albanians. The few police officers deployed to protect the mosques were unable to control the rioters. In a March 17 television interview, Serbian Interior Minister Vladan Jovic effectively encouraged the rioters, assuring viewers that the police would not use force against "its own people." On the same evening, the police in Novi Sad stood by as demonstrators attacked and seriously damaged an Islamic community center, as well as pastry shops and bakeries belonging to ethnic Albanians and Muslims. In the following months, prosecutors in Nis and Belgrade charged three dozens rioters with participation in a violent group, rather than with ethnically- or religiously-aggravated forms of violence. To date, there have been no indictments for the violence in Novi Sad.

There have been dozens of incidents against ethnic minorities in Vojvodina since January 2004. The violence ranges from tombstone desecration and painting of nationalistic graffiti to confrontations involving young persons of different ethnicities. The government initially claimed that the incidents were not ethnically motivated. In the face of mounting evidence that most of incidents had an ethnic motivation, and European Union and Council of Europe condemnations of the violence, the government eventually acknowledged there was a problem. In September, Serbian Prime Minister Kostunica and the

Minister of Serbia and Montenegro for Human and Minorities Rights Rasim Ljajic visited Vojvodina and vowed to end ethnic intolerance. By October there had been only one case in which a court charged perpetrators with ethnically motivated crimes. Most other cases have either not reached trial, or resulted in minor penalties for disturbing the peace.

In southern Serbia—a predominantly ethnic Albanian area bordering eastern Kosovo—the school curriculum continues to ignore Albanian culture and history. There is still no progress on improving educational opportunities for Roma children in Serbia. Most Roma children drop out of school altogether at an early stage, or are channeled into the schools for students with mental disabilities. Thousands of Roma families—many of them displaced from Kosovo—live in makeshift settlements on the outskirts of towns, without electricity, running water, sewers, or access to public health and education services.

Serbia and Montenegro has seen some progress during the year in the implementation of the 2002 Law on the Rights and Freedoms of National Minorities. Most minority groups have completed establishing national councils under the law. The councils play a consultative role in minority education and cultural matters.

### ***Key International Actors***

The United States government enjoys considerable influence with the authorities in Serbia. Serbia's failure to cooperate with the ICTY is a growing cause of friction in their relations. The U.S. suspended U.S.\$26 million in economic assistance to Serbia on March 31, 2004, over its non-cooperation with the ICTY. It is the first time the U.S. has taken such a step since the fall of Slobodan Milosevic in October 2000. The U.S. position has been less than principled, however. The Serbian government's request to try Serbian generals wanted by the ICTY in Serbia rather than handing them over to the tribunal has met with a

sympathetic response from two senior U.S. government officials. Mixed signals from the U.S. encourage the Serbian officials to persist in non-cooperation with the ICTY.

On March 18, the ICTY sentenced former Yugoslav Navy admiral Miodrag Jokic to seven years in prison for the 1991 shelling of the Croatian town of Dubrovnik. In February, the ICTY prosecutor rested its case against the former President Slobodan Milosevic, who faces crimes against humanity and genocide charges. The beginning of Milosevic's defense has been frustrated by his refusal to cooperate with the lawyers assigned to him on September 2. Milosevic continued to insist on representing himself, which the trial chamber has determined was not appropriate given the serious deterioration in his health. On November 1, ICTY Appeals Chamber confirmed the decision on the assignment of lawyers, but gave Milosevic greater scope to run his case. The overall perception of the Tribunal's work among Serbian public remains negative, mainly due to the hostility of consecutive Serbian governments and the media to the work of the tribunal.

The European Union is attempting to make a more effective use of the association and stabilization process to leverage improvements in Serbia's performance on human rights. The Stabilization and Association report from April 2004, noted progress in the area of minority rights, but also the slower than hoped-for reform of the police and judiciary, and shortcomings in the conduct of domestic war crimes trials. The European Partnership document, adopted by the E.U. Council on June 14, details a list of short- and medium-term human rights priorities for Serbia and Montenegro's further integration with the E.U. On October 11, the European Commission announced that it would re-launch the Feasibility Report on a Stabilization and Association Agreement (SAA) with Serbia and Montenegro. The report, due to be finalized by spring 2005, will assess the country's capacity to negotiate and implement the far-reaching political and economic obligations the agreement entails.

## ***Kosovo***

In March 2004, the United Nations-administered province of Kosovo returned to the international agenda. Two days of widespread riots—the worst violence since 1999—revealed the precarious situation of the province’s minority population, the weakness of security structures, and the frustration of the majority population at the international institutions that govern Kosovo. Lack of security for minorities, coupled with a continuing accountability gap and uncertainty regarding the province’s political status, limit the return of internally displaced and refugee Kosovars to their homes. The impact of Kosovo’s inadequately functioning judicial institutions is felt by majority and minority populations alike. October elections for Kosovo’s legislative assembly were free of violence, but most Serbs did not participate.

### ***Protection of Minorities***

The March 17-19 riots shattered the illusion of security for Kosovo’s minority communities. At least thirty-three major riots took place across the province, involving an estimated 51,000 predominantly ethnic Albanian participants. The violence—directed at international organisations as well as minorities—left twenty-one people dead, more than 950 wounded, and some 4,100 people displaced, almost all of them Serbs, Roma, Ashkali, or other non-Albanian minorities. At least 730 minority-owned homes—including some belonging to recent returnees—and twenty-seven Orthodox churches and monasteries were burned and looted, together with at least ten public buildings providing services to minorities, including a hospital, two schools, and a post office.

During the riots, the security organizations in Kosovo—the NATO-led Kosovo Force (KFOR), U.N. international civilian police, and the local Kosovo Police Service (KPS)—almost completely lost control. In too many cases, minorities under attack were left entirely unprotected. Poor

inter-agency coordination, limitations on deployment in individual KFOR contingents (so-called “caveats”), and lack of riot-control training and equipment for KPS, U.N. police, and KFOR, provide part of the explanation.

Beyond the destruction of homes, and the displacement of more than four thousand people, the violence reinforced existing concerns among minorities about their personal safety, fuelled by routine—and frequently unreported—ethnically-motivated harassment and intimidation, verbal abuse, property defacement, and stone-throwing. Minorities also face persistent discrimination in the provision of education, social welfare, and health services, and limited access to administrative offices and courts. There has been little progress in implementing the new anti-discrimination law.

Efforts to improve coordination among KFOR and U.N. police have yet to reassure either minority communities or those agencies working on their behalf that international security structures would be able effectively to manage a repeat of March violence. Assurances from the U.N. Interim Administration Mission in Kosovo (UNMIK) that the situation has stabilized—often supported by crime statistics considered on par with many Western European countries—ring hollow at a time when many minorities have little or no freedom of movement, and remain subject to harassment and intimidation.

### ***Return of Refugees and Internally Displaced Persons***

Even before the March violence, the overall picture on returns in Kosovo was bleak. Fewer than 5 percent of the more than 200,000 internally displaced and refugees from minority communities who left their homes since 1999 have returned. The majority are in Serbia, Montenegro, and Macedonia. By the end of September 2004, fewer than 1,500 voluntary minority returns had occurred. (During the twelve months of 2003, there were 3,801 minority returns). The figures

include returns of displaced ethnic Albanians to locations where they are in the minority. Those returns that did take place were often incomplete or partial returns—with only part of the family returning, or the family returning only for part of the year. As of early October 2004, 2,288 of the 4,100 minorities driven from their homes by the March violence remained displaced.

Even prior to March, the United Nations High Commissioner for Refugees (UNHCR) warned against the forced return of minorities, including ethnic Albanians from areas where they are in the minority, and those from mixed families. Forced returns of minorities have continued, however, together with the return of larger numbers of ethnic Albanians to majority areas.

### ***Impunity and Access to Justice***

While there has been progress toward the establishment of a functioning and sustainable justice system in Kosovo over the past five years, the current picture of accountability for crimes is one of rampant impunity. Ongoing legislative drafting, including the recently enacted criminal procedure, criminal, gender equality, and anti-discrimination laws, though an important part of the judicial process, can do little to remedy many of the practical obstacles to accessing justice in Kosovo.

The current justice system continues to suffer from a significant, and ever increasing, backlog of cases; a shortage of international and local judges; virtually non-existent mechanisms for witness protection and relocation; poorly-trained and inadequately supported investigators and prosecutors; persistent concerns over the perceived bias of ethnic Albanian judges; and serious problems in ensuring the right to be tried within a reasonable time, including securing the attendance of the accused at trial. The problems affect all communities, undermining confidence in the criminal justice system and the rule of law.

There have been few prosecutions for war crimes committed in 1998 and 1999 and for post-war inter-ethnic and political violence, especially during the period of late 1999 and 2000. The second major trial of former Kosovo Liberation Army (KLA) members began in October 2004. All of the alleged victims are ethnic Albanian. Verdicts in the first domestic war crimes trial, the so-called “Llap” case, were only rendered in late 2003. All but one of the victims in that case are ethnic Albanian. There has also been little progress in resolving the more than three thousand outstanding cases of missing persons from Kosovo.

In comparison to the dismal rate of prosecutions for offences prior to March—whether for war crimes, inter-ethnic crimes, or ordinary criminal offences—the response to the March events has been dramatic. More than 270 people have been arrested for criminal acts relating to the violence. The bulk of these arrests, however, have resulted in charges for fairly minor offences, adjudicated by the local Municipal and Minor Offences Courts. Despite the minor nature of the offences charged, and the relative speed at which these cases should be adjudicated, fewer than half had been resolved by late October 2004. Of the fifty-seven more serious cases relating to murders, ring-leaders, serious inter-ethnic crime, and major arson attacks, only about one-third were in the judicial process by late October 2004, with indictments filed in little more than half of those cases. Cases involving allegations of police complicity in violence are still under investigation.

Trafficking of women and girls—a significant problem in Kosovo—is another area where there is a serious accountability gap. There have been few prosecutions for trafficking. Women and girls rounded up in police raids have been prosecuted for being unlawfully present in Kosovo or for prostitution. The inclusion in the UNMIK witness protection program of trafficking victims facing serious threat as of September 2004 is a welcome development.



The problems with the criminal justice system are mirrored in Kosovo's civil courts. Case backlogs, access to the courts for ethnic minorities, and a sometimes chronic failure to implement court decisions, are among the obstacles.

### ***Key International Actors***

The United Nations remains the key international actor in Kosovo. The appointment of the experienced diplomat Søren Jessen-Petersen as special representative to the secretary general (SRSG) in August was broadly welcomed as an opportunity to re-energize the tired U.N. mission ahead of negotiations on Kosovo's political status. The new SRSG faces a major challenge to reinvigorate the U.N.'s work on police and justice issues, and restore confidence in the mission among Kosovo's communities. In October, the U.N. Human Rights Committee requested that UNMIK submit a report to it on the situation of civil and political rights in Kosovo.

The first trial of former KLA members at the International Criminal Tribunal for the former Yugoslavia began on November 15. Fatmir Limaj, Haradin Bala, and Isak Musliu are charged with crimes against humanity for their alleged role in the torture and murder of Serb and ethnic Albanian civilians at a KLA prison camp in 1998. The three men have pleaded not guilty to all charges.

The Contact Group—France, Germany, Italy, Russia, the United Kingdom, and the United States—renewed their focus on Kosovo in the wake of the March violence. The group has emphasized that progress on minority protection and other human rights standards remain a precondition for a viable political settlement in Kosovo.

The Organization for Security and Cooperation in Europe (OSCE) Mission in Kosovo is increasingly emphasizing the capacity-building elements of its mandate, including training for judicial officials and offi-

cers from the Kosovo Police Service. It continues to monitor the courts and produce periodic reports on minority rights together with UNHCR.

NATO has been working at a diplomatic level to remove national restrictions (“caveats”) on the deployment of NATO contingents in Kosovo—widely seen as a barrier to a coordinated and effective KFOR response to security incidents.

The European Union remains the key international player with regard to economic development, including Kosovo’s vexed privatization process. The E.U. is assuming a growing importance in the political sphere—a role suggested in the June 2004 U.N.-commissioned report by Norwegian NATO Ambassador Kai Eide. New envoys from the E.U. High Representative on Common Security and Foreign Policy and the European Commission were dispatched to Pristina/Prishtina in the wake of the March violence.

## TAJIKISTAN

The human rights situation in Tajikistan is fragile. Despite reforms on paper—including a new election law and a moratorium on capital punishment—the government continues to put pressure on political opposition, independent media, and independent religious groups. The political climate has deteriorated as President Emomali Rakhmonov attempts to consolidate power in advance of 2005 parliamentary and presidential elections.

### ***Political Opposition***

Hizbi Demokrati-Khalkii Tojikiston (the People's Democratic Party of Tajikistan), led by President Rakhmonov, dominates political life. Under 1997's power-sharing arrangement, opposition parties are guaranteed 30 percent of top government posts. In January 2004, Rakhmonov replaced senior government officials from other political parties with members of his own party, reducing the other parties' share of top posts to 5 percent.

Rakhmonov's opponents are vulnerable to prosecution on politically-motivated charges. In January 2004, the Supreme Court sentenced Shamsuddin Shamsuddinov, deputy chairman of Nahzati Islomi Tojikiston (the Islamic Renaissance Party, IRP)—which participates in the power-sharing government—to sixteen years in prison on charges of polygamy, organizing an armed criminal group during the civil war, and illegally crossing the border. Three other IRP members were given lengthy prison terms for alleged complicity in Shamsuddinov's armed group. Shamsuddinov, who has maintained his innocence since his arrest in May 2003, alleges he was beaten and tortured with electric shocks while awaiting trial.

Other opposition parties enjoy limited resources and popular support. In principle, they are allowed to exist. In practice, the parties face sig-

nificant obstacles in registering with the Ministry of Justice. In early 2004, the ministry refused to register the charter of the Taraqqiyot (Tajikistan Development) party, citing violations of the Law on Political Parties. In March, four party members went on a six-day hunger strike in protest. The Vakhdat (Unity) party also encountered difficulties registering.

### ***Electoral Reform***

Tajikistan has a history of flawed elections. Neither the 1999 presidential vote nor the 2000 parliamentary elections met international standards. The June 2003 presidential referendum (allowing Rakhmonov to stand for another two seven-year terms as president) was also marred by allegations of vote fraud.

The government has come under increasing pressure to reform the electoral system. In November 2003, the Socialist and Socialist Democratic parties organized the Coalition for Fair and Transparent Elections. The IRP and the Democratic Party joined the coalition in calling for an overhaul of national election law. The Organization for Security and Cooperation in Europe (OSCE) and United Nations also advocated electoral reform. In July 2004, the president signed a new election law. The amended law has drawn criticism from the United States, European Union, and opposition parties, however. The introduction of a U.S.\$500 registration fee for each election candidate is particularly troubling. Critics fear it will prevent opposition politicians from running in upcoming parliamentary elections.

### ***Freedom of Expression***

Freedom of expression remains under threat in Tajikistan, despite the growing popularity of independent newspapers. While independent newspapers and magazines are technically legal, state-run publishing houses refuse to print them, making production difficult or impossible.

The state-controlled printing house Sharq-i-Ozod in Dushanbe decided in November 2003 to stop publishing *Ruzi Nav* (New Day), a major independent newspaper. No explanation was given.

The independent printing house Jiyonkhon continued to print *Ruzi Nav* and other independent newspapers in Dushanbe, including *Nerui Sukhan* (Power of the Word), *Odamu Olam* (People and the Word), and *Najot* (Salvation), a publication of the IRP. In August 2004, authorities closed the Jiyonkhon printing house for alleged tax violations. Other independent and state-owned printing houses have refused to take on publication of the four papers. A printing press in neighboring Kyrgyzstan offered to carry *Ruzi Nav*, and it issued one print run in November. However, the papers were confiscated by Tajik transportation tax police upon arrival in Dushanbe. *Ruzi Nav* is filing charges.

Obtaining official registration is the main obstacle for independent television and radio stations. In September 2003, the State Radio and Television Committee refused to grant the Asia Plus news agency a television broadcast license, stating that the agency lacked the necessary technical equipment and qualified personnel. Asia Plus claims that the committee never examined its equipment or personnel.

Harassment of independent and opposition journalists is a serious concern, although physical attacks on journalists have declined. There have been at least twelve cases of harassment of journalists since January 2004, according to the National Association of Independent Media in Tajikistan. Mavluda Sulonzoda, a reporter for *Ruzi Nav*, received numerous anonymous telephone calls threatening her and her family with violence unless she stopped writing articles critical of President Rakhmonov. Turko Dikayev, an Asia Plus correspondent, reported receiving similar calls. In July 2004, unidentified assailants attacked Rajab Mirzo, an editor for *Ruzi Nav*.

## **Capital Punishment**

Tajikistan's use of the death penalty has long been of international concern. In 2003, four men—Rachabmurod Chumayev, Umed Idiyev, Akbar Radzhabov, and Mukharam Fatkhulloev—were sentenced to death for membership in a criminal gang. The cases of Mr. Chumayev and Mr. Idiyev were considered by the U.N. Human Rights Committee as potential breaches of the International Covenant on Civil and Political Rights. Despite the requests by the Committee to the Tajik government issued on January 22, 2004, and on April 13, 2004, to stay the men's executions while it examined their claims, all four were executed in April 2004. On April 30, 2004, President Rakhmonov introduced a proposal to outlaw the death penalty. As of November, the resulting bill has been approved by both houses of Parliament, but awaited Rakhmonov's signature.

## **Religious Freedom**

The Tajik Constitution guarantees freedom of religion. In practice, government officials monitor, and interfere with, the activities of religious groups. All religious organizations must register with the State Committee on Religious Affairs. Independent religious groups considered extremist or politicized—including the banned group *Hizb ut-Tahrir*, or Party of Liberation—face government scrutiny and harassment. During 2003, approximately 160 suspected *Hizb ut-Tahrir* members were arrested and thirty-four were convicted on subversion charges. In 2004, more than seventy alleged members of *Hizb ut-Tahrir* were arrested. In September, twenty suspected members were convicted: nine received prison sentences from thirteen to fifteen years for crimes including: “organizing a criminal group, inciting national, racial, religious and ethnic strife.” The rest were given short prison terms. Some of those detained on suspicion of involvement in *Hizb ut-Tahrir* allege beatings, sexual violence, and electric shocks in police custody.

## ***Human Trafficking***

Human trafficking is a significant problem in Tajikistan. According to the International Organization for Migration, Tajikistan is a major country of origin for trafficked women and children. Tajik authorities have undertaken some positive steps to curb trafficking, including the creation of new anti-trafficking department in the Ministry of Internal Affairs. In August 2003, Parliament adopted a bill criminalizing human trafficking, with sentences from five to fifteen years. In December 2003, a Tajik woman was sentenced to fourteen years in prison, and her property confiscated, following conviction for trafficking women into the sex industry in the United Arab Emirates. Four members of a trafficking group were convicted in April 2004, and another fourteen cases have been opened by the Ministry of Internal Affairs.

## ***Key International Actors***

Russia has been a dominant influence on Tajikistan's economy and military since the country's independence in 1991. Tajikistan continues to host Russian soldiers under Moscow's direct control. During 2004, Presidents Putin and Rakhmonov negotiated the partial withdrawal of Russian troops by 2006. Tajikistan owes approximately U.S. \$300 million to Russia, and its fragile economy is dependent upon remittances sent home by Tajik migrant workers in Russia. Russia has promised to forgive a large portion of Tajikistan's debt in return for permanent rights to maintain a military base on Tajik soil.

Tajikistan has assumed a heightened importance for the United States government since the 2001 military operation in Afghanistan. The U.S. military provides technical assistance and training to Tajik armed forces. The U.S. contributed \$50.7 million in assistance during 2004. While the majority of U.S. non-military economic assistance to Tajikistan is in the form of humanitarian aid, it increasingly funds democratization, law enforcement, and market development efforts. The February 2004 State

Department country practices report is critical of the Rakhmonov administration's record of torture and ill-treatment of detainees, its suppression of political opposition, and violations of free speech.

On October 11, 2004, Tajikistan became the final Central Asian state to sign a Partnership and Cooperation Agreement (PCA) with the European Union. While the PCA contains human rights conditionality, E.U. policy toward Tajikistan continues to be defined primarily by security and terrorism concerns. Tajikistan receives more E.U. aid per capita than any other Central Asian country. During 2003, the E.U. provided \$10 million in humanitarian aid. In 2004, it scaled down its aid projects to about \$8 million, while focusing more on reconstruction loans.

In August 2004, OSCE voiced concern over the closure of the Jiyonkhon printing press and the attack on newspaper editor Rajab Mirzo, and called on the Tajik authorities to respect media freedom in the run-up to elections. The OSCE advised the government on the conditions necessary for free and fair elections and campaign finance regulations. The widely criticized final version of the election law did not reflect its recommendations.



## TURKEY

Turkey's human rights record continued to improve during 2004, albeit slowly and unevenly, as the country attempted to recover from the legacy of gross violations committed by state forces and armed opposition groups fighting in the countryside and cities in the early 1990s. The reduction in political violence since 1999 has encouraged reform. It was therefore disappointing when Kongra-Gel (Kurdistan People's Congress, formerly known as the Kurdistan Workers' Party [PKK]) resumed attacks in the mountainous southeast of the country, and state forces responded with heavy-handed security operations affecting civilians in rural areas.

Reform has taken one step back for every two steps forward as police, governors, prosecutors, and government institutions tend to interpret legislation as restrictively as possible. Nevertheless, there have been significant turning points: on June 9, 2004, for example, four Kurdish former deputies imprisoned for their non-violent activities since 1994 were released, and the state broadcasting channel gave its first program in the Kurdish language.

Progress in extending basic freedoms has been frustratingly slow, but continues a consistent trend of improvement as over previous years. Achievements in combatting torture remain fragile, with a risk of backsliding into old habits as anti-terror operations resume. The government has once again failed to establish an effective framework for the return of the hundreds of thousands of Kurds forcibly displaced from the southeast during the early 1990s.

Events reflect the interplay of four strong forces: pressure for reform coming from Turkish civil society, impatient with longstanding restrictions and ingrained institutional abuses; the incentive provided by the European Union through Turkey's candidacy for membership; resistance to change presented by the powerful sectors within the military,

security forces and the state apparatus; and the destructive effects of political violence.

### ***Freedom of Expression***

These tensions have produced a very mixed picture for freedom of expression. Journalists and politicians who in earlier years would have received prison sentences for their statements have been acquitted, but prosecutors continue to indict people for their non-violent expression, and several writers served prison sentences during 2004. For example, in May, Hakan Albayrak (*Milli Gazete*) began a fifteen-month sentence at Kalecik prison near Ankara under the Law on Crimes against Atatürk for writing that prayers were not said at the funeral of Mustafa Kemal Atatürk, the founder of the Turkish Republic. Nevin Berktafli is now serving a three and a half year sentence under article 169 (supporting an armed organization) of the Turkish criminal code for writing a book critical of isolation in F-type prisons.

State security courts, commonly used to prosecute and imprison people for their non-violent opinions, were abolished in June 2004, but laws used to stifle free speech such as articles 159 of the criminal code (insulting state institutions) and 312 (incitement to racial hatred) remain in place, and were copied into the new criminal code that was adopted in October.

In June 2004 Turkey's longest-standing prisoners of opinion, the four Kurdish former deputies Leyla Zana, Orhan Doğan, Hatip Dicle, and Selim Sadak, were released pending retrial, after ten years at Ankara Central Closed Prison. They had been convicted in 1994 for their non-violent activities as parliamentary deputies in an unfair trial under the Anti-Terror Law.

In June 2004 state television began broadcasts in Kurdish, Bosnak, Circassian, Arabic, and Zaza. The programs were short with uninspiring

content, but represented a significant change in official attitudes to minority languages. Private radio stations in southeastern Turkey applied to the High Council for Radio and Television for permission to broadcast in Kurdish, but had not received permission by the end of 2004.

### ***Torture and Ill-treatment***

There were fewer cases of torture and ill-treatment in 2004, largely due to safeguards imposed in recent years, and by the government's frequent assertions of zero-tolerance for such abuses. Nevertheless, detainees from all parts of the country report that police and gendarmes beat them in police custody. In some cases, detainees still complain that they have been subjected to electric shocks, sexual assault, hosing with cold water, and death threats. The persistence of these violations is a consequence of poor supervision of police stations, which permits security forces to ignore detainees' rights – and most importantly, the right to legal counsel. Human Rights Watch has urged the government to impose measures to improve internal monitoring of police stations by provincial governors and prosecutors, to permit independent monitoring by members of bar and medical associations, and to launch ministry-level investigations of all allegations of torture.

### ***Internal Displacement***

More than a quarter of a million villagers, mainly Kurdish, remain unable to return to their homes in the southeast, after having been forced out of their homes by security forces in brutal operations accompanied by torture and “disappearance” during the conflict between security forces and the PKK during the 1990s. In most cases, communities were forcibly evacuated if they refused to join the paramilitary “village guards,” a brutal and corrupt force that was armed and paid by the government to fight the PKK.

Government projects for return did not provide the displaced with adequate resources to re-establish their lives in their former homes or establish conditions which would enable them to return in safety. Those villagers who attempted to return were in some cases turned back by local gendarmes because they refused to join the village guards, or were at risk of attack by village guards. In September a village guard allegedly shot and killed Mustafa Koyun and wounded Mehmet Kaya in the village of Tellikaya of Diyarbakir. The villagers who were attacked had been forced to leave Tellikaya in the early 1990s after they refused to join the village guard

Those who attempted to draw attention to the plight of the displaced risk official persecution. In January 2004, Fefika Gürbüz, president of the Migrants' Association for Social Cooperation and Culture (Göç-Der), was convicted of "incitement to racial hatred" for preparing a study of the difficulties faced by displaced Kurds. Gürbüz received a ten-month prison sentence converted to a fine.

### ***Key International Actors***

The Parliamentary Assembly of the Council of Europe (PACE), which had imposed human rights monitoring on Turkey in 1996, lifted the mechanism in June 2004. This was an appropriate move, in view of the general improvement in the intervening nine years, but it is crucial that Turkey and the Assembly do not lose site of the wide-ranging recommendations that accompanied the decision. Other Council of Europe bodies continued their long-standing and close engagement with Turkey. In June the Committee for the Prevention of Torture (CPT) published a report on its September 2003 visit to Turkey. The CPT noted a general improvement, with lawyers, human rights organizations, and even detainees themselves noting a sharp decline in "heavy torture." On the other hand, there were consistent reports of electric shocks used in one custody unit, and medical evidence consistent with beatings in three others. The CPT found that in southeastern Turkey

the “great majority” of those detained by the police or gendarmerie were unable to gain access to a lawyer, and that there were “major deficiencies” in the system for medical examinations.

The European Court of Human Rights (ECtHR) issued further judgments against the Turkish government on issues ranging from freedom of expression to torture and extrajudicial execution. In February 2004 the court found the Turkish government responsible for the deaths of Ikram and Servet Ipek, who “disappeared” after being taken into custody by soldiers who were destroying houses in southeastern Turkey in 1994.

The ECtHR ruled in June 2004 that the ban on wearing the headscarf in universities was not a breach of the right to freedom of religion. Leyla Sahin had been denied access to university because she wore a headscarf. The court echoed the Turkish government’s arguments that the ban is justified in order to preserve the secular public order and to protect the rights of other non-Muslim students and students who choose not to wear the headscarf. Human Rights Watch believes that the ban is discriminatory and breaches the rights to freedom of religion and expression.

International and domestic attention has been firmly fixed on the E.U.’s dealings with Turkey. 2004 was the fifth year of close monitoring to establish whether or not Turkey had met the Copenhagen Criteria: “the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.” This was seen as a make-or-break moment, since a decision in December to open negotiations for membership would strengthen the government and those within the government who have pushed for reform, while a refusal or postponement was likely to be regarded as a sign that the E.U. intended to pull out of the process unilaterally in spite of the substantial human rights improvements.

In October 2004 Hina Jilani, the special representative of the United Nations Secretary-General on Human Rights Defenders visited Turkey to examine the pressures still faced by civil society. In a statement at the end of her visit she noted “genuine steps toward change” but urged that the growing human rights movement should no longer be treated with suspicion by security forces. In November the government issued a circular recognizing the legitimate role of human rights defenders and requiring security forces to treat them accordingly.

Also in October 2004, the European Commission recommended that Turkey’s candidacy should move forward to the next step, with the opening of membership negotiations in 2005. The recommendation included extra monitoring measures, including a “brake clause” that would suspend the candidacy process if respect for human rights are put under threat. In December the Brussels European Council will give a final decision on the opening of negotiations.

## TURKMENISTAN

The regime of president-for-life Saparmurat Niazov is one of the most repressive in the world. It crushes independent thought, controls virtually all aspects of civic life, and actively isolates the country from the outside world. The perverse cult of personality around President Niazov dominates public life and the education system. Civil society, already on the brink of extinction, this year took another blow with a new law criminalizing involvement in unregistered nongovernmental or religious groups. Although 2004 saw the abolition of exit visas and a slight mitigation of the laws on religious freedom and nongovernmental organizations (NGOS), in practice the rights to freedom of movement and conscience are severely restricted. Indeed, the human rights situation in Turkmenistan today is noticeably worse than it was a few years ago.

### ***Freedom of Expression***

Turkmen law bans criticism of any policies initiated by President Niazov and equates it with treason. Therefore, the open expression of alternative points of view is practically impossible. A dramatic example of the harsh consequences for seeking to express alternative views occurred in February, when a dissident from the city of Balkanabad, Gurbandury Durdykulyev, was forcibly taken to a psychiatric hospital after he submitted a request to the president to conduct a peaceful protest.

All national and local media outlets in Turkmenistan belong to the government, cable television and access to the Internet are tightly controlled, and foreign press in practice is forbidden. In July the authorities cut off the transmitting signal inside the country for the Russian radio station *Mayak* (Beacon) after it broadcast an interview with the leader of a foreign-based Turkmen opposition party.

The authorities persecute the few scattered individuals associated with foreign media, in particular Radio Liberty. In 2004, Rakhim Esenov and Ashirkuli Bairiyev, who worked regularly for the Turkmen service of Radio Free Europe/Radio Liberty, were detained on false charges of smuggling into Turkmenistan Esenov's novel about medieval India. Several of Esenov's and Bairiev's relatives were fired from their jobs following the detention. Former film director Khalmurad Gylychdurdyev was also detained and questioned about his work for Radio Liberty. The Ashgabat correspondent of Radio Liberty, Saparmurad Ovezberdyev, was forced into exile in July.

On April 30 a Turkmen political émigré, Mukhamedgeldy Berdiev, who was working at Radio Liberty, was brutally beaten in Moscow by unknown assailants. The attack is presumed to be linked to Berdiev's work criticizing President Niazov on an opposition website.

### ***Civil Society***

In November 2003, a new law on nongovernmental organizations (NGOs) came into force criminalizing the activities of unregistered NGOs. Shortly after its passage, activists from dozens of unregistered groups received warnings that they may be subject to criminal charges for their work. Court cases initiated on arbitrary pretexts led to the liquidation of even well-known, registered NGOs. The government relented on including the criminalization language in the criminal code, though work by unregistered NGOs remains banned. The shrinking community of independent NGOs received a fatal blow in April 2004, when the Ashgabat environmental group Catena was closed. Security agents put pressure on activists of unregistered NGOs, in some cases preventing their contact with foreigners and limiting their ability to travel outside of and within the country.

The educational system continues to deteriorate. Compulsory education is limited to nine years. Niazov's books of poetry and spiritual guidance,



the *Rukhnama*, and hagiographic propaganda about the president are replacing all other curricular materials. The authorities have almost entirely expunged grade-school instruction in the languages of ethnic minorities. Most people who received higher education abroad after 1993 must have their diplomas confirmed by Turkmen authorities in order to hold jobs in certain sectors, including law, medicine, education, and many other jobs in public service. Authorities require these individuals to take exams in *Rukhnama*.

Until recently, The Russian Orthodox church and the Sunni Islam were the only permitted religious confessions in Turkmenistan. In early 2004, the draconian law on religious organizations that had been adopted several months before was softened, after which several groups of so-called “nontraditional faiths” (Baptists, Adventists, Baha’i, and Hare Krishna) were allowed to register. Seven Jehovah’s Witnesses, who earlier had been sentenced to jail as conscientious objectors to military service, were released. Two other Jehovah’s Witnesses, however, were sentenced to prison terms in May and June on the same charges, and in August the secret police obstructed the group meetings of Adventists and Baptists who had registered under the new law.

### ***Freedom of Movement***

Freedom of movement and choice of place of residence are strictly limited. Visiting two of the country’s five *velayaty* (provinces) and the border regions requires prior police permission. In some large cities the sale of property to residents of other provinces is restricted. Despite the fact that exit visas were abolished in January, thousands of people are on “black lists” and are denied the right to leave the country. Several relatives of so-called “enemies of the people” (see below) were arrested in mid 2004 on charges of planning to “cross the border illegally.”

By presidential decree, some quarters of Ashgabat and villages in other provinces were razed to the ground, and residents in many cases were subjected to forced resettlement.

The authorities continue to use internal exile as a method of punishment. A clear example of this is Sazak Begmedov, who has been in internal exile since he was forced to leave Ashgabat in September 2003.

### ***The Battle with “Internal Enemies”***

The government continues its search for numerous “internal enemies” within its ranks, which began after the November 25, 2002, attack on Niazov. In 2004 President Niazov sanctioned the arrests and secret trials of a number of former ministers, heads of provincial administrations, and other former officials suspected of disloyalty. They were formally charged with corruption, abuse of office, and similar offenses. Several secretly went abroad or were detained upon attempting to flee the country. In many cases, officials confiscated their property or harassed their relatives.

In March, the former *mufti* (or leading Muslim cleric) of Turkmenistan, Nasrulla ibn Ibadulla, was sentenced to twenty-two years in prison on charges of anti-government activities. No official information is available about his arrest and trial, though some observers believe the authorities convicted him on charges related to the 2002 attack on President Niazov. Significantly, Ibadulla is implicated in the attack in a book ascribed to the former foreign minister, now imprisoned on charges of leading the attack. The book was published after the former minister’s incarceration, and should be considered a quasi-official source of information.

The authorities also put pressure on the relatives of well-known political émigrés. These people are denied their rights to work and to leave the country.

The fate of more than fifty prisoners, convicted for the 2002 attack on Niazov, remains unknown. It is, however, unofficially related that they are being held in strict isolation in the new secret prison Ovadan-Depe (near Ashgabat). Visits by relatives are forbidden. There are unconfirmed reports of cruel treatment and the deaths of several of the convicted.

While the government has no official policy of ethnic discrimination, some analysts believe the government is suspicious of the political reliability of the country's ethnic Uzbek population. The Turkmen government accused the Uzbek government of involvement in the November 2002 attack on Niazov, by association casting suspicion on the country's Uzbek minority. At the end of 2003 and beginning of 2004, dozens of ethnic Uzbeks were removed from positions of leadership in Dashoguz and Lebap provinces, which are located on Turkmenistan's border with Uzbekistan; several of them were arrested.

### ***Key International Actors***

In the current climate of political isolationism and contempt for the international community, third party governments and international organizations have had little success in improving the human rights situation in Turkmenistan.

After the United Nations General Assembly adopted a resolution on human rights in Turkmenistan in December 2003, the Turkmen authorities began to assert their intentions of strengthening their relationship with international institutions; however, these assertions in many cases proved to be without substance.

In April 2004, at its 60<sup>th</sup> session, the U.N. Commission on Human Rights adopted a resolution on the situation of human rights in Turkmenistan acknowledging the liberalization of laws on religious freedom, but also noting the lack of progress in other key areas that had

been highlighted in the General Assembly's resolution of the previous year.

The relationship between Turkmenistan and the Organization for Security and Cooperation in Europe (OSCE) remains tense. The Turkmen authorities continued to ignore the recommendations made in last year's report, which had been prepared within the framework of the OSCE's Moscow mission, and they used their veto power to block the reappointment of the head of the OSCE's Turkmenistan mission, P. Badescu. In October 2004 it was announced that Turkmenistan will not invite OSCE observers to oversee parliamentary elections at the end of the year.

The U.S. leveraged its influence by tying benefits to freedom of religion and freedom of movement, which has led to partial improvements in both areas. The United States resisted seeking other improvements, perhaps due to an unwillingness to jeopardize the corridor to Afghanistan and flyover rights granted by Turkmenistan.

In contrast, Russia, which enjoys a great deal of influence over Turkmenistan through economic leverage, softened its criticism of Niazov's regime and took a passive position even in disagreements over the status of people with dual Russian-Turkmen citizenship.

## UKRAINE

A November presidential election that was neither free nor fair plummeted Ukraine into its deepest political crisis since gaining independence in 1991. At this writing the two leading candidates, Prime Minister Viktor Yanukovich and opposition candidate Viktor Yushchenko, had both claimed victory. Hundreds of thousands of protesters had occupied the streets of Kiev, and parliament had adopted a vote of no confidence in Yanukovich. Initiatives in several regions in eastern Ukraine to seek autonomy should the opposition candidate win the presidency had raised concern of a possible break-up of the country. While the Ukrainian political elite, together with foreign mediators, were looking hard for a way out of the crisis, the danger of the situation turning violent remained very real. To their credit, the authorities had to date not cracked down on demonstrators.

On December 3, 2004, the Supreme Court, citing allegations of widespread fraud in the vote, ruled that new elections had to be held by December 26.

The crisis, however, was entirely preventable. Its roots lay in the government's persistent violations of basic human rights norms, and political freedoms in particular. For years, under the leadership of President Kuchma, the government imposed ever stricter controls on media coverage, repeatedly sought to manipulate electoral processes, and ignored widespread popular discontent. By doing so, it has undermined legitimate avenues for people to express their grievances in a meaningful way. The government's blatant attempts to manipulate the presidential vote in favor of Prime Minister Viktor Yanukovich—notwithstanding a clear popular preference for opposition candidate Viktor Yushchenko—served to convince many Ukrainians that mass street protests are their only hope of being heard.

The Ukrainian government has a poor track record on press freedom. The government or individuals close to the president own most major media outlets, including almost all television stations. It blatantly uses its sway over these media to influence their coverage of the news, in part by issuing instructions to news editors, sometimes in writing, detailing what news stories should be covered and how. As a result, the government has received a disproportionate amount of positive coverage in most media, while opposition parties and figures have struggled to have their voices heard. Under international pressure, the authorities have taken some steps to address press freedom problems—most notably by adopting a law defining censorship and criminalizing government interference with the press. But the government's continued manipulation of the media strongly suggests that these were not genuine attempts to ensure a free press.

The independent—and often opposition minded—media consists primarily of newspapers and internet publication that have a small readership. Yet, attacks on independent journalists have been frequent and President Kuchma was personally implicated in the worst one: the disappearance and murder of opposition journalist Georgiy Gongadze. In 2000, a former presidential body guard made public hours of secretly taped conversations between Kuchma and his inner circle. On one of the tapes, Kuchma appeared to order Gongadze's murder. The president has denied involvement in the murder but to date his administration has hindered a full investigation. In 2004, there were repeated attacks on opposition journalists. In June, Ichvan Kotsanik, a cameraman for an opposition-linked television station, was beaten into a coma and died several days later. It remains unclear who was behind the attack.

In the run-up to the presidential elections, the authorities made extensive use of their administrative resources and the media under their control to promote their favored candidate, Viktor Yanukovich. In August, the Committee of Voters of Ukraine, a nongovernmental

watchdog group, stated in a report that government funds were being used to support Yanukovich's candidacy, and that local officials had forced state employees, such as teachers, to take part in pro-Yanukovich rallies. As in previous elections, political opponents have faced harassment and intimidation. Several months prior to the elections, Viktor Yushchenko suddenly fell ill after what he called an attempt by the authorities to poison him. The authorities have denied the charge and the hospital that treated Yushchenko has not confirmed that he was poisoned.

### ***Entrenched Human Rights Problems***

Ukraine has been plagued by numerous human rights problems that require a structural approach on the part of the government. While it has begun to act on some of these issues, many remain unaddressed.

Torture and ill-treatment continues to be a significant problem in police detention and prisons in Ukraine. Ukraine's human rights ombudsman receives numerous complaints of torture from criminal suspects and estimates that 30 percent of all detainees may become victims of torture or ill-treatment by law enforcement agents. Ill-treatment has resulted in permanent physical damage to many victims, and in the most severe cases, resulted in death. In the vast majority of cases, the perpetrators of torture are not investigated or prosecuted for their crimes. Prison conditions in Ukraine continue to be poor. Prisons are overcrowded, and prisoners have insufficient access to food and health care. As in many other former-Soviet nations, tuberculosis is widespread in prisons.

Ukraine has one of the fastest growing HIV/AIDS epidemics in the world, and human rights violations are fueling its growth. Widespread discrimination against members of high risk groups— injection drug users, sex workers, and men who have sex with men—prevents people from seeking preventative health services and thus increases their risk of contracting HIV. There is also a history of discrimination against peo-

ple infected with HIV. Although the government has made a commitment to fighting the spread of HIV/AIDS and plans to distribute generic antiretroviral drugs, these steps alone are insufficient to stem the epidemic.

Ukraine has recently legalized the use of methadone, widely regarded as the single most effective means of treating opiate dependency. Although the medical and public health establishment has been generally supportive, resistance to methadone by Ukrainian law enforcement bodies have so far prevented its use. One critically important outcome of this situation is that many drug users living with HIV will not benefit from expanding access to antiretroviral (ARV) therapy, as they will be barred from receiving the major tool necessary to support treatment adherence.

Women face severe discrimination in Ukraine's workforce. Men hold a disproportionate number of managerial positions and receive better pay than women in comparable jobs. Discrimination is especially prevalent in the job market, where women's access to high paying or high prestige jobs is limited in both the public and private sectors due to discriminatory recruitment processes. Many women are forced into lower paying jobs or remain jobless—women make up 80 percent of the unemployed in Ukraine. Some women, frustrated by the lack of opportunities at home, seek employment outside Ukraine and become victims of trafficking into forced labor abroad, including forced sex work. Women are also victims of widespread domestic abuse.

Ukraine is both a transit point and a point of origin for human trafficking. Ukrainian women and girls are sent to the Middle East and other European countries and forced to be sex workers, while Ukrainian men are sent to other parts of Europe and North America for forced labor. Many victims of human trafficking from Moldova and Asian nations travel through Ukraine, on their way to countries where they will be exploited. The past year has seen an increase in the number of traf-



ficked children, many of them orphans. The government of Ukraine has recently taken steps to reduce human trafficking using increased prosecution of suspected traffickers and programs to help victims. Despite this progress, however, Ukraine still does not meet international standards meant to fight trafficking, and the problem persists.

### ***Key International Actors***

The international community has closely monitored the presidential elections. With the exception of the monitors from the Commonwealth of Independent States, which is made up of twelve former Soviet States, international monitors found that the presidential vote had fallen short of international standards. The Organization for Security and Cooperation in Europe stated that the second round “did not meet a considerable number of [international] commitments for democratic elections.” The E.U., U.S., Council of Europe, and NATO have all expressed concern over widespread fraud and have urged a peaceful solution to the political crisis. The E.U. has strongly endorsed a new vote as the best way forward.

## UZBEKISTAN

Uzbekistan's disastrous human rights record is long-standing and changed little in 2004, with major violations of the rights to freedom of religion, expression, association, and assembly. Uzbekistan has no independent judiciary and torture is widespread in its pre-trial and post-conviction facilities. In response to international pressure the government has introduced, but not implemented, incremental reform, resulting in no fundamental improvement. The government continues its practice of controlling, intimidating, and arbitrarily suspending or interfering with the work of civil society groups, the media, human rights activists and opposition political parties.

In 2004 Uzbekistan was shaken by two episodes of violence—bombings, and shootings in Tashkent and Bukhara in late March and early April, and bombings of the U.S. and Israeli embassies and the General Prosecutor's office in Tashkent on July 30.

Uzbekistan is a key ally of the United States in the global campaign against terrorism, but undermines that campaign by using it to justify gross human rights abuses. Unfair trials of terror suspects in Uzbekistan that result from gross abuses further undermine counterterrorism efforts by producing unreliable convictions which damage rather than promote the rule of law.

### ***Religious Persecution***

For years, the government has imprisoned on “fundamentalism” charges individuals whose peaceful Islamic beliefs, practices, and affiliations fell outside of strict government controls. An accumulated total of about 7,000 people are believed to have been imprisoned since the government's campaign against independent Islam began in the mid-1990s. The government justifies this campaign by referring to the “war on terror,” failing to distinguish between those who advocate violence and

those who peacefully express their religious beliefs; it used the March-April attacks to give new validation to the campaign.

By November 1, 2004, Human Rights Watch documented 241 convictions; the true numbers are believed to be much higher. Police use torture and other illegal means to coerce statements and confessions from these detainees. Courts fail to investigate torture allegations made by defendants at trial, despite an instruction by the Supreme Court to judges to exclude any evidence obtained under illegal means, and routinely sentence defendants to long prison terms based solely or predominantly on such testimony.

Conditions in Uzbekistan's prisons are poor, and religious and political prisoners suffer particularly harsh treatment. According to testimony by relatives, prisoners are forced to sign statements begging President Islam Karimov for forgiveness, renouncing their faith, and incriminating themselves as terrorists. Prisoners who refuse are punished with beatings, time in punishment cells, and even new criminal prosecutions.

### ***Terrorism Trials***

Approximately one hundred people were tried on terrorism, murder, and other charges relating to the March-April 2004 violence. Trials monitored by Human Rights Watch and other observers failed to meet international fair trial standards. Many defendants denied any knowledge of or involvement in the violence and alleged that police had held them incommunicado and used torture, threats, and other pressure to coerce confessions during the investigation. Bakhtior Muminov, tried in October along with four others for alleged participation in the March-April violence and alleged membership Hizb ut-Tahrir (a non-violent religious organization that is banned in Uzbekistan) had been held incommunicado from his arrest in late March to August. At trial he testified that he had been tortured with beatings and electric shocks to coerce a confession. The judge failed to launch any inquiry into

Muminov's or other defendants' torture allegations and sentenced him to sixteen years' imprisonment.

### ***Torture***

The government has made no visible progress on ending the use of torture in practice and only minimal progress on implementing the recommendations made by the United Nations (U.N.) Special Rapporteur on Torture after his visit to Uzbekistan in 2002. The Supreme Court issued an instruction to judges to exclude defendants' testimony and confessions extracted under torture. In practice, however, judges do not implement this instruction. Although the government states that it has prosecuted law enforcement officers for torture and other illegal methods, Human Rights Watch has received no response to its request for further information about these cases. Judges routinely accept as evidence testimony and confessions in cases where torture is alleged as well as base convictions solely on confessions made by defendants during the investigation. Human Rights Watch continued to receive credible allegations of torture in investigations and pre-trial custody as well as in prisons.

### ***Crackdown on Civil Society***

The government tightened its grip on civil society in 2004 by extending to international nongovernmental organizations (NGOs) many of the repressive tactics it has used against local NGOs. In 2004 it introduced burdensome new registration and reporting procedures requiring international NGOs to obtain "agreement" from the Ministry of Justice (MOJ) on the content, agenda, timing and place of any activity, and to invite MOJ officials to attend. The government closed the Open Society Institute, which provided vital support for civil society groups, and suspended the activities of the local affiliate of the media-support organization Internews for six-months for alleged minor administrative

violations. It also forced all women's NGOs to undergo re-registration procedures.

The government refused to register any independent human rights organizations in 2004. Throughout the year, the government harassed, threatened, and detained human rights defenders in an attempt to restrict information on human rights abuses. At least two activists were severely beaten by unknown assailants after receiving threats from the government to stop their activities. On February 16, authorities arrested defender Muidinjon Kurbanov and held him incommunicado for three days, during which they threatened and forced him to sign a dictated confession. He was tried and sentenced to three years' imprisonment on fabricated charges of weapons possession in an unfair trial that focused on his human rights work. The sentence was reduced to a fine on appeal and after international outcry.

Uzbek authorities continue to harass, detain, and hold under effective house arrest activists who attempted to stage demonstrations. For example, in June authorities prevented Bahodir Choriev, a farmer trying to prevent government confiscation of his farm, from holding a demonstration by holding him and his relatives in their apartment. Police forced Choriev and eighteen of his relatives onto a bus and drove them outside Tashkent where they interrogated them and confiscated their passports.

## ***Elections***

There are no genuine opposition parties registered in Uzbekistan. The government refused to register opposition political parties in advance of the December 26 parliamentary elections. The Birlik (Unity) party applied for registration several times, each time denied by the MOJ, most recently in January 2004, when the MOJ claimed that the party's signature lists were flawed. On appeal, the Supreme Court ruled that the court had no jurisdiction to review registration decisions. Although

the law allows unaffiliated candidates to run through initiative groups, in practice, independent candidates faced intimidation, harassment, and other serious obstacles obtaining registration and few ultimately ran. The government also refused to allow independent observers to observe at polling stations. Citing serious flaws in Uzbekistan's election laws, the lack of registered opposition parties and restrictions on freedom of the press, the Office of Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Cooperation in Europe (OSCE) refused to send a full election observation mission to Uzbekistan.

### ***Key International Actors***

In July, the U.S. State Department determined that Uzbekistan had failed to make sufficient progress on its human rights commitments as outlined in the U.S.-Uzbek Bilateral Agreement and therefore did not qualify for direct government assistance, cutting U.S. \$18 million in aid. However, in August, the Department of Defense undermined the principled message this decision sent by pledging U.S. \$21 million in new military aid. The U.S. continues to regard Uzbekistan as an important partner in the war on terror.

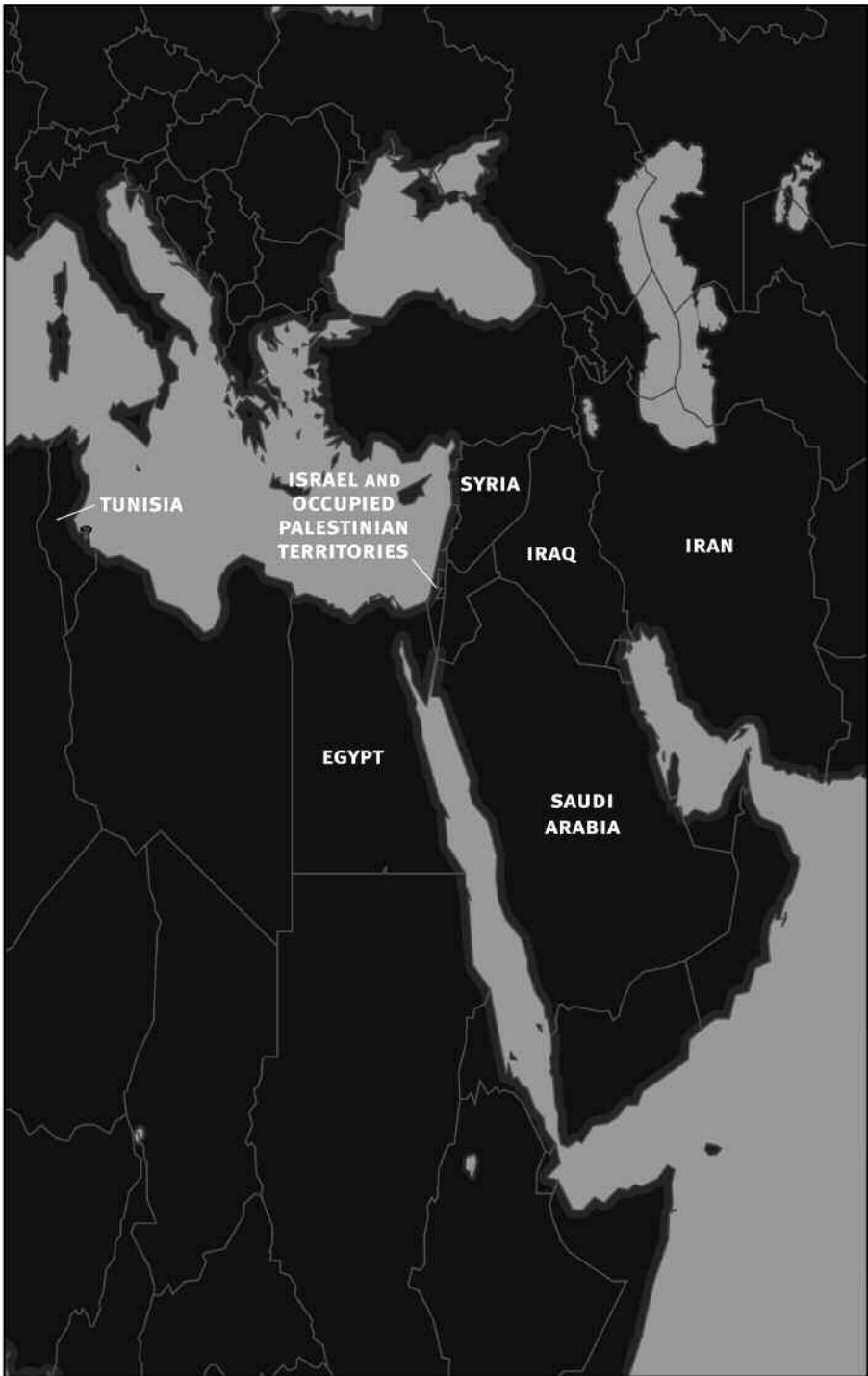
The E.U.-Uzbekistan Partnership and Cooperation Council met in January 2004 to discuss implementation of the Partnership and Cooperation Agreement (PCA). The PCA requires that partner states guarantee basic civil and political rights. The E.U. missed the opportunity to obtain a commitment from the Uzbek government to implement specific reforms and prematurely gave the Uzbek government credit for progress on torture and civil society liberalization, when such progress had not been made.

In March 2004, following the expiration of the one-year deadline it had set for the Uzbek government to meet specific human rights benchmarks as a condition for further engagement, the Board of Directors of

the European Bank for Reconstruction and Development (EBRD) took the unprecedented decision to suspend direct assistance to the government of Uzbekistan, citing the government's failure to make progress on the benchmarks. It decided to limit investment to the private sector and stay involved in public sector projects only to the extent that they directly affect the well-being of the general population, or involve neighboring countries.

The benchmarks had been set in the bank's March 2003 country strategy for Uzbekistan, issued less than two months before it held its annual meeting in Tashkent. They pertain specifically to human rights: greater political openness and freedom of the media; registration and free functioning of independent civil society groups; and implementation of the recommendations issued by the U.N. Special Rapporteur on torture.

The U.N. Human Rights Commission voted to impose a confidential monitoring mechanism on Uzbekistan due to persistent lack of improvement in its human rights record. In October 2004, an independent expert appointed by the Commission visited Uzbekistan to conduct a human rights assessment. He will present his findings in a confidential report at the next meeting of the Commission.





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2005

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**MIDDLE EAST  
AND NORTH AFRICA**

## EGYPT

Egypt's human rights record showed little improvement during 2004. The government set up a National Council for Human Rights and appointed several respected independent activists to its board, but serious issues like routine torture of persons in detention and suppression of non-violent political dissent remain unaddressed. Emergency rule continues, providing the basis for arbitrary detention and trials before military and state security courts. Victims of torture and ill-treatment include not just political dissenters but also persons detained in ordinary criminal inquiries, men suspected of engaging in consensual homosexual conduct, and street children. Nongovernmental organizations are subjected to stringent controls under the new law on associations, and the authorities arbitrarily reject the applications of several organizations to register as NGOs, as required by the law. Women and girls face systematic discrimination under personal status and other laws, and violence directed at women and girls frequently goes unpunished.

### ***Emergency Rule***

In February 2003, the government extended twenty-two years of continuous emergency rule for another three years. The Emergency Law, Law No. 162 of 1958, allows arbitrary arrest and indefinite detention without trial, and creates an atmosphere of impunity in which torture and ill-treatment flourish. The government has used the emergency rule to criminalize political dissent at will, and to refer civilian defendants to military courts or to exceptional state security courts in which trials do not meet international fair trial standards. Some seven hundred alleged Islamist militants who had never been tried or convicted of a crime were reportedly released during 2004. The Cairo-based Human Rights Association for Assistance to Prisoners in early 2004 estimated that the total number of persons then detained without charge for prolonged periods was around fifteen thousand. The group released a list

of sixty-five attorneys who have been held without charge or trial under the provisions of the emergency law, some for as long as sixteen years.

### ***Torture***

Security forces and police routinely torture and mistreat detainees, particularly during interrogations. Torture in the past was used primarily against political dissidents, especially Islamists, but in recent years it has become rife in ordinary police stations as well, affecting citizens who find themselves in custody as suspects or in connection with criminal investigations. Torture and ill-treatment are known or suspected to be the cause of at least seventeen deaths in detention in 2002 and 2003, including at least three cases at the hands of the State Security Investigations (SSI) branch of the Ministry of Interior, and additional cases of deaths in detention were reported in 2004. Ministry of Interior officials confirmed to Human Rights Watch in February 2004 that there had not been a single criminal investigation of SSI officials for torture or ill-treatment in the past eighteen years, and no internal disciplinary measures were imposed, despite numerous credible allegations of serious abuse.

### ***Restrictions on Freedom of Association***

Egypt's new law governing associations, Law 84 (2002), severely compromises the right to freedom of association, giving the government unwarranted control over the governance and operations of NGOs. The law, which took effect in June 2003, provides criminal penalties for "unauthorized" activities, including "engaging in political or union activities, reserved for political parties and syndicates" (Article 11). The law also provides for up to six months in prison for receiving donations on behalf of an NGO without prior ministry approval. Persons carrying out NGO activities prior to the organization's formal registration are liable to a three-month prison term.

NGOs whose applications for registration were initially rejected include the New Woman Research Center, which raises public awareness of women's rights issues, including female genital mutilation and domestic violence, and the Land Center for Human Rights, which works on economic and social rights issues in rural areas. The authorities in both cases said that security agencies did not approve the applications. The government rejected the application of the Egyptian Association Against Torture because it listed among its goals "to change Egyptian legislation in accordance with human rights conventions." The Ministry of Social Affairs wrote that civil associations had no legal right to be "concerned with legislation" and that such activities were unconstitutional.

Egypt also maintains strict controls over political associations. The official Political Parties Affairs Committee, composed almost entirely of government officials and currently headed by the chairman of the ruling National Democratic Party, routinely rejects applications to form new political parties, based on broadly worded criteria such as whether the party's program "constitutes an addition to public life." On October 27, 2004, the committee, for only the third time since 1977, approved a new party. Al Ghad (Tomorrow) is headed by independent member of parliament Ayman Nur. The committee however continued to reject other applications.

### ***Arrests and Torture of Men for Consensual Homosexual Conduct***

Since early 2001, the Cairo vice squad has spearheaded a campaign of entrapment and harassment that has resulted in the arrest, prosecution, and conviction of hundreds of men alleged to have had sex with other men. Officials claim that they are targeting promiscuity and prostitution ("debauchery"), but the authorities routinely raid private apartments, wiretap phones, and employ extensive surveillance of and entrapment via the Internet to round up individuals whose only offence is their alleged homosexual conduct. Many of those detained endure routine

torture and ill-treatment at the hands of security officials. Doctors participate in torturing these detainees under the guise of collecting forensic evidence to support the charge of “habitual debauchery.”

### ***Ill-treatment of Street Children***

The government periodically conducts mass arrest campaigns of street children. Typically, the children are homeless, beggars, or truants from school but have committed no crime. In custody, they often face beatings, sexual abuse, and extortion by police and adult suspects, and police routinely deny them access to food, bedding, and medical care. The authorities do not routinely monitor conditions of detention for children, investigate cases of arbitrary arrest or abuse in custody, or appropriately discipline those responsible. In many cases, children are detained illegally for days before going before the public prosecutor on charges of being “vulnerable to delinquency.” Police often do not notify parents about arrests, and children who have fled parental abuse or who lack guardians have no recourse for assistance.

### ***Women’s Rights***

Egypt’s family and nationality laws have seen some reforms in recent years. However, additional steps are required to amend laws that discriminate against women and girls, to prosecute gender-based violence, and to grant women and girls full and equal citizenship rights. Discriminatory personal status laws governing marriage, divorce, custody, and inheritance have institutionalized the second class status of women in the private realm and undermined their legal standing. Discriminatory divorce laws and policies, for instance, undermine the ability of many women, including those in abusive relationships, from ever attempting to seek a divorce and leave others languishing in legal limbo for years. The penal code does not effectively deter or punish domestic violence, and police are routinely unsympathetic to the concerns of battered women and girls. Current governmental policy also

denies women the opportunity to become judges. This exclusion of women from the judiciary is not codified in law but is a matter of practice that violates Egypt's constitution and its international obligations not to discriminate on the basis of gender.

### ***Religious Intolerance and Discrimination against Religious Minorities***

Although Egypt's constitution provides for equal rights without regard to religion, discrimination against Egyptian Christians and intolerance of Baha'is and minority or unorthodox Muslim sects remains a problem. Egyptian law recognizes conversions to Islam but not from Islam to other religions. There are credible reports that Muslims who convert to Christianity sometimes face harassment. Difficulties in getting new identity papers have resulted in the arrest of converts to Christianity for allegedly forging such documents. Baha'i institutions and community activities are prohibited by law. The authorities have detained and prosecuted individuals adhering to or promoting non-orthodox Islamic sects on grounds of insulting one of the "heavenly religions"—Islam, Christianity, and Judaism.

### ***Key International Actors***

The United States has long been Egypt's largest provider of foreign military and economic assistance, amounting to \$1.3 billion in military aid and \$600 million in economic assistance in Fiscal Year 2004. Egypt hosts the bi-annual Bright Star multilateral military exercises with U.S. forces, the largest military exercise in the region. The U.S. considers Egypt to be "an active partner in the global war against terror": Deputy Assistant Secretary of State David Satterfield told a Congressional committee in June 2004 that the two governments "cooperate closely on a broad range of counter-terrorism and law enforcement issue."

The Association Agreement between Egypt and the European Union, signed in June 2001, came into force on June 1, 2004. Although the agreement is premised on “respect for human rights and democratic principles,” Egypt’s serious human rights problems do not seem to have affected its operation. The E.U. is Egypt’s biggest trading partner, currently taking 40 percent of its exports and providing 34 percent of its imports.

## IRAN

Respect for basic human rights in Iran, especially freedom of expression and opinion, deteriorated in 2004. Torture and ill-treatment in detention, including indefinite solitary confinement, are used routinely to punish dissidents. The judiciary, which is accountable to Supreme Leader Ali Khamene'i rather than the elected president, Mohammad Khatami, has been at the center of many serious human rights violations. Abuses are carried out by what Iranians call "parallel institutions": plainclothes intelligence agents, paramilitary groups that violently attack peaceful protests, and illegal and secret prisons and interrogation centers run by intelligence services.

### ***Freedom of Expression and Opinion***

The Iranian authorities systematically suppress freedom of expression and opinion. After President Mohammad Khatami's election in 1997, reformist newspapers multiplied and took on increasingly sensitive topics in their pages and editorial columns. Prominent Iranian intellectuals began to challenge foundational concepts of Islamic governance. In April 2000, the government launched a protracted campaign to silence critics: closing down newspapers, imprisoning journalists and editors, and regularly calling editors and publishers before what became known as the Press Court. Today, very few independent dailies remain, and those that do self-censor heavily. Many writers and intellectuals have left the country, are in prison, or have ceased to be critical. Days after the visit of the Special Rapporteur for freedom of opinion and expression, Ambeyi Ligabo, in late 2003, one of the student activists with whom he spoke was re-arrested. In 2004 the authorities also moved to block Internet websites that provide independent news and analysis, and to arrest writers using this medium to disseminate information and analysis critical of the government.



### ***Torture and Ill-treatment in Detention***

With the closure of independent newspapers and journals, treatment of detainees has worsened in Evin prison as well as in detention centers operated clandestinely by the judiciary and the Islamic Revolutionary Guard Corps. Torture and ill-treatment in detention has been used particularly against those imprisoned for peaceful expression of their political views. In violation of international law and Iran's constitution, judges often accept coerced confessions. The use of prolonged solitary confinement, often in small basement cells, has been designed to break the will of those detained in order to coerce confessions and provide information regarding associates. This systematic use of solitary confinement rises to the level of cruel and inhuman treatment. Combined with denial of access to counsel and videotaped confessions, prolonged solitary confinement creates an environment in which prisoners have nowhere to turn in order to seek redress for their treatment in detention. Severe physical torture is also used, especially against student activists and others who do not enjoy the high public profile of older dissident intellectuals and writers. The judiciary chief, Ayatollah Mahmud Hashemi Shahrudi, issued an internal directive in April 2004 banning torture and inhumane treatment of detainees, but as of yet no enforcement mechanisms have been established.

### ***Parallel Institutions***

“Parallel institutions” (*nabad-e movazi*) is how Iranians refer to the quasi-official organs of repression that have become increasingly open in crushing student protests, detaining activists, writers, and journalists in secret prisons, and threatening pro-democracy speakers and audiences at public events. These groups have carried out brutal assaults against students, writers, and reformist politicians, and have set up arbitrary checkpoints around Tehran. Groups such as *Ansar-e Hizbollah* and the *Basij* work under the control of the Office of the Supreme Leader, and there are many reports that the uniformed police are often afraid to

directly confront these plainclothes agents. Illegal prisons, which are outside of the oversight of the National Prisons Office, are sites where political prisoners are abused, intimidated, and tortured with impunity. Over the past year politically active individuals have been summoned to a detention center controlled by the Department of Public Places (*Edareh Amaken Umumi*) for questioning by “parallel” intelligence services. According to journalists and student activists who have undergone such interrogations but not been arrested or detained, these sessions are intended to intimidate and threaten students and others.

### ***Impunity***

There is no mechanism for monitoring and investigating human rights violations perpetrated by agents of the government. The closure of independent media in Iran has helped to perpetuate an atmosphere of impunity. In recent years, the Parliament’s Article 90 Commission (mandated by the constitution to address complaints of violations of the constitution by the three branches of government) has made an admirable effort to investigate and report on the many complaints it has received, the Commission lacks any power to enforce its findings and recommendations. The Commission repeatedly called for a thorough investigation of the judiciary’s violations of the law, but thus far this has not happened. In October 2003 the Article 90 Commission presented a public report on the death in custody several months earlier of Iranian-Canadian photojournalist Zahra Kazemi. The report placed responsibility for her death squarely on agents of the judiciary. In a bizarre development, the judiciary accused a low ranking official of the Intelligence Ministry, Reza Ahmadi, of killing Kazemi. Despite a strong rebuke from the Intelligence Ministry, the judiciary proceeded with a hastily organized trial held in May 2004 in which Reza Ahmadi was cleared of the charges. The judiciary has taken no further steps to identify or prosecute those responsible for Kazemi’s death.

### ***The Guardian Council***

Iran's Guardian Council is a body of twelve religious jurists: six are appointed by the Supreme Leader and the remaining six nominated by the judiciary and confirmed by Parliament. The Council has the unchecked power to veto legislation approved by the Parliament. In recent years, for instance, the Council has repeatedly rejected parliamentary bills in such areas as women's rights, family law, the prohibition of torture, and electoral reform. The Council also vetoed parliamentary bills assenting to ratification of international human rights treaties such as the Convention against Torture and the Convention on the Elimination of all forms of Discrimination against Women.

The Council also has the power to vet candidates for elected political posts, including the presidency and the national parliament, based on vague criteria and subject only to the review of the Supreme Leader. The Council wielded its arbitrary powers in a blatantly partisan manner during the parliamentary elections of February 2004 when it disqualified more than 3,600 reformist and independent candidates, allowing conservative candidates to dominate the ballot. The Council's actions produced widespread voter apathy and many boycotted the polls. Many Iranians regarded the move as a "silent coup" on behalf of conservatives who had performed poorly during previous elections in 2000. The Council also disqualified many sitting parliamentarians whose candidacy had been approved by the same Council in 2000.

### ***Minorities***

Iran's ethnic and religious minorities remain subject to discrimination and, in some cases, persecution. The Baha'i community continues to be denied permission to worship or engage in communal affairs in a public manner. In a rare public protest, eighteen Sunni parliamentarians wrote to the authorities in July 2003 to criticize the treatment of the Sunni Muslim community and the refusal to allow construction of a mosque in

Tehran that would serve that community. The Baluchi minority, who are mostly Sunni and live in the border province of Sistan and Baluchistan, continue to suffer from lack of representation in local government and have experienced a heavy military presence in the region. In December 2003, tensions between the local population and the Revolutionary Guards led to large demonstrations in Saravan, in Baluchistan province. In the ensuing clashes between demonstrators and the police at least five people were killed.

### ***Key International Actors***

The European Union has increased both economic and diplomatic ties with Iran. The E.U. has pledged to tie human rights standards to this process, but so far with little impact. Australia and Switzerland have also initiated “human rights dialogues” with Iran, but benchmarks have not been made public, making it unlikely that these will have any greater impact than the dialogue conducted by the E.U.

Iran issued a standing invitation to thematic mechanisms of the United Nations Commission on Human Rights in 2002. Since then, the Working Group on Arbitrary Detention and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression have visited the country and issued reports critical of government practices in these areas. The government, however, has failed to implement the recommendations of the U.N. experts, and there were reprisals, such as re-arrest, against witnesses who testified to the experts. Since then, Iran has not responded to requests by the U.N. Special Rapporteurs on Torture and on Extra-Judicial Executions to visit the country.

Relations between the United States and Iran remain poor. The Bush administration has publicly labeled Iran as part of an “axis of evil.” Deputy Secretary of State Richard Armitage, in October 2003, said that the U.S. was not pursuing a policy of “regime change” towards Iran, but

persistent reports from Washington indicate that the administration remains divided on this point. The U.S. continues to oppose loans to Iran from international financial institutions.

## IRAQ

The human rights situation in Iraq remained grave in 2004, aggravated by increased armed attacks by insurgents and counterinsurgency attacks by U.S.-led international and Iraqi forces. Both U.S. forces and insurgents have been implicated in serious violations of the laws of armed conflict, including war crimes.

The level of violent attacks on civilians by insurgents, including suicide bombings and the deliberate killing of Iraqi civilians working with U.S. and other foreign forces, remained high in 2004. There was also a marked increase in the number of abductions, and in some cases killings, of both Iraqi and foreign nationals. This high level of insecurity had a particularly negative impact on the ability of women and girls to go to jobs, attend school, or otherwise move outside the home.

U.S. forces have also been responsible for violations of the laws of war. The photographs from Abu Ghraib prison of torture and other mistreatment of detainees, made public in April 2004, provided the most graphic evidence of abuse; further investigations revealed that abuses against detainees were not limited to Abu Ghraib. Security considerations have limited monitoring of U.S. military operations against insurgent strongholds, but reports have emerged of U.S. soldiers killing incapacitated Iraqi combatants, forcing civilians back into battle zones, and using unnecessary force against civilians at checkpoints. U.S. forces continue to detain hundreds of Iraqis on the basis of Security Council authorization but in accordance with no evident law.

In the aftermath of the U.S.-led invasion of Iraq and the overthrow of the Ba'athist government in April 2003, the occupying power and interim government have worked to dismantle the repressive apparatus erected under Saddam Hussein. The U.S.-led coalition's failure to provide adequate security following the invasion, the expansion of the

insurgency, and insurgent attacks on humanitarian agencies have seriously impeded this process and efforts at economic reconstruction.

Iraq continues to face the legacy of nearly three decades of authoritarian rule by Saddam Hussein and his Ba'athist government. The legacy includes crimes against humanity, war crimes, and genocide that have long gone unpunished; and a criminal justice system atrophied due to its subordination to the state security apparatus and corrupted by "revolutionary courts" that made extensive use of the death penalty, torture, and arbitrary detention. Many of the victims of the former government were Kurds, an ethnic minority, and Shi'a, the religion of the Iraqi majority. Government policies and comprehensive economic sanctions imposed by the United Nations Security Council left the country's infrastructure and economy devastated.

### ***The Governing Authority in Iraq***

Following the declared end of occupation by U.S.-led coalition forces and the dissolution of the Coalition Provisional Authority (CPA) on June 28, 2004, the U.S.-led coalition transferred sovereignty to the Interim Iraqi Government. U.S.-led forces have remained in Iraq under the authority of U.N. Security Council Resolution 1546, adopted on June 8, 2004, creating the Multi-National Force-Iraq (MNF-I). The resolution gives the MNF-I "the authority to take all necessary measures to contribute to the maintenance of security and stability in Iraq," working with the interim government.

With the transfer of sovereignty, the Law of Administration for the State of Iraq for the Transitional Period (TAL) came into effect. The TAL was promulgated by the CPA on March 8, 2004, and is due to remain in effect until "the formation of an elected Iraqi government pursuant to a permanent constitution," envisaged for the end of 2005 following general elections. The TAL contains a bill of rights for Iraqi citizens, including the right to freedom of expression and association,

religious beliefs, and freedom from discrimination on ethnic, religious or other grounds. The law also stipulates that all citizens are equal before the law, and enjoy freedom from arbitrary arrest and unlawful detention, unfair trials and torture.

### ***Internal Security and Emergency Law***

In June 2004, Prime Minister Ayad Allawi announced a major reorganization of Iraqi security forces, including the creation of new agencies with responsibility for intelligence gathering and for law enforcement. An Iraqi National Intelligence Service had already been set up under CPA authority in April 2004, initially reporting to CPA Administrator L. Paul Bremer and subsequently to the prime minister. Several Ministry of Interior agencies were also reorganized and expanded under the CPA with responsibility for investigating serious criminal offenses—such as money laundering, abductions, and organized crime—as well as gathering intelligence on criminal activity.

On July 3, 2004, the interim government passed the Order for Safeguarding National Security (Number 1 of 2004), introducing emergency legislation to the statute books and enabling the prime minister to declare martial law for up to sixty days (renewable with the approval of the Presidency Council). The Order provides for the imposition of curfews; the closure of roads, sea lanes, and airspace; restrictions or bans on public gatherings; surveillance of electronic and other communications; and wide powers to search property and to detain suspects.

Under the Public Safety Law, a state of emergency may be declared “upon the exposure of the people of Iraq to a danger of grave proportions, threatening the lives of individuals and emanating from an ongoing campaign of violence by any number of people, for the purpose of preventing the establishment of a broad based government in Iraq, or to hinder the peaceful participation of all Iraqis in the political process, or for any other purpose” (Article 1.)



In announcing the Order, Iraqi officials pointed to provisions requiring that persons may not be arrested except upon the issuance of arrest warrants from the judicial authorities, and would be brought before an investigative judge within twenty-four hours. The law, however, does provide for such arrests or searches without warrant in “extreme exigent circumstances,” which are not defined. On November 7, 2004, the Prime Minister declared a state of emergency for a period of sixty days on the eve of a U.S.-led military offensive on the town of al-Falluja, targeting suspected insurgents believed to be based there.

As part of the declared intention to crack down on violent crime, the interim government reintroduced the death penalty, which had been suspended by CPA authorities. Order 3 of 2004, passed on August 8, provides capital punishment for certain crimes affecting internal state security, public safety, attacks on means of transportation, premeditated murder, drug trafficking, and abduction.

Several days prior to the reintroduction of the death penalty, Prime Minister `Allawi announced an amnesty for a range of offenses connected with the possession of weapons and explosive devices, the failure to inform authorities about the planning or financing of terrorism or other acts of violence, participation with terrorist groups in acts intended to undermine internal state security or public welfare and property, and the giving of refuge to persons sought by the judicial authorities for terrorist or violent crimes or in connection with crimes perpetrated by the former Iraqi government. Order No. 2/2004 excludes from the terms of the amnesty those found guilty of murder, abduction, rape, robbery, and harming or destroying public or private assets. It also limited those benefiting from its terms to Iraqi nationals who committed the said crimes between May 1, 2003, and the date of the law coming into force. The amnesty, initially valid for a thirty-day period, was extended for an additional month in mid-September 2004. It is not known how many people have benefited.

## ***The Criminal Justice System***

Following the fall of the Saddam Hussein government, Iraq's criminal courts began functioning again around June 2003, but have had to rely on an outdated and deeply flawed legal framework pending comprehensive reform of Iraq's judicial system and criminal laws.

Human Rights Watch observed numerous trials and investigative hearings during 2003 and 2004 involving suspects charged with various offenses under the Penal Code of 1969 before the ordinary criminal courts in Baghdad as well as the Central Criminal Court of Iraq (CCCI). The latter court was set up in July 2003 under CPA authority to hear cases involving serious felonies such as terrorism, organized crime, governmental corruption, acts intended to destabilize democratic institutions or processes, and violence based on race, nationality, ethnicity, or religion. Defendants brought before the CCCI include those charged with attacks against U.S.-led coalition forces and those who currently remain in MNF-I custody. The court also has jurisdiction over future cases involving suspects arrested and charged in accordance with July 3, 2004 national security order described above.

In the vast majority of cases observed by Human Rights Watch, defendants had been detained without judicial warrants and were brought before the criminal courts without having had prior access to defense counsel. Many of them had been held for weeks or months in pre-trial detention, and in some cases had been tortured or ill-treated to extract confessions from them. Where defendants were unable or unwilling to engage lawyers to act on their behalf, the courts appointed lawyers for them. However, such lawyers did not have prior access to the defendants nor to the evidence against them, and in some cases, lawyers were not present at investigative hearings. Trials before the criminal courts were summary, lasting less than thirty minutes in the majority of cases.

## ***Accountability for Past Crimes***

The Statute of the Iraq Special Tribunal, promulgated under the CPA by the Iraqi Governing Council in December 2003, contains serious substantive and procedural shortcomings that, independent of questions of how the tribunal was established and other factors, could undermine the legitimacy of the tribunal and the fairness of future trials.

Among other problems, the tribunal law contains no prohibition on using confessions extracted by torture, no right of access to a lawyer in the early stages of investigation, and no requirement that guilt be proven beyond a reasonable doubt. Those convicted can face the death penalty. And while justice efforts worldwide have created a cadre of judges and prosecutors with invaluable experience prosecuting genocide and crimes against humanity, the tribunal has been structured to almost entirely exclude their participation. Instead, the tribunal is to be run by lawyers and judges who have acknowledged their own lack of experience in complex prosecutions of this kind.

Human Rights Watch has raised these matters with Iraqi and U.S. officials and called for key amendments to be introduced to the law to bring it into line with international fair trial standards. To date the tribunal law has not been amended.

Since the end of June 2004, the MNF-I has retained physical custody of “high value detainees,” among them members of the former Iraqi government who will eventually be tried before the Iraq Special Tribunal. At this writing, over ninety such persons remained in detention and most are believed to be held at Camp Cropper in the vicinity of Baghdad International Airport. To date, only twelve of the defendants have been arraigned, among them former president Saddam Hussein, under the jurisdiction of the Central Criminal Court of Iraq, for crimes punishable under Iraq’s Penal Code.

### ***Key International Actors***

The United States, in the aftermath of the war to overthrow the former government, remains the preeminent external power in Iraq. At this writing, 138,000 U.S. active-duty troops were based in the country, engaged in counterinsurgency operations and reconstruction efforts. There is a large and growing U.S. embassy in Baghdad, and numerous U.S. companies are operating in the country under contract with the U.S. government. The United Kingdom is the primary military and political ally in the U.S.-led coalition, with a troop presence of around 8,500 mainly in the southern part of the country. Other countries with a military presence in Iraq include Italy (2,700), Poland (2,500), South Korea (3,600), and the Netherlands (1,400).

Following public release of photos showing U.S. forces abusing detainees at Abu Ghraib prison (*see* Introduction), the U.N. working group on arbitrary detention and U.N. special rapporteurs on torture, independence of judges and lawyers, and right to health made a joint request on June 25, 2004 to visit all places in Iraq where terror suspects are held.

In the wake of attacks against United Nations headquarters and personnel, and against humanitarian agencies generally, the U.N. has had a limited presence in Iraq. The general deterioration in security conditions has induced many non-Iraqi nongovernmental organizations to pull out their international staff from Iraq or to close down their operations completely. Many foreign journalists, several of whom have been targeted for abduction, also have pulled out of Iraq. By late 2004, security conditions prohibited those who remained from traveling to conduct investigations, apart from “embedded” assignments with U.S. forces engaged in attacks against suspected insurgents.

## **ISRAEL/OCCUPIED PALESTINIAN TERRITORIES**

The human rights situation in Israel and the occupied West Bank and Gaza Strip remained grave throughout 2004, as armed clashes continued to exact a high price from civilians. While many see the period after Arafat's death on November 11 as the beginning of a new era in the Israeli-Palestinian conflict, few changes have occurred on the ground where the wall regime Israel is building inside the West Bank and the illegal Israeli settlements continue to expand. On December 3 a top Hamas leader said that the group would accept the establishment of a Palestinian state in the West Bank and Gaza Strip and a long-term truce with Israel. It remains to be seen whether Israel will make reciprocal declarations and whether words will be translated into action.

In 2004, the Israeli army and security forces made frequent and, in the Gaza Strip, large-scale military incursions into densely-populated Palestinian areas, often taking heavy tolls in terms of Palestinian deaths and injuries as well as property destruction. Palestinian armed groups fired rockets from areas of the Gaza Strip at Israeli civilian settlements and populated areas in Israel close to the border, and carried out seven suicide bombings inside Israel and four around Israeli army checkpoints in the Occupied Palestinian Territories (OPT). Armed attacks and clashes in the course of the year brought casualties since September 2000 to well over three thousand Palestinians and nearly one thousand Israelis killed, and more than 34,000 Palestinians and six thousand Israelis injured. Most of those killed and injured were civilians.

The Israeli authorities continue a policy of closure, imposing severe and frequently arbitrary restrictions on freedom of movement in the West Bank, Gaza Strip, and East Jerusalem, contributing to a serious humanitarian crisis marked by extreme poverty, unemployment, and food insecurity. The movement restrictions have also severely compromised Palestinian residents' access to health care, education, and other services.

Over the past two years these restrictions have become more acute, and in many places more permanent, with the construction of a “separation barrier” inside the West Bank. While the stated Israeli security rationale for the barrier is to prevent Palestinian armed groups from carrying out attacks in Israel, 85 percent of its route extends into the West Bank, effectively annexing to Israel most of the large illegal Jewish settlements constructed over the past several decades as well as confiscating some of the most productive Palestinian farmlands and key water resources.

In October 2004 the Knesset approved Prime Minister Ariel Sharon’s plan to “disengage” from the Gaza Strip in 2005 by withdrawing its military forces and Jewish settlements, although the plan will leave Israel in control of Gaza’s borders, coastline, and airspace. This move will not end Israel’s occupation of Gaza or its responsibility for the well-being of its inhabitants.

The control of the Palestinian Authority (P.A.) over Palestinian population centers is frequently nominal at best, and conditions of lawlessness prevail in some areas of the Gaza Strip and the northern West Bank. Palestinian gunmen carried out lethal attacks against persons alleged to have collaborated with Israeli security forces, and political rivalries sometimes erupted into clashes between armed factions and attacks on PA officials and offices.

### ***Unlawful Use of Force***

The Israeli army and security forces carried out numerous attacks in Palestinian areas over the course of 2004. These were most intense and extensive in the Gaza Strip, and were often carried out in a manner that failed to demonstrate that the attackers had used all feasible measures to avoid or minimize harm to civilians and their property. Human Rights Watch documented serious violations of international humanitarian law in the course of the Israel Defense Forces’ (IDF) May 2004 assault in the southern Gaza town and refugee camp of Rafah, in which over two

hundred homes, along with cultivated fields, roads, and other infrastructure, were razed without regard to military necessity. Israeli forces also continued to use lethal force in an excessive or indiscriminate manner. On May 19, 2004, for instance, during the Rafah incursions, an Israeli tank and helicopter gunship fired on a crowd of demonstrators, killing nine persons, including three children. In late September 2004, Israel launched a massive incursion into the northern Gaza Strip. Around 130 Palestinians were killed, more than a quarter of them children. One thirteen-year-old girl, Imam al-Hams, was shot twenty times by an Israeli officer. Several children were killed in their classrooms in other incidents.

There were also numerous instances in the West Bank of civilians killed by indiscriminate Israeli gunfire, such as the deaths in Nablus in June 2004 of Dr. Khaled Salah, a lecturer at Najah University, and his sixteen-year-old son. Israel has failed to investigate suspicious killings and serious injuries by its security forces, including killings of children, thus continuing to foster an atmosphere of impunity.

While in 2004 the number of Palestinian suicide bombings and similar attacks targeting civilians inside Israel dropped considerably compared to immediately preceding years, neither the Palestinian Authority nor the armed groups responsible have taken any serious steps to act against those who ordered or organized such attacks. Palestinian armed groups in the Gaza Strip on numerous occasions fired so-called Qassam rockets, an inherently indiscriminate home-made weapon, at illegal Jewish settlements in the Gaza Strip as well as at communities on the Israeli side of the border. Qassam rockets killed a man and a small child in the border town of Sderot in June, and in a separate incident killed two small children in the same town in September. In August 2004 gunmen apparently affiliated with the Hamas movement threw one or more grenades into a cellblock in a P.A.-run prison that housed alleged collaborators, and subsequently entered a Gaza City hospital to kill two of those who had been seriously wounded in the grenade attack. In July

2004 gunmen attempted to assassinate Palestine Legislative Council member Nabil Amr after he criticized PA President Yasir Arafat in a television appearance; Amr was gravely wounded and doctors had to amputate his leg.

### ***Separation Barrier and Restrictions on Freedom of Movement***

The government of Israel cites the significant decrease in suicide bombing attacks in 2004 to buttress its claim that the separation barrier performs a valid security function, but it fails to make the case that a barrier constructed entirely on the Israeli side of the “Green Line” would not have been at least as effective. The actual route, instead, is designed to “capture” some 80 percent of the Jewish population now living in illegal West Bank settlements, and the land and resources they control, while government policy continues to support the expansion of settlements. In the case of many Palestinian villages like Jayyous and Isla, the barrier separates farmers from their agricultural land, greenhouses, olive and citrus trees, and even water. Other Palestinians who find themselves on the “Israeli side” of the barrier must have special permits to reside in their own homes. By making movement and in some cases residence so difficult, the barrier seems intended to encourage Palestinians to leave for other areas of the West Bank, or even other countries.

In June 2004, Israel’s High Court of Justice ruled on a petition challenging a forty-kilometer portion of the separation barrier, finding that the route in this case violated the principle of proportionality because the hardship and severe injury caused to the affected Palestinian population, by separating them from the agricultural lands on which their livelihoods depended, was excessive compared to the purported security benefit. The injury caused by the barrier, the court wrote, is not limited to the immediate inhabitants: “The injury is of far wider scope. It is the fabric of life of the entire population.” The government responded that it would revise thirty kilometers of the route in that area to meet the objections of the court, but neither the court nor the government



addressed the issue of proportionality as it pertained to other areas of the barrier.

The following month, the International Court of Justice (ICJ), in an advisory opinion responding to a request from the U.N. General Assembly, held that the barrier is in violation of international humanitarian law. The court wrote that Israel should cease construction of the barrier on Palestinian territory, dismantle those portions already constructed on Palestinian territory, and pay reparations for damage caused by its construction there. However the construction of the barrier has continued since the ICJ decision.

Israeli restrictions on freedom of movement in the West Bank and Gaza Strip are so extensive as to constitute collective punishment, a serious violation of international humanitarian law. These restrictions are the result of the barrier, government-sponsored illegal settlements, the network of Jewish-only roads that support them, and the more than 700 checkpoints that are frequently operated in an arbitrary manner. This system of collective punishment is also in direct violation of Israel's obligation, as the occupying power, to provide to the extent possible for the welfare of the population it controls.

### ***Gaza “Disengagement”***

The Israeli Cabinet adopted Prime Minister Sharon's Gaza “disengagement” plan on June 6, 2004, and the full Knesset gave its approval on October 26. The plan calls for the withdrawal of Jewish settlers and the redeployment of Israeli troops to posts on the Israeli side of the border with Gaza, while Israel will retain control of Gaza's borders, coastline, and airspace. Israel is reserving the right to launch incursions into Gaza, and will continue to control Gaza's economy and trade, telecommunications, water, electricity, and sewage networks. The plan explicitly envisions the demolition of hundreds more homes along the Gaza-Egypt border in order to expand the buffer zone there. The plan states that

the disengagement “will serve to dispel the claims regarding Israel’s responsibility for the Palestinians in the Gaza Strip.” In fact, under international humanitarian law, the steps envisioned will not end Israel’s occupation of the territory, and Israel will retain responsibility for the welfare of Gaza’s civilian population.

### ***Key International Actors***

Israel remains the largest bilateral recipient of United States military and economic assistance, amounting to about U.S. \$2.7 billion in Fiscal Year 2004. The IDF continues to use U.S.-supplied weaponry in military operations in the OPT, including Apache and Cobra helicopters, F-16 fighter aircraft, and M-16 automatic weapons. Through the Foreign Military Sales Program, Caterpillar Corporation supplies to Israel bulldozers built to military specification which have been used to demolish Palestinian homes and other civilian property in violation of international humanitarian law. Public reactions by Bush administration officials to reported Israeli violations of international humanitarian law continued to emphasize Israel’s right of self-defense without clear reference to international humanitarian law standards, and the U.S. took no public steps to pressure Israel to meet its obligations under those standards. In April 2004, during a visit of Prime Minister Sharon to Washington, President Bush endorsed the Gaza “disengagement” plan and voiced support for a West Bank final status in which Israel would continue to control many of the illegal settlements constructed there. Although the U.S. calls for a “freeze” on construction of illegal settlements, in 2004 the administration declined to deduct from the U.S. \$9 billion in loan guarantees awarded in 2003 any amount corresponding to Israeli expenditures on settlements, as it had the previous year. There were Israeli press reports in 2004 that some U.S. army units were training at a “special anti-terror school” at an IDF base near Modi’in.

In early May 2004, representatives of the “Quartet”—United Nations Secretary-General Kofi Annan, Irish Foreign Minister Brian Cowen

representing the presidency of the European Union, Russian Foreign Minister Sergei Lavrov, and U.S. Secretary of State Colin Powell—met at the U.N. and issued a communiqué that, among other things, called on Israel to exercise its legitimate right to self-defense “within the parameters of international humanitarian law” and on the P.A. to “take immediate action against terrorist groups and individuals who plan and execute such attacks.”

## SAUDI ARABIA

Human rights violations are pervasive in Saudi Arabia, an absolute monarchy. Despite international and domestic pressures to implement reforms, improvements have been halting and inadequate.

Many basic rights are not protected under Saudi law, political parties are not allowed, and freedom of expression remains extremely limited. In recent years, the government has carried out a campaign of harassment and intimidation of Saudi Arabian human rights defenders and has stifled all efforts to establish independent groups to monitor and report on abuses.

Arbitrary detention, mistreatment and torture of detainees, restrictions on freedom of movement, and lack of official accountability remain serious concerns. The kingdom carried out some fifty executions in 2003; as of mid-November about fifteen executions had been carried out so far in 2004. Saudi women continue to face serious obstacles to their participation in the economy, politics, media, and society. Many foreign workers face exploitative working conditions; migrant women working as domestics often are subjected to round-the-clock confinement by their employers, making them vulnerable to sexual abuse and other mistreatment.

Media attention to political reform and government proclamations regarding human rights have not led to changes in practices or enhanced public access to information about rights violations. The Saudi government established a national human rights commission in 2004, but it lacks independence.

### ***Terror and Internal Security***

Saudi Arabia's internal security situation worsened in 2004. On May 12, 2003, nine suicide bombers killed themselves and twenty-six other peo-

ple using car bombs when they attacked three compounds housing foreign workers, mainly from other Arab countries. Since then, suicide bombings, attacks with automatic weapons, and hostage-taking, mostly directed against Western expatriate workers, have plagued the country. The authorities claim to have killed or captured at least thirteen of the twenty-six people they have identified as leading suspects in the attacks.

In March 2004 Deputy Interior Minister Prince Ahmad bin Abd al-Aziz said that some security detainees had been convicted and are serving prison sentences, while others remained under interrogation. The prince declined to comment on the trials, or on why they were not public. At this writing, authorities had released no additional information about any trials of security detainees or alleged terrorists.

### ***The Reform Movement and Arrests of Activists***

2003 and 2004 saw a number of public petitions calling for reforms and enhanced rights protections. In late January 2003, 104 Saudi Arabian citizens sent a charter entitled “Vision for the Present and the Future of the Homeland” to Crown Prince Abdullah, the country’s de facto ruler, and other high-ranking officials. The charter urged comprehensive reforms including guarantees of freedom of expression, association, and assembly, and requested release or fair trials for political prisoners. The crown prince received a group of the signatories, and in June 2003 convened a “national dialogue conference” that invited religious scholars from the country’s Muslim communities, including Shi`a and non-Wahhabi Sunnis. A subsequent petition, in September 2003, criticized the slow pace of reform and the absence of popular participation in decision-making. Signed by 306 academics, writers, and businesspeople, including fifty women, it advocated popular election of the 120-member Consultative Council (members currently are appointed by the government) and observed that lack of freedom of expression fosters the growth of intolerance and extremism.

Crown Prince Abdullah's favorable disposition toward the reformers, however, was not shared by others in the royal family. Minister of Interior Prince Nayif in October 2003 dismissed calls for reform as "useless barking." When Saudi citizens, in an unprecedented initiative, took to the streets on the October 14, 2003, during the opening of an officially-sponsored human rights conference, security forces arrested hundreds of demonstrators and forcibly dispersed the rest. About eighty people were kept in detention for several months afterwards without charge or trial, while others were sentenced to jail terms and floggings; as of November 2004 most had reportedly been released.

On March 9, 2004, the government announced the establishment of a National Human Rights Commission, comprised mainly of government officials. In November members of the commission announced that they had visited prison facilities, and were preparing a report for the Interior Ministry. They were quoted in the Saudi media as saying that "in general conditions were good" but that the prisons were badly overcrowded and that approximately 80 percent of the inmate population was non-Saudi.

March 2004 also saw the arrest of thirteen reformers who attempted to circulate a petition calling for Saudi Arabia to become a constitutional monarchy with an elected parliament. They also indicated their intent to establish a human rights group independent of the government. All but three were released within several weeks, evidently after agreeing to halt their public petition efforts. The trial of the remaining three, who declined to agree to those terms, began with a first public session on August 9, 2004. The official Saudi Press Agency had earlier quoted an unnamed interior ministry official as saying that the three had issued statements "which do not serve national unity or the cohesion of society based on shari`a law." The official National Human Rights Commission has not publicly commented on the case.

The government has twice postponed elections for half the members of 178 municipal councils around the country, at this writing scheduled for February 2005. The remaining council members are to be appointed by the government. Although the elections law states that all citizens twenty-one and older are eligible to vote, and several women announced their intention to stand for election, on October 10, 2004 Prince Nayif bin Sultan, the minister of interior, ruled that out, saying, "I don't think that women's participation is possible."

On September 13, 2004, the Council of Ministers announced that the government planned to enforce existing laws prohibiting all public employees from "participating, directly or indirectly, in the preparation of any document, speech or petition, engaging in dialogue with local and foreign media, or participating in any meetings intended to oppose the state's policies." Public employees, including academics, have been among the signatories to recent reform petitions.

### ***Women's Rights***

Women in the kingdom suffer from severe discrimination and restrictions in their freedom. The Committee for the Promotion of Virtue and the Prevention of Vice, or the "religious police," enforces strict gender segregation and obliges women and girls to wear long black cloaks and head coverings in public. Although some women hold professional jobs at hospitals, schools, banks, offices, and elsewhere, they still need written permission from a male relative to travel.

When women are mistreated or suffer violence at the hands of male relatives, they often have no means for redress. Rania al-Baz, a presenter on state-run Channel One television, raised the issue of domestic violence in an unprecedentedly public way in April 2004 when she gave press interviews from her hospital bed and released photos of her badly bruised face after her husband had savagely beaten her. Her case galva-

nized public opinion and stimulated considerable debate about the problem of spousal abuse.

### ***Migrant Workers***

Foreign workers in Saudi Arabia are estimated to number 8.8 million, or a third of the country's population, according to Minister of Labor Ghazi al-Gosaibi. The majority comes from South and Southeast Asian countries, such as India, Pakistan, Bangladesh, Sri Lanka, Indonesia, and the Philippines, but significant numbers of migrants also come from countries such as Sudan and Egypt. They often face exploitative working conditions, including twelve- to sixteen-hour workdays, often without breaks or access to food and drink, lack of pay for months at a time, and confinement to locked dormitories during their time off.

Many women migrants are employed as household domestic workers, and are especially at risk for human rights abuses due to their isolation in private homes and their exclusion from many employment protections. Migrant workers' NGOs in many Asian countries have documented hundreds of cases in which such workers have suffered physical, psychological, and sexual abuse, including rape, with little or no redress.

Foreign workers who are detained by the police face torture, prolonged incommunicado detention, and forced confession. About two thirds of the approximately fifty persons executed in Saudi Arabia in 2003 were foreign nationals.

### ***Key International Actors***

The United States is a key ally of Saudi Arabia and a major trading partner, although relations have been somewhat strained in the aftermath of the September 11, 2001 attacks on New York and Washington, D.C.. The presence of thousands of active duty U.S. military personnel stationed in Saudi Arabia has been a major source of domestic opposi-



tion to the government, and the numbers have been reduced from about 5,000 in early 2003 to around 500 by late 2004, although thousands of U.S. personnel servicing military sales contracts remain in the kingdom. In September 2004, for the first time, the State Department's annual International Religious Freedom Report designated Saudi Arabia as "a country of particular concern." U.S. non-military merchandise exports to Saudi Arabia were U.S. \$4.6 billion in 2003, the last year for which figures are available; exports of military and other services have averaged U.S. \$2 billion per year recently. Saudi Arabia is a major supplier of oil to the United States and its allies. Saudi Arabian investments in the U.S. were estimated to be around U.S. \$250 billion in early 2003.

Saudi Arabia also maintains military ties with Britain and France.

## SYRIA

A prominent businessman in Aleppo has characterized Syria as “a society in custody.” Emergency rule imposed in 1963 remains in effect, and the authorities continue to harass and imprison human rights defenders and other non-violent critics of government policies. The government strictly limits freedom of expression, association, and assembly, and treats ethnic minority Kurds as second-class citizens. Women face legal as well as societal discrimination and have little means for redress when they become victims of rape or domestic violence.

In a positive development, the government released more than one hundred long-time political prisoners in 2004, bringing to more than seven hundred the number of such prisoners freed by President Bashar al-Asad since he came to power in June 2000. Thousands of political prisoners, however, reportedly still languish in Syria’s prisons.

### ***Arbitrary Arrest and Detention, Torture, and “Disappearances”***

Syria has a long record of arbitrary arrests, systematic torture, prolonged detention of suspects, and grossly unfair trials. Thousands of political prisoners, many of them members of the banned Muslim Brotherhood and the Communist Party, remain in detention. In recent years, dozens of people suspected of being connected to the Muslim Brotherhood have been arrested upon their voluntary or forced return home from exile.

The London-based Syrian Human Rights Committee (SHRC) has alleged that several political prisoners died in custody in 2004 as a result of torture. While hundreds of long-term political prisoners have been released in recent years, many remain in detention even after serving their full prison sentences. The SHRC estimates that about four thousand political prisoners remain in detention in Syria today. The authori-

ties have refused to divulge information regarding numbers or names of people in detention on political or security-related charges.

The government has never acknowledged responsibility for an estimated 17,000 persons—Lebanese citizens and stateless Palestinians—who were “disappeared” in Lebanon in the early 1990s and are known or believed to be imprisoned in Syria.

### ***Arrests of Human Rights Activists and Political Critics***

Human rights activists continue to be a frequent target of the government. In April 2004 the authorities arrested Aktham Nu’aisse, the fifty-three-year old head of the Committees for the Defense of Democratic Liberties and Human Rights in Syria after he organized a peaceful demonstration outside the parliament building calling for an end to emergency rule. He was released on bail in mid-August and permitted to travel abroad, but at this writing still faces charges under Syria’s emergency law, including “opposing the objectives of the revolution.”

Dr. Arif Dalila, a prominent economics professor and one of many imprisoned critics of the government, continues to serve a ten-year prison term imposed in July 2002 for his non-violent criticism of government policies. Mamoun al-Homsi, a democracy activist and former member of parliament, is currently serving a five-year jail term for “attempting to change the constitution.” Five men remained in detention in late 2004 after being arrested more than a year earlier for downloading material critical of the government from a banned Web site and e-mailing it to others.

### ***Discrimination and Violence Against Kurds***

On March 12, 2004, a clash between supporters of rival Kurd and Arab soccer teams in Qamishli, a largely Kurdish city near the border with Turkey, left several dead and many injured. The following day, Kurds

vandalized shops and offices during a funeral for the riot victims, and the violence spread to nearby areas. Police responded with live ammunition, killing at least two dozen people, injuring hundreds, and arresting many hundreds more. Human Rights Watch has received credible information that some of those detained were tortured in custody, and at least two of them reportedly died in detention.

Kurds are the largest non-Arab ethnic minority in Syria, comprising about 10 percent of Syria's population of 18.5 million, and have long called for reforms to address systematic discrimination, including the arbitrary denial of citizenship to an estimated 120,000 Syria-born Kurds. In June 2004 the authorities reportedly warned leaders of two unrecognized Kurdish political parties that no independent political activities would be tolerated.

### ***Discrimination against Women***

Syria's constitution guarantees equality for men and women, and many women are active in public life, but personal status laws as well as the penal code contain provisions that discriminate against women. The penal code allows for the suspension of legal punishment for a rapist if he chooses to marry his victim, and provides leniency for so-called "honor" crimes, such as assault or killing of women by male relatives for alleged sexual misconduct. Punishment for adultery for women is twice that for men. A husband also has a right to request that his wife be banned from traveling abroad, and divorce laws are discriminatory.

The government keeps no statistics regarding gender-based crimes such as domestic violence and sexual assault against women, although non-governmental organizations say that domestic violence is common and that the government does not do enough to combat it or provide for victims.

***Key International Actors***

In May 2004, following U.S. Congressional passage of the Syria Accountability and Lebanese Sovereignty Act, President Bush banned exports of goods to Syria and Syrian commercial flights to the United States, and froze assets of “certain Syrian individuals and government entities.” The law, in authorizing such sanctions, cited Syria’s hosting of Palestinian militant groups, its support for Lebanon’s Hizballah organization, its military presence in Lebanon, its purported efforts to develop chemical and biological weapons, and its alleged support for anti-U.S. forces in Iraq.

In September 2002, the United States forcibly transferred Maher Arar, a dual Canadian-Syrian national whom the U.S. government alleges to have ties with al-Qaeda to Syria, despite Syria’s long record of torturing detainees to extract confessions. Arar was arrested in September 2002 while traveling from Tunisia to Canada through New York’s Kennedy Airport. U.S. immigration authorities flew Arar to Jordan, where he was handed over to Syrian authorities, despite his repeated statements to U.S. officials that he would be tortured in Syria. After he was released without charge ten months later and allowed to return to Canada, Arar alleged that he had been tortured repeatedly with cables and electrical cords by Syrian interrogators. In January 2004, Arar filed suit in U.S. federal court alleging violations of the Torture Victim Protection Act.

A Syrian-born German national, Muhammad Haydar Zammar, was arrested in Morocco in November 2001 and secretly transferred to Syria, reportedly with the assistance of the United States. He is said to be in solitary confinement in a tiny underground cell in the Palestine Branch of Military Intelligence headquarters in Damascus, where torture and ill-treatment are reportedly common.

The European Commission and Syria initialed an Association Agreement in October 2004 which will be signed in early 2005 and then

sent to the parliaments of all European Union member states and the European Parliament for ratification. The text stipulates that Syria must implement all international non-proliferation accords and that “respect for human rights and democratic principles” constitutes “an essential element of the agreement.” No E.U. member state appeared at this writing to have called attention to the discrepancy between Syria’s practices and the human rights provision of the agreement.

In September 2004, France joined the U.S. to co-sponsor U.N. Security Council Resolution 1559, which demands that “outside powers”—i.e., Syria—withdraw their military forces from Lebanon.

## TUNISIA

Tunisia's intolerance for political dissent continued in 2004. The ruling party, the Constitutional Democratic Assembly, dominates political life, and the government continues to use the threat of terrorism and religious extremism as a pretext to crack down on peaceful dissent. The rights of freedom of expression and freedom of association are severely restricted. Critics of the government are frequently harassed or imprisoned on trumped-up charges after unfair trials. Following the conditional release of some eighty political prisoners in early November, about four hundred remained incarcerated, nearly all suspected Islamists. There are constant and credible reports of torture and ill-treatment used to obtain statements from suspects in custody. Sentenced prisoners also face deliberate ill-treatment. During 2004, as many as forty political prisoners were held in prolonged and arbitrary solitary confinement; some had spent most of the past decade in isolation.

President Zine el-Abidine Ben Ali won re-election for a fourth five-year term on October 24 by 94.5 percent of the vote, having gotten the constitution amended in April 2002 in order to remove the previous three-term limit. The same amendment also granted permanent immunity to the head of state for any acts connected with official duties. Two of Ben Ali's three opponents endorsed the incumbent. Authorities prevented the only genuine opposition candidate, Mohamed Halouani, from printing and distributing his electoral platform. Halouani's supporters were permitted to hold a protest march in Tunis on October 21, 2004 the first such public opposition rally in recent memory. Halouani received less than 1 percent of the vote, according to the official tally. Several other parties boycotted the elections as unfair. The ruling party captured all of the 152 district seats in parliament – thirty-seven additional seats are reserved for members of other parties – ensuring the continuation of a rubber-stamp legislature.

## ***Human Rights Defenders***

Tunisia's two leading human right organizations operate in a legal limbo. The Tunisian Human Rights League (Ligue Tunisienne des droits de l'Homme, LTDH), founded in 1977, remains under a court decision nullifying the 2000 election of an outspoken executive committee. In the case of the six-year-old National Council on Liberties in Tunisia (Conseil National pour les Libertés en Tunisie, CNLT), the government rejected its application for legal recognition. Other, newer human rights organizations have applied but failed so far to get legal approval, including the International Association for Solidarity with Political Prisoners, the Center for the Independence of Judges and Lawyers, and the Association to Fight Torture in Tunisia.

Human rights defenders, like dissidents generally, are subject to heavy police surveillance, sporadic travel bans, dismissals from work, interruptions in phone service, and police harassment of spouses and family members. Human rights lawyers and activists have been assaulted on the street by plainclothes security personnel acting with complete impunity. Sihem Ben Sedrine, a founder of the CNLT and editor of the dissident magazine *Kalima*, was assaulted and punched by unidentified men outside her home in downtown Tunis on January 5, 2004. On October 11, former political prisoner Hamma Hammami, whose party urged the boycott of the October 24 presidential elections, reported being assaulted in Ben Arous by men in plainclothes who punched him and broke his glasses. The property of human rights activists and dissidents has been subject to vandalism, and their homes, offices, and cars to suspicious break-ins.

## ***The Justice System***

The Tunisian judiciary lacks independence. Judges frequently turn a blind eye to torture allegations and procedural irregularities, convicting defendants solely or predominantly on the basis of confessions secured



under duress. For example, a Tunis court on April 6, 2004, sentenced six men from Zarzis in the south of the country to nineteen-year prison terms for plotting terrorist attacks. The defendants claimed they had been tortured into confessing and into implicating each other and that the police had falsified the place and date of their arrest. The judge refused to investigate these allegations, even though these “confessions” constituted the main piece of evidence in the file. On July 6, an appeals court reduced the sentences to thirteen years.

The government uses the courts to convict and imprison non-violent critics of its policies. Jalal Zoghlami, editor of the unauthorized leftist magazine *Kaws el-Karama*, and his brother Nejb, were jailed on September 22, 2004, after a disturbance in a Tunis café that they claim was staged by police agents. They were sentenced on November 4 to eight months actual time in prison for damaging property. Former political prisoner Abdullah Zouari served out a nine-month prison term imposed in August 2003, after a rushed and politically motivated prosecution. Zouari had earlier that month helped a Human Rights Watch researcher to meet families in southern Tunisia.

Tunisians residing outside of the country have been arrested while visiting Tunisia and imprisoned for political activities that were not crimes in the countries where they took place. Salem Zirda, whom a Tunisian court convicted in 1992 *in absentia* for nonviolent political offenses, was arrested upon his return to Tunisia in 2002. On June 29, 2004, a Tunis military court sentenced him to seven years in prison. The evidence presented at the trial suggests he was prosecuted solely for nonviolent association while abroad with Nahdha party members.

Tunisia’s policy of placing some political prisoners in strict, long-term solitary confinement is one of the harshest holdovers from the severe prison regime of the 1990s. Authorities generally provide no official explanation to prisoners why they are being segregated, for how long, or how they may appeal the decision. The isolation policy as it is prac-

ticed violates Tunisian law as well as international penal standards, and in some instances may rise to the level of torture.

The government has not allowed independent observers to inspect prisons since 1991. An April 20, 2004 statement by Minister of Justice and Human Rights Béchir Tekkari hinted that Tunisia might accept prison visits by the International Committee of the Red Cross (ICRC), but as of late November 2004 no accord with the ICRC had been announced.

### ***Media Freedom***

Tunisia's press remains largely controlled by the authorities. None of the print and broadcast media offer critical coverage of government policies, apart from a few low-circulation independent magazines that face occasional confiscation of their issues or problems at the printers. During the campaign for presidential and legislative elections in October 2004, all of the major media accorded disproportionate and highly favorable coverage to Ben Ali and the ruling party candidates, while giving limited space to candidates of other parties.

The government's rhetoric promotes electronic communication as a vehicle of modernization, yet it blocks certain political or human rights websites. In 2002, the authorities arrested Zouheir Yahiaoui, editor of a webzine that ridiculed President Ben Ali's rule. He was released in November 2003 after serving most of his two-year sentence on trumped-up charges. Given Tunisia's systematic suppression of a free media, and limits on the Internet in particular, human rights organizations have criticized Tunisia's designation as host to the World Summit on the Information Society in November 2005.

### ***Counterterrorism Measures***

Following the attacks in the United States on September 11, 2001, Tunisian authorities claimed that they had long been in the forefront of

combating terrorism and extremism, alluding to their long-running crackdown against the once-tolerated Islamist Nahdha movement.

Since 1991, the one deadly terrorist attack to occur in Tunisia was the April 2002 truck bomb that targeted a synagogue on the island of Djerba. The suicide bomber was Tunisian, and al-Qaida claimed responsibility for the attack.

In December 2003, Tunisia adopted an anti-terror law containing a broad definition of terrorism that could be used abusively to prosecute persons for peaceful exercise of their right to dissent. The law provides harsh penalties and allows for the referral of civilian suspects to military courts.

### ***Key International Actors***

The United States actively monitors human rights conditions in Tunisia, but its criticism of those conditions has been undercut somewhat by Washington's persistent praise for President Ben Ali's counter-terrorism conduct. Still, Secretary of State Colin Powell, after he met with President Ben Ali in December 2003, spoke publicly about the need for "for more political pluralism and openness and a standard of openness that deals with journalists being able to do their work." In February 2004, when President Ben Ali visited Washington, President Bush publicly expressed the desire to see in Tunisia "a press corps that is vibrant and free, as well as an open political process." However, the administration's public expression of disappointment with the lack of genuine contestation in the October 24 elections was exceedingly mild.

Tunisia's Association Agreement with the European Union continued in force, despite the country's poor human rights record. While E.U. officials have conveyed concern about Tunisia's human rights conditions, they have yet to suggest that violations would jeopardize the agreement.

President Jacques Chirac of France remained Europe's staunchest supporter of President Ben Ali. On a visit in December 2003, he deflected concerns over political and civil rights by declaring that the "first" rights were food, medical care, housing, and education, and praising Tunisia's achievements in this regard. President Chirac sent his Tunisian counterpart a message of congratulations immediately after his victory in the patently unfair elections of October 24.





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# UNITED STATES

## UNITED STATES

The United States has long been proud of its commitment to the rule of law, its constitutional system of checks and balances, the independence of its judiciary, and its democratic political culture. The picture has never been perfect—the legacy of institutionalized discrimination that followed in slavery’s wake is the most obvious example of flaws—but the United States has long seen itself to be, and in many places has been perceived to be, an effective advocate for human rights worldwide and one that practices much of what it preaches.

Its record at home and overseas in 2004—most notably the government’s use of coercive interrogation and disregard for the Geneva Conventions in its treatment of detainees in Afghanistan, Iraq, and Guantanamo Bay, exemplified by the images of torture from Abu Ghraib prison—have undermined that reputation. The Bush administration’s efforts to expand executive power at the expense of judicial and legislative oversight in its approach to counterterrorism also continue to jeopardize long-established civil and political rights in the United States.

A vibrant and diverse group of nongovernmental organizations work in the United States on a wide range of domestic human rights concerns. As reflected in the summary below, Human Rights Watch’s work on domestic U.S. rights practices currently focuses on the human rights implications of the Bush administration’s counterterrorism measures and continuing rights violations in the U.S. criminal justice system.

### ***Counterterrorism and Human Rights***

The Bush administration still refuses to apply fundamental rights protections found in U.S. and international law to persons apprehended in its global campaign against terrorism. It refuses to apply either laws of war or human rights standards to the more than five hundred men at



Guantanamo Bay, Cuba, who have been held, many since 2002, in long-term indefinite and largely incommunicado detention; it has begun proceedings to try terrorist suspects before military commissions that do not meet fair trial standards; it has sought to block the most basic due process protections to U.S. citizens detained on presidential order as enemy combatants; and it has sent or assisted in the return of individuals to countries where they face torture.

### ***Guantanamo Bay and Enemy Combatant Detentions***

Some 550 men remain detained at Guantanamo Bay, many held since 2002, in long-term indefinite and largely incommunicado detention. The United States had insisted that detained “enemy combatants” had no right to judicial review of their detention. In June, 2004, however, the U.S. Supreme Court ruled that U.S. courts had jurisdiction to hear cases by the Guantanamo detainees and that those held by the United States must be afforded a meaningful opportunity to contest their detention before a neutral decision maker.

In response to the Supreme Court rulings, the Pentagon quickly instituted Combatant Status Review Tribunals (CSRTs) to assess whether each Guantanamo detainee is an enemy combatant. This one-time administrative review has no basis in U.S. or international law, and is being used by the administration to justify the detention of persons who, absent evidence of criminal wrongdoing or violation of the laws of war, should have been released at the conclusion of active hostilities between the United States and the Taliban government in 2002. Detainees who have sought to contest their status before the CSRTs have not been able to bring in outside witnesses (other than other Guantanamo detainees) or be represented by counsel, and the process does not guarantee that they can see all of the evidence against them. As of late November 2004, CRSTs had reviewed 401 cases; final action was announced in 144 cases and only one detainee was deemed to be a non-enemy combatant and released.

During 2004, former Guantanamo detainees (some 150 have been released since the first prisoners were brought from Afghanistan in January 2002) alleged that interrogation methods included prolonged periods of painful “stress” positions, exposure to extreme cold and loud music, and threats of torture and death. They said they had been subjected to weeks and even months in solitary confinement—at times either suffocatingly hot or cold from excessive air conditioning—as punishment for failure to cooperate during interrogations or for violations of prison rules.

U.S. officials have publicly acknowledged that interrogation techniques at Guantanamo have included the use of stress positions, isolation, and removal of clothing, but have refused to allow human rights organizations that report publicly, including Human Rights Watch, to examine conditions at Guantanamo or interview detainees. According to press reports in November, the International Committee of the Red Cross told the U.S. government in confidential reports that its treatment of detainees has involved psychological and physical coercion that is “tantamount to torture.”

During 2004, three men—including two U.S. citizens—continued to be held incommunicado and without charges, having been designated “enemy combatants” by President Bush. After the Supreme Court ruled that one, Yasser Hamdi, was entitled to his day in court, the U.S. government and his attorneys negotiated his release and return to Saudi Arabia (he had joint U.S. and Saudi citizenship). The United States continues to insist in court that it has the authority to detain indefinitely without charges the two others, Jose Padilla and Ali-Saleh Kahlal al-Marri.

The U.S. also has “disappeared” at least eleven high-level al-Qaeda suspects, holding them in undisclosed locations worldwide; some reportedly have been tortured. It has also facilitated or participated directly in the transfer of an unknown number of people to countries in the

Middle East where torture is routine. (See “Darfur and Abu Ghraib,” in this volume.)

### ***Military Commissions***

In August 2004, the military began legal proceedings before newly created military commissions against four Guantanamo detainees, the first to be charged with crimes. The commissions, authorized by a November 2001 order by President Bush, are fatally flawed in design and practice. They permit the executive branch broad powers as prosecutor, judge, and jury without any civilian judicial oversight. They sharply limit a defendant’s rights to present a defense, including by allowing the use of evidence that the accused may not see nor confront. And they do not require that those sitting in judgment have any legal training: in the initial hearings, the panel members, only one of whom was a lawyer, were not familiar with basic concepts of criminal law, let alone the complex international law issues at stake. Poor translations by U.S. government interpreters made a mockery of hearings and raised further fair trial concerns.

In November 2004, a federal district court ordered a halt in proceedings in one of the commission cases. The court ruled the case was improperly before a military commission because of the military’s failure to determine the defendant’s legal status under the Geneva Conventions and because commission rules of evidence violated fair trial standards.

### ***Material Witness Detentions***

The U.S. government continues to misuse a federal material witness law to secretly arrest and detain Muslim men in the U.S. indefinitely without charge. This law was enacted to enable authorities to temporarily detain a witness when his or her testimony is critical to a criminal proceeding and the individual is likely to flee if not detained. Since

September 11, the government has used the law to incarcerate terrorism suspects while investigations into their activities continue. The Justice Department still refuses to disclose the number of material witnesses it has held in connection with the war on terror or any details about them, citing national security concerns and grand jury rules.

On May 12, 2004, the government detained as a material witness U.S. citizen Brandon Mayfield, an Oregon attorney and Muslim convert who the government believed was linked to the March 11 Madrid bombing. A month later, authorities released Mayfield when they learned that the allegations against him were based on a faulty match of fingerprints recovered from the bombing site. In November, an international panel of scientists, commissioned by the FBI and led by the chief of the FBI's Quality Control unit to review the Mayfield case, strongly criticized the FBI for an institutional culture that discouraged fingerprint examiners from disagreeing with their superiors, blaming the faulty match on such pressures rather than technological failures, the explanation originally given by the FBI.

### ***Immigration***

Congressional and executive efforts to curtail the rights of immigrants through new legislation and administrative policies continued unabated throughout 2004. Non-citizens face violations of their right to seek asylum, to be free from arbitrary detention, to defend against their deportation when it will result in separation from their U.S. citizen children or other close family members, and to be afforded full and fair deportation hearings.

The United States has for many years used a unique preliminary asylum screening process for Haitians fleeing their country who have been interdicted at sea. This rudimentary policy fails to guarantee fair access to screening for Haitians who fear being returned to a place where their lives or freedom are threatened. Haitians fleeing their country following

the exile of Haitian President Aristide on February 29, 2004 were sent back in record numbers. By October 2004, 3229 had been interdicted at sea. Only ten were found to be refugees. As of this writing, they are confined to the U.S. Naval Base at Guantanamo Bay, Cuba, contrary to international standards limiting restrictions on the free movement of refugees. The U.S. government is searching for other countries that will take them in.

In December 2003, the Inspector General of the U.S. Department of Justice issued a report on the treatment in detention of non-citizens arrested after the September 11 attacks because of suspected links to terrorism. The report confirmed Human Rights Watch's findings in 2002 that some of the detainees had been physically abused. According to the Inspector General, guards in the federal Metropolitan Detention Center in Brooklyn maliciously slammed detainees against walls, twisted their fingers and wrists, and jerked their restraints to make the detainees fall. None of the detainees were indicted for crimes related to the September 11 attacks. Most were eventually deported for ordinary visa violations.

The U.S. has continued to adopt new immigration policies based on an assumed link between non-citizens and terrorism. In June 2004, the Department of Homeland Security announced that it would begin subjecting every undocumented non-citizen within 160 miles of the Mexican or Canadian border to "expedited procedures" to determine whether they are legally present. If not, they are immediately deported without a hearing.

The new policy has raised concerns about the training and capacity of border agents to assess the legal status of non-citizens and the viability of their asylum claims. A U.N. report leaked to the *New York Times* in August 2004 revealed that similar expedited procedures, in place at U.S. airports since 1996, have resulted in some non-citizens being harassed

and intimidated, discouraged from seeking asylum, and interviewed without translators by airport inspectors ignorant of asylum law.

### ***Criminal Justice***

Despite steadily dropping crime rates, harsh sentencing policies continue to fuel the expansion of the nation's jail and prison population, which reached a new high of 2.2 million in 2003. The United States—which has less than 5 percent of the world's population—holds nearly 23 percent of the world's prisoners. Racial disparities in the criminal justice system remain pronounced and minor drug offenses continue to constitute a significant number of total arrests.

In response to escalating prison costs, some states have begun instituting sentencing reforms to reduce prison populations, but there is still considerable resistance. In California, for example, voters in November 2004 rejected an initiative to reform the state's infamous "three strikes law," which imposes a mandatory life sentence on anyone who commits a third criminal offense, even a minor one such as petty theft.

Prisons generally fail to provide safe and humane conditions of confinement or adequate rehabilitative services and programs for prisoners. Prison rape remains a serious problem. The congressionally authorized National Prison Rape Reduction Commission began working in 2004 to document the problem and establish standards to eliminate it. Its work complements other new federal efforts to develop reliable statistics on the prevalence of prison rape, and to provide anti-rape grants and training to prison authorities.

Some 16 percent of prisoners are mentally ill, and prison mental health services are woefully deficient. In October 2004, Congress passed legislation that will provide federal funds to help divert the mentally ill from the criminal justice system and to improve their treatment when incarcerated. Medical treatment of prisoners is substandard in many prisons.

After several prisoners with HIV/AIDS died due to appalling living conditions and negligent or incompetent medical care, the Alabama Department of Corrections in June 2004 settled a lawsuit against it by agreeing to improve the care and treatment of prisoners with HIV/AIDS.

In his 2004 State of the Union address, President Bush declared: “America is the land of the second chance—and when the gates of the prison open, the path ahead should lead to a better life.” He proposed a reentry initiative for the nearly 650,000 men and women returning each year from state and federal prisons. Congress has introduced legislation that would fund expanded access to treatment, transitional housing, and other services to ease the transition from prison to home.

Federal and local public housing policies, however, exclude hundreds of thousands of needy Americans because they have criminal records, denying them the opportunity to obtain decent, stable, and affordable housing. While such exclusions ostensibly protect existing tenants, the policies are so arbitrary, overbroad, and harsh that they exclude persons arrested for minor offenses and people who have turned their lives around and remain law-abiding.

Close to 30 percent of HIV infections in the U.S. result from the sharing of syringes by injection drug users. In every state, possession of syringes for the purposes of injecting illegal drugs can be a crime, restricting effective sterile syringe programs, such as needle exchange, that reduce the spread of HIV. In 2004, needle exchange program volunteers distributing clean syringes were arrested in at least two states—Massachusetts and Pennsylvania.

In the U.S. as well as internationally, the U.S. government continues to promote HIV prevention programs that promote sexual abstinence and marital fidelity, while censoring lifesaving information about condoms as a means of HIV prevention. Funding for “abstinence only” programs

has greatly increased during the Bush administration. A growing body of evidence indicates these programs may actually increase HIV risk among teens by discouraging use of condoms and other safe-sex measures.

### ***Death Penalty***

By mid-October, the U.S. had carried out forty-eight executions during 2004. Over 3,400 men and women were on death row at the end of the year, including almost eighty juvenile offenders. The Supreme Court heard arguments in October in a case that will decide the constitutionality of the death penalty for juvenile offenders. Nineteen states and the federal government have already set eighteen as the minimum age for the death penalty. The Court's decision will determine whether the U.S. will leave the company of Iran and China, which are among the few states in the world that sentence juvenile offenders to death.

Five death row inmates were exonerated in 2004, bringing to 117 the number of men released from death row since 1973 because of evidence of their innocence. In August, a Louisiana death row inmate, Ryan Matthews, convicted of murder in 1999, was cleared of all charges after new DNA evidence exonerated him. Matthews is the fourteenth and most recent death row inmate freed with the help of DNA evidence.

In October 2004, the Congress passed the Innocence Protection Act (IPA) as part of a larger anti-crime bill. The IPA seeks to prevent wrongful executions by raising the standards for adequate representation in death penalty cases, providing greater access to post-conviction DNA testing, and ensuring that those exonerated through DNA evidence in federal cases receive compensation.

In March 2004, the International Court of Justice (ICJ) ruled that the U.S. had violated the rights of fifty-four Mexican nationals on death row because they had not been informed of their right to talk to their



consular officials after they were arrested, as required by the Vienna Convention on Consular Relations. The court rejected the U.S. argument that the clemency process offered an adequate remedy and insisted that the courts had to provide “effective” review of the convictions to determine whether the violations caused “actual prejudice” to any of the fifty-four men. The ICJ ruling did not affect other foreign nationals on death row; Hung Thanh Le, a Vietnamese national, was executed in Oklahoma despite his denial of consular notification. More than 120 foreign nationals from twenty-nine countries remain on death row in the United States.



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