

## 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 cautious 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.

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## 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

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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

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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.

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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.

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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.

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### ***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 widespread 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.

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## 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

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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.

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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

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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.

## 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 years 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.

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## **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 Nouveau*—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

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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 government 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.

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### ***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 county. 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

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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.

## 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.

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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 plane load 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

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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

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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

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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 sanctions 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

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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

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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

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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.

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### ***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.

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### ***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.

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### ***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.

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### **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 significant 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

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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 parliament 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.

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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.

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## **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.

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### ***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 government 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.

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## 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

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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

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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 (UK), 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 UK and others still hesitated to criticize abuses inside Rwanda, although the European Union did finally issue mildly critical

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letters concerning the Bizimungu trial and the attack on civil society for “genocidal ideology.” Rwanda sharply rejected these reproofs.

## 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.

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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.

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### ***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.

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## 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 (U.N.) 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

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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

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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's 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.

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### ***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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## 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

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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

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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,

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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

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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 Kakwau, 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

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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

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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

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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 domestically-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.

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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.