ABDICATION OF RESPONSIBILITY

The Commonwealth and Human Rights

A HUMAN RIGHTS WATCH REPORT

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INTRODUCTION

Heads of state of Commonwealth nations meet this month in Harare, Zimbabwe. Their gathering is an important opportunity to take tangible steps to recognize the importance of human rights in the member states and to commit the Commonwealth to an initiative that would significantly enhance its role in combatting human rights abuses.

The membership of the Commonwealth is diverse in every respect, and an increased commitment to human rights would cut across the usual divides of region, economic system and political structure. Because a number of the Commonwealth nations are among the leading donor nations, such as Australia and Great Britain, or important regional forces, such as India and Kenya, the development of a Commonwealth human rights effort could have considerable impact.

What virtually every member state has in common with the others is an imperfect record of assuring protection for human rights. This report, which deals with only nine of the fifty Commonwealth nations (and with only some of the human rights problems within each of those nations) nevertheless documents a number of serious human rights abuses, including:

- In Ghana, at least 68 persons are held without charges or a hearing, torture of political and security detainees is common, and death sentences are meted out by politically-motivated "public tribunals."

- In India, government forces have fired on crowds of unarmed demonstrators in Kashmir, killing scores of civilians, and have summarily executed civilians and suspected militants in Kashmir, Punjab and other states.

- In Kenya, opponents of one-party, one-man rule have been detained and prosecuted, and subjected to censorship and violence.

- In Malawi, the government has been linked to the assassination of critics in neighboring countries, and at least 19 political prisoners remain in detention without charges -- one since 1965 -- despite some recent releases.

- In Malaysia, over 100 persons are detained under the Internal Security Act, including seven for the peaceful expression of political views and party affiliation.

- In Nigeria, the government has engaged in detention without trial, mass arrests of students, dissolution of labor unions, and closure of newspapers.

- In Sri Lanka, both government and Tamil rebel forces have engaged in gross violations, including massacres of civilians, arbitrary arrests, abductions and torture.

- In the United Kingdom, there is internment without trial in Northern Ireland under "emergency" legislation, an appalling use of lethal force against civilians by both sides in the conflict there, and curbs on press interviews with lawful political organizations.

- In Zimbabwe, despite the end of the State of Emergency and the government's declared intention to abandon its commitment to a one-party state, the ruling party has intimidate political opponents, abridged civil and trade union rights and academic freedom, and eroded the protection of constitutional rights.

During the past twelve months, Human Rights Watch conducted studies of prison conditions in the United Kingdom, India and Kenya. Of these countries, only in Great Britain were we able to inspect the prisons, although we were not allowed to see three of the institutions we requested to see.[1] Where visits were not possible, we based our research on documentary evidence and interviews with former inmates, relatives of current inmates, prison officials, government officials, lawyers, prisoner rights advocates and others. Our investigations in these three countries revealed conditions that vary widely in some respects but that are surprisingly similar in others. In all three countries, prison conditions are very poor, indeed dehumanizing. All three countries have serious overcrowding problems, poor or non-existent sanitation, bad food and deficient medical services.

These abhorrent practices -- discussed at greater length in the country sections that follow -- have been the subject of reports by Human Rights Watch and other non-governmental human rights monitoring organizations, and to some extent by international and regional bodies. But it would be a significant boost to the worldwide movement for the protection of human rights if the Commonwealth began to take seriously the need to promote respect for human rights among its member states. Not only does human rights merit at least the same degree of attention as recent Commonwealth initiatives on economic development and the environment; basic rights of freedom of expression and association -- which are impeded to one degree or another in virtually every Commonwealth nation -- are prerequisites for any meaningful effort to deal with such problems.

In addition, a number of Commonwealth nations, such as India, have refused to permit visits by non-governmental human rights monitoring organizations.

This report includes sections on nine of the Commonwealth nations, South Africa, and Hong Kong. The list of countries included is not a comprehensive inventory of all Commonwealth nations that commit serious human rights abuses, but reflects the countries where Human Rights Watch has devoted its greatest energies -- based on the seriousness of abuses, our access to information, our ability to affect human rights practices, our priority in maintaining a balance in our work cutting across significant political and other divisions, and our limited resources. Within each country, the issues covered do not necessarily span the scope of human rights abuse, but reflect the areas to which Human Rights Watch has devoted its attention. We view this report as the first of a series.

We include here a section on South Africa, even though it has not been a member of the Commonwealth since 1961, because in the past the denial of human rights in South Africa has been a dominant topic at gatherings of Commonwealth heads of state. Earlier this year, Commonwealth Secretary-General Chief Emeka Anyaoku indicated that South Africa would not figure heavily at this year's meeting, as "we are on

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[1] We have also conducted a 1990 study of prison conditions in Jamaica, with full cooperation of the Jamaican government. This report does not include a chapter on Jamaica, because only two aspects of the human rights situation, i.e., prisons conditions and abuses by police, were investigated by us.

the last lap of the race" there. But as a recent Africa Watch report documents, government security forces have been persistently involved in violence between African National Congress and Inkatha forces, and in death squad attacks on anti-apartheid activists.

In the case of Hong Kong, a British dependent territory scheduled to revert to China upon the expiration of the British lease in 1997, Asia Watch has expressed concern over the detention of nearly 60,000 Vietnamese asylum-seekers and problems with the application of the new Bill of Rights.

In addition to urging that human rights be adopted as a major focus of the Harare meeting and a dominant theme of the Commonwealth program in the coming decade, we make the following specific recommendations:

(1) The Commonwealth Secretariat should speak out against human rights abuses taking place in member states.

(2) The Commonwealth should require all member states to permit visits by delegations from other countries concerned with human rights abuses.

(3) The Commonwealth should encourage member states to permit inspections of prisons and bring them into compliance with minimum standards such as those set forth in the U.N. Minimum Rules for the Treatment of Prisoners.

(4) The Commonwealth should sponsor its own delegations of eminent persons to conduct first-hand investigations of human rights abuses.

(5) The Commonwealth should establish formal relationships with non-governmental human rights monitoring organizations, and require its members to permit activity by such organizations.

GHANA

INTRODUCTION

Since December 31, 1981, Ghana has been ruled by the Provisional National Defense Council (PNDC) headed by Flt. Lt. Jerry Rawlings, the Chairman of the PNDC. Since then, the PNDC has ruled Ghana by decree and has been a consistent violator of basic human rights. The 1979 Constitution has been suspended; party political activities are banned and a battery of decrees introduced which allow the PNDC to exercise supreme power, accountable to no other institution.

The government has promised a transition to multiparty politics. A referendum on a draft constitution is scheduled for early 1992, with elections at the end of the year. It is unclear, however, to what extent this will usher in important political changes. The transition program is being manipulated by the PNDC, which is restricting freedom of association and harassing suspected political opponents. The legitimacy of the transition process has so far been undermined by the fact that several groups, such as politicians whose parties remain banned, students and lawyers, have boycotted the Consultative Assembly convened to discuss the future Constitution.

RESTRICTIONS ON POLITICAL PARTICIPATION

Freedom of association is tightly circumscribed. The police have persistently denied permits for rallies to groups critical of the government. On August 28, 1991, three weeks after the formation of the umbrella political organization known as the Coordinating Committee of Democratic Forces (CCFD), the authorities announced a 12-day ban on outdoor gatherings, with the exception of "religious, cultural, funeral or sporting activities." Officially, the measure was to ensure security for delegates attending the Tenth Non-Aligned Ministerial meeting in Accra the following week, but it was clearly designed to prevent a CCDF rally planned for Saturday August 31.

The leadership of the CCDF incudes representatives of all the major political tendencies within the country except the government-sponsored "revolutionary organs" established under PNDC rule. The CCDF explicitly rejects the PNDC's current political transition program - from which its members have been excluded - and has called instead for the establishment of a constituent assembly to draft a new constitution.

The Consultative Assembly, which finally began its work on August 12, 1991, has been challenged on a variety of grounds. The Catholic Bishops Conference criticized the fact that the government chose a consultative body whose decisions do not have the force of law - rather than a Constituent Assembly elected by universal adult franchise.

The communique issued by the Bishops also criticizes the distribution of seats in the 260-seat Assembly. The mainstream Churches - the Catholic Bishops Conference and the Christian Council of Ghana - have been allocated a total of 2 seats, while the security forces - Army, Navy, Air Force and Police - have 10 seats between them. In addition, the PNDC reserves the right to nominate 22 Assembly members. The National Council on Women and Development and the Committees for the Defense of the Revolution, which owe their existence to the government, have been allocated 10 seats each.

On August 1, 1990, in response to the government's open invitation to take part the debate over the country's political future, the Movement for Freedom and Justice (MFJ) was formed, representing a wide spectrum of political opinion. On the day of their inaugural press conference, four of the movement's leaders were "invited for discussions" with the director of the Bureau of National Investigations (BNI).

Since then, branches have been refused all applications for the police permits required to hold rallies. On June 29, 1991, armed riot police dispersed a crowd of MFJ supporters who had gathered outside the main Post Office in Accra. They had assembled there after failing to hold the rally at Bukom Square - the original venue - because the Square was occupied by members of the government-sponsored CDR's.

MFJ leaders have been persistently harassed, detained, intimidated and kept under surveillance, culminating in the shooting on August 2, 1991, of Daniel Kaba, a member of the Movement's Tema branch, by two members of the state-sponsored militia, the Civil Defence Organization.

On August 14, 1991, Alhaji Ottman Danfordio, an MFJ activist, was detained and assaulted by men in plainclothes after he had put up posters calling for the repeal of repressive PNDC laws; the release of political prisoners and detainees; the lifting of the ban on party politics; an unconditional amnesty for all political exiles; the establishment of an independent electoral commission and a constituent assembly selected by universal adult suffrage; and the declaration by the PNDC of a timetable for the return to civilian rule.

These demands have been echoed by virtually all political organizations and other interest groups. Apart from the mainstream churches and the Ghana Bar Association (GBA), these include the National Union of Ghana Students (NUGS), the Trades Union Congress (TUC) and the Association of Recognized Professional Bodies (ARPB), an umbrella body affiliated to the CCDF.

After an emergency meeting on May 11, 1991, the GBA announced its decision to boycott the Consultative Assembly. The Bar Association also called on the PNDC to hand over to an interim government by July 1, 1991; to lift the ban on party politics and to repeal all repressive laws; to organize a Constituent Assembly, freely elected by universal adult suffrage under the supervision of an independent electoral commission and to draft the constitution.

DETENTION WITHOUT CHARGE OR TRIAL

Under an August 1984 amendment to the 1964 Habeas Corpus Act (PNDC Law 91), the courts may no longer inquire into cases of "administrative" or "preventive" detention. The government denies that Ghana has any political prisoners. Africa Watch knows of at least 68 persons currently detained for political reasons or who are being systematically denied a hearing in an independent court of law. In the absence of official information, it is difficult to estimate the exact number of political detainees in Ghana. A number of detainees have died while in custody. (See below, under Torture).

Maj. Courage Quashigah, a former Chief Operations Officer at PNDC headquarters, and a former commander of the Military Police and five others, were detained in two operations in September 1989 and January 1990. They have never been charged. Public statements by senior government officials are likely to prejudice any future trial.

PRE-EMPTIVE DETENTION

Five victims of "pre-emptive" detention about whom Africa Watch has particular concern are a group of BNI officers who were detained in BNI cells in 1987 following the escape of a political detainee. All five had been on duty that day, and were verbally accused of having facilitated the escape. No formal charges were ever laid, but the five have been in detention ever since. There do not appear to be any disciplinary procedures within the Bureau to deal with negligence.

TORTURE

Torture has become a common practice in the interrogation of political and security detainees under the PNDC. For example, in 1984 Sgt. Malik, and Cpls. Gyiwah, Ajomgba, Bismarck and Sarkodie were arrested on suspicion of involvement in a previous coup attempt. All were tortured and summarily executed. Victims of torture during 1986 included Kyeremeh Djan and Mawuli Drah Gokah, who were later executed for involvement in an alleged coup plot; and Majs. Ocran and Twumasi-Anto, who were also executed for involvement in an alleged plot.

One of the main interrogation centers is located at Nyame House in Accra and interrogations are carried out by a Special Forces Team whose leaders were trained in Cuba. Africa Watch believes that Flt.Lt. W.K. Domie, a pilot suspected of involvement in an alleged plot led by Maj. C.E.K. Quashigah, died while being interrogated at Nyame House in September 1989. However according to the official version of events Flt.Lt. Domie committed suicide by hanging, after constructing a noose with his own clothing.

L.Cpl. Moses Harley, who is currently believed to be held in Kpandu prison, is also known to have suffered torture. He testified for the prosecution in a subversion trial, and has been in detention without charge since 1985.

ATTACKS ON THE INDEPENDENT PRESS

In March 1989, the PNDC introduced Law 221, the Newspaper Licensing Decree. But this was just a formality, because the PNDC had already established a poor record of respect for press freedom during the previous seven years. Among publications banned or forced to close down under the PNDC are the *Believer*, *Palaver Tribune*, *Punch* and *Echo* (all closed in July 1982 after attacks by members of the PNDC-inspired People's Defence Committees); the *Legon Observer* (1984); the *Catholic Standard* (license revoked 1985); and the *Free Press*, which
voluntarily ceased publication in April 1986 after its research editor, Kweku Baako, was detained by officers of the BNI.

Under Law 211, the Ministry of Information ordered all newspapers and magazines to reapply for their licenses, citing reasons of "bad taste and cultural pollution" in some publications. A re-registration fee of 25,000 cedis (U.S.$67.50) was introduced. The immediate effect of the Law and the accompanying Legislative Instrument was that apart from the main state-owned dailies, all publications disappeared from the newsstands.

Of the applications initially submitted in 1989, three newspapers were denied new licenses - *The Concord*, *The Independent*, and the *Sports Guide*. It is clear that Law 221 was designed principally to silence certain journalists who had run afoul of the authorities. All three were either owned, published or edited by journalists regarded as critical of government policies and leadership.

In 1989, a group of Ghanaian journalists called for the adoption and implementation of a law that would give the public the right of access to information. Since the middle of 1991, a number of publications have felt free to publish dissenting views, particularly with regard to the debate on a return to constitutional rule. This has provoked angry personal responses from Flt. Lt. Rawlings and some of his closest colleagues, who have made it clear that they regard the private press as "anti-PNDC."

The government has also been hostile to the circulation of critical magazines published abroad. In July 1991, during an official visit to France, Flt.Lt. Rawlings accused the London-based magazine *West Africa* of bias against his government, and questioned whether it should be allowed into Ghana. Copies of another London-based publication, *New African*, were confiscated and the magazine banned from circulation in Ghana after its December 1988 issue carried an interview with Maj.(retired) Kojo Boakye-Djan, a former colleague of Flt. Lt. Rawlings who now lives in exile.

Journalists whose coverage the government deems as "offensive" have suffered harsh reprisals. Kweku Baako, one of the owners of the *Concord* spent two years in detention without charge. His colleague John Kugblenu died in August 1984, one month after his release from over a year in detention without charge. Detained with him were the paper's publisher, Tommy Thompson, and columnist Mike Adjei.

In February 1985, following an attempt to assassinate the head of state in Kumasi, Baffour Ankomah, editor of Ghana's oldest newspaper *The Pioneer*, and the paper's news editor Osei Tutu, were detained and taken to the PNDC's headquarters at Gondar barracks in Accra where they were assaulted. In July 1985, Tommy Thompson was detained at BNI headquarters in Accra.

LACK OF AN INDEPENDENT JUDICIARY

The PNDC has attempted to exercise political control over the judiciary by setting up a system of Public Tribunals. Under this system, the rules of ordinary jurisprudence are

suspended, and Tribunal Panel members are for the most part, supportive of the PNDC's wider political goals.

Government interference in the judicial process is routine. On December 14, 1990, the first accused in a fraud case before the National Public Tribunal was "granted bail from the Castle" (the seat of government) in a letter signed by Ato Dadzie, a PNDC Secretary. The Tribunal panel pointed out that nowhere in PNDC Law 78 - which governs the Tribunals - is there provision for a PNDC Secretary to grant bail, and described the initiative as "a nullity, void, of no effect and illegal".

In its ruling of January 22, 1991, the Tribunal declined jurisdiction in the case. Three days later George Agyekum, the chairman of the National Public Tribunal and the presiding member of the Tribunal panel hearing the fraud case, was suspended pending an investigation into his conduct by a committee of inquiry.

In September 1982, following the annual meeting of the Ghana Bar Association in Kumasi, the GBA announced the decision of lawyers in private practice to boycott the Tribunal system. The GBA described as "detestable" the absence of a right of appeal and criticized as "disturbingly prejudicial" the

powers of the Tribunals to decide "in advance...that legal technicalities will not be tolerated." The Tribunal system has also laid itself open to abuse through the practice of accepting financial reparation *in lieu* of sentence.

The GBA boycott was denounced in the state-owned media and by the chairman of the National Board of Tribunals as a political act by "reactionary forces hostile to the revolution." In May, 1991, the Accra High Court ruled that the boycott was illegal, following a politically-motivated suit filed by a pro-government member of the GBA. Individual lawyers have been appearing before the Tribunals, either for financial reasons or when a trial is seen to be political.

THE DEATH PENALTY

All cases in which the death sentence has been imposed and then carried out under PNDC rule have been heard before the Public Tribunals. No sentence of death passed on persons tried before the established courts has been carried out in Ghana since 1976. Although under the Criminal Code of 1960 all cases in which the death sentence has been imposed are subject to a statutory right of appeal, that right has been rendered meaningless by the procedures which govern the Tribunals.

Since 1982, there has been extensive use of the provision for the death penalty under PNDC Law 78, which permits execution by firing squad for a number of political offenses and for what the government calls "economic sabotage". Until mid-1988, more than 60 people are known to have been executed for "subversion", murder, economic sabotage or armed robbery. But under Ghana's established Criminal Code armed robbery is not an offense which carries the death sentence.

Twenty death sentences are known to have been passed during 1990, and seven more capital sentences are reported to have been passed since then. A further 18 people are already facing execution for criminal offenses. Meanwhile at least 68 further detainees of whom Africa Watch is aware could all potentially face the death penalty, since the government describes them as "subversives" detained for their own safety.

RECOMMENDATIONS

The government of Ghana should repeal all legislation which restricts the human rights of Ghanaian citizens. In particular,

- PNDC Law 4, which allows for indefinite detention without trial; PNDC Law 91, which bars the courts from enquiring into the reasons for detention under PNDC Law 4;

- PNDC Law 78, which has been used by the government to try and in certain cases to execute - its political opponents;

- PNDC Law 211, used to ban publications critical of the government; and

- PNDC Law 221, which restricts freedom of worship.

The government should also publish the findings of the commission of inquiry established in 1989 to look into the reform of Ghana's prison system.

HONG KONG

Unprecedented international scrutiny of Hong Kong's human rights situation took place in 1991, brought on by the enactment of a local Bill of Rights, the report of the United Kingdom to the UN Human Rights Commission, and visits by other human rights delegations such as the International Commission of Jurists. The incarceration of nearly 60,000 Vietnamese asylum-seekers stood out as Hong Kong's most glaring and intractable human rights problem. The Bill of Rights promised to be a powerful new tool for challenging oppressive colonial laws and government actions, but its efficacy is hobbled by various restrictions, notable among them a period of immunity for certain of the government's police powers. Finally, the crisis of confidence in Hong Kong's future deepened as both the British and local government signalled willingness to compromise on the principle of Hong Kong's autonomy to accommodate China.

THE DETENTION OF VIETNAMESE ASYLUM-SEEKERS

As of October 1991, 59,226 Vietnamese were imprisoned in closed detention centers awaiting either determination of their claims to refugee status or eventual repatriation to Vietnam. The relevant immigration ordinance sets no precise limit on the amount of time Vietnamese may be detained. Some, particularly unaccompanied minors, have been waiting since 1988 to undergo initial "screening" of their claims.[2] This condition of indefinite detention also affects former residents of Vietnam who come to Hong Kong after having spent some time in China. They, however, are not entitled to evaluation of their claims to refugee status and await merely their identification and acceptance by China.

Conditions in the detention centers approximate those of prisons. Inmates, who are referred to by number rather than name, live behind barbed wire, in corrugated metal huts lined by rows of triple bunk beds, or in some cases, large tents. Both the internal and external living space per inmate fall well below international standards.[3] Little work is provided in the majority of detention centers, and the space for amenities such as sports or education is very limited within the compounds. The police or the correctional services department manage most detention centers and enforce disciplinary rules, including provision for limiting visits, censoring mail, and punishing disobedience or disrespect of an officer, escape, and vandalism. Despite such supervision, however, assault, rape and substance abuse within the camps remain serious problems.

Families and minors have suffered the effects of these conditions especially severely. Camp workers have reported the widespread breakdown in family relationships, child abuse and juvenile delinquency due to long-term incarceration. Sadly, several thousand unaccompanied minors, the most vulnerable inmates, live in these conditions the longest. Although the special procedures for evaluating their claims were revised in 1991, the new committee has only begun to make headway in resolving the backlog of cases.

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[2] In general, waits of two to three years are common.

[3] The exception is Tai A Chau Detention Center, in which residents have access to an entire island during the day. A forcible repatriation scheme would raise its own set of human rights issues, particularly whether Britain and Vietnam have provided adequate safeguards such as access by international monitors, to prevent abuse of returnees by local officials.

The prolonged detention of asylum-seekers has not been justified on grounds of public order -- indeed, Hong Kong has handled much larger numbers of both Vietnamese and Chinese immigrants on past occasions. Nor is it related to any immediate prospect of repatriation. Although recent negotiations between Britain and Vietnam may eventually produce a repatriation scheme, local officials admit that boat people are likely to stay in Hong Kong for "a very long time." The only articulated rationales for detention have been deterrence of future arrivals and local public opinion, neither of which justify the arbitrary deprivation of liberty prohibited by Article 9 of the International Covenant on Civil and Political Rights. Indeed, Hong Kong's own Supreme Court, considering the case of a boatload of Vietnamese who were detained when they asked not for asylum but for supplies and repairs, found a detention of 18 months unreasonable.

THE BILL OF RIGHTS

The provisions of Hong Kong's new Bill of Rights are modeled on those of the International Covenant for Civil and Political Rights. By its terms the Bill of Rights repealed all inconsistent pre-existing legislation. Six ordinances were exempted from any such repeal for one year, with another one year "freeze" possible by resolution of the Legislative Council. These ordinances, which all grant extraordinary law enforcement powers and vest administrative authorities with enormous discretion in their exercise, are those laws most likely to conflict with individual rights guarantees. In arguing for the "freeze" provision, the government claimed that were these laws to be struck down there would be a dangerous gap in existing police powers. However, the government has not committed itself to preparing revisions of these laws during the "freeze," but merely to reviewing these laws for possible conflicts.

Although the Hong Kong Bill of Rights Ordinance came into operation on June 8, 1991, the first judicial decisions relying on its provisions did not appear until several months later, after an international symposium drew attention to the new law. These decisions struck down presumptions of guilt in Hong Kong's drug laws and automatic issuance of stop orders to prevent debtors from leaving the territory.

While these early cases are encouraging, it remains to be seen whether the Bill can be used to protect a wide range of rights and plaintiffs. Hong Kong follows the English practice whereby the loser in litigation must pay the winner's legal fees. In practice, the litigation of rights issues will be limited to those few plaintiffs with the means to risk an adverse judgement. The government has rejected proposals to establish a commission that could inexpensively enforce the rights of the disadvantaged or to alter or waive the rule on payment of fees.

HONG KONG'S AUTONOMY AND HUMAN RIGHTS

Hong Kong's government has a history of exercising its considerable powers to mute confrontations with China, and 1991 was no exception. In late 1989, the government assured China that the territory would not be used as a "base for counterrevolutionary activities." In July of this year, the government appeared to act on this pledge by refusing to admit over a dozen overseas students who had landed in Hong Kong to attend a pro-democracy conference. Earlier, customs officials impounded a replica of the Tiananmen Square "Goddess of Democracy" which was intended to be used at a mass rally to commemorate the June 4, 1989 massacre.

Following Britain's concessions to China over the financing and control of Hong Kong's new airport project, another compromise was announced regarding the composition of Hong Kong's highest court.

Under the Basic Law, the Court of Final Appeal may be composed of local judges, or "as required," foreign judges from other common law jurisdictions. The Joint Liaison Group, after months of stalemate on the composition of the Court, announced on September 27, 1991, that only one of the five judges could be selected from either overseas judges or retired local judges. This restriction has been criticized as a concession to Beijing, which would prefer the Court not to be overly independent.

The independence of the judiciary, and the legal protections in place to safeguard rights are of the utmost importance as 1997 approaches. Precedents set by expedience now, such as the mass incarceration of civilians, will lay the foundations for ever more egregious rights abuses in the future. China's commitment to rule of law remains questionable; in view of this, it is Britain's responsibility to fortify and protect the legal system, not to hedge and limit it unnecessarily.

INDIA

Nineteen-ninety-one has been a dramatic and catastrophic year for India, pushing the country to the brink of an economic crisis in the midst of unprecedented political turmoil. In November 1990 the minority government of V.P. Singh collapsed and was replaced by that of Prime Minister Chandra Shekhar, which then fell in March 1991. Parliamentary elections held in May and June saw the worst violence of any election since the country's independence. Among those killed was former Prime Minister Rajiv Gandhi, who died in a bomb explosion on May 20 while campaigning in the state of Tamil Nadu. In the wake of his assassination, local politicians threatened to expel thousands of Sri Lankan refugees and police in Tamil Nadu arrested scores of suspected members of the militant Sri Lankan separatist group, the Liberation Tigers of Tamil Eelam (LTTE), which was believed responsible for the killing. One suspect subsequently died in custody under suspicious circumstances.

Human rights issues remained at the forefront of the political upheavals, as secessionist movements in the border states of Punjab, Jammu and Kashmir and Assam claimed thousands of lives and led to widespread abuses by security forces and armed militant groups. The Terrorist and Disruptive Activities Act (TADA), among other security laws, was used widely throughout India against alleged militants and those suspected of supporting them -- including peaceful opponents of government policy.

PUNJAB AND KASHMIR

The severity of the human rights concerns in Punjab and Kashmir prompted Asia Watch to send a delegation in late 1990 to investigate and document human rights violations and violations of humanitarian law by all parties to the conflicts. The findings were published in two reports, *Kashmir Under Siege* and *Punjab in Crisis*, in May and August 1991, respectively. The endemic nature of human rights abuse in prisons throughout India, including widespread torture and deaths in custody, are documented in Asia Watch's March 1991 report, *Prison Conditions in India*. In addition to these issues, Asia Watch has been concerned about rampant abuses and violations of the laws of war by government forces and secessionist militant groups in Assam and other northeastern states.

In the states of Andhra Pradesh, Uttar Pradesh and Bihar, armed groups operating with the connivance and, in some cases, the assistance of local police have attacked and killed low-caste villagers and peasant activists. Finally, Asia Watch is increasingly concerned about the arrests of peaceful demonstrators protesting against large-scale development projects in Maharashtra, Madhya Pradesh and Bihar and government efforts to censor information about the environmental impact of such projects.

Despite growing criticism by international and domestic human rights groups in 1991, the central government continued to pursue its brutal campaign against militant separatists in Kashmir. Throughout the year, the army and the security forces routinely engaged in extrajudicial executions, disappearances, arbitrary arrest, prolonged detention without trial, and widespread torture. Government troops also violated the laws of war which prohibit

indiscriminate attacks on civilians, summary execution and the wanton destruction of civilian property.

In its May 1991 report, Asia Watch documented some 200 extrajudicial executions of civilians and

suspected militants by army and paramilitary forces in Kashmir. In many of the cases detailed in the report, troops opened fire on unarmed crowds of demonstrators, or in crowded markets and residential areas. Shootings of this kind continued in 1991. On May 8 at least 14 mourners in a funeral procession were killed when government forces opened fire on a crowd of 3,000 at a Srinagar cemetery. According to press reports, when mourners returned to the scene to collect the bodies, the troops again opened fire, killing a teen-aged boy.

The reported rape on February 23 of at least 23 and perhaps as many as 100 women in the village of Kunan Poshpora by army soldiers of the Fourth Rajputana Rifles became the focus of a government campaign to acquit the army of charges of human rights violations. The incident provides a telling example of the government's failure to ensure that charges of human rights violations committed by members of its armed forces are properly investigated.

The rapes allegedly occurred during a search operation in the village conducted by the army unit on the night of February 23 in which the men were taken away from their homes and interrogated. The village headman and other village leaders have claimed that they reported the rapes to army officials on February 27, and that the officials denied the charges and took no further action. Officials have countered that no clear complaint was made.[4] Villagers then complained on March 5 to the local magistrate, S.M. Yasin, who visited the village on March 7. Yasin filed his report, which included the statements of 23 women who claimed that they had been raped and "subjected to cruel measures irrespective of their age, marital status, pregnancy, etc." The report raised questions about discrepancies in the women's testimony and called for a more comprehensive investigation.

Publicity about the incident in the national press provoked strong denials from army officials. On March 17, a fact-finding delegation headed by Chief Justice Mufti Bahauddin Farooqi investigated the incident and reported that the delegation had interviewed 53 women who had made allegations of rape. According to Chief Justice Farooqi's report, the villagers stated that a police investigation ordered into the incident had not commenced because the police officer assigned to conduct the investigation, Assistant Superintendent Dilbagh Singh, was on leave. Farooqi reportedly stated, "He had never seen a case in which normal investigative procedures were ignored as they were in this one." In July, Dilbagh Singh was transferred to another station without ever carrying out the investigation.

On March 18, the divisional commissioner, Wajahat Habibullah, visited the village and filed a confidential report, parts of which were then released on April 10. The report concluded that "the allegations leveled against the army cannot be believed and have apparently been made by villagers as an afterthought under pressure from the militants."[5] Government officials also claimed that "a certificate of non-harassment duly signed by two local representatives, the village headman and a prominent person, was

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[4] Two police constables who accompanied the army unit have stated that some of the men emerged from the interrogation center barely able to walk and that the women cried out for help. They claim that they reported the incident to the commanding officer.

[5] The report's conclusions were based primarily on the fact that the women had not reported the incident immediately and that all of the women who alleged that they were raped had not reported the incident. The report also claimed that there were too few soldiers in the unit to have committed the number of rapes reported. Officials also challenged the women's credibility because the number of alleged victims kept changing. Other sources have suggested that a smaller number of women may have been raped and that others joined them so that they would not be ostracized.

also furnished to the security personnel before their departure from the village. However, according to a local journalist, "The soldiers forcibly took `no objection certificates' from the local police and the residents.

In response to criticism about the government investigation, the Press Council of India appointed a "Committee on the Media Situation in Kashmir and Punjab" to conduct an investigation of the incident. The committee members visited the village in June, more than three months after the incident occurred. After interviewing a number of the alleged victims, they concluded that contradictions in the women's testimony rendered the charge of rape "baseless." The committee interviewed hospital officials who confirmed that one of the women, Zarifa, who was pregnant at the time, gave birth four days after the incident to a baby with a fractured arm. Zarifa had claimed that a soldier kicked her in the stomach; the committee concluded that such injuries may result from the efforts by doctors to position the fetus for delivery. Examinations conducted on 32 of the women on March 15 and 21 confirmed that the women had abrasions on the chest and abdomen, and that the hymens of three of the unmarried women had been torn. The committee concluded that "such a delayed medical examination proves nothing" and that such abrasions are "common among the village fold in Kashmir."[6] About the torn hymens, the committee argued that they could be the result of "natural factors, injury or premarital sex."

While the results of the examination by themselves do not substantiate the charge of rape, they do raise serous questions about what happened in Kunan Poshpora. Under the circumstances, the committee's eagerness dismiss any evidence that might contradict the government's version of events is deeply disturbing. In the end, the committee has revealed itself to be far more concerned about countering domestic and international criticism than about uncovering the truth. The report echoes the government's concern about international criticism by arguing that the charges against the army constituted "a massive hoax orchestrated by militant groups and their sympathizers and mentors in Kashmir and abroad...for reinscribing Kashmir on the international agenda as a human rights issue."[7]

As Asia Watch noted in its May 1991 report, the alacrity with which military and government authorities in Kashmir discredited the allegations of rape, and their failure to follow through with procedures that would provide critical evidence for any prosecution -- in particular prompt medical examinations of the alleged rape victims -- raises serious concerns about the integrity of the investigation. The failure to promptly establish an impartial investigation into the incident suggests that the Indian authorities have been far more interested in shielding government forces from charges of abuse. Given evidence of a possible cover-up of the incident, both the official and the Press Council investigation fall far short of the measures which would need to have been taken to establish the facts in the incident and determine culpability.

Since their campaign for secession escalated in late 1989, Kashmiri militants have engaged in grave violations of human rights and humanitarian law by executing suspected police informers and threatening and murdering prominent Muslims and members of the minority Hindu community. Militants have also violated the laws of war prohibiting indiscriminate attacks on civilian targets.[8]

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[6] The committee did not inquire whether the men had similar injuries.

[7] Human rights groups in India have also criticized the Press Council for confining its terms of reference to the army, as the paramilitary forces in Kashmir have been responsible for the greatest number of abuses.

[8] Pakistan's military intelligence, the Directorate of Inter-Services Intelligence (ISI), apparently provides arms and training for some

Kidnappings by Kashmiri militant groups escalated in 1991, and included among the victims a number of foreigners. In March, two Swedish engineers were kidnapped by the Muslim Janbaz Force which demanded that the United Nations and Amnesty International be allowed to conduct fact-finding missions in Kashmir. In June, the two men escaped from their captors. On June 27 a group of Israeli tourists on a houseboat were attacked by militants, who took seven men hostage. When one of the Israeli men grabbed a militant's rifle and opened fire, a tourist and a militant were killed in the ensuing gun battle, and three tourists injured. As the militants fled they took one of the tourists hostage, releasing him a week later. Militants have also kidnapped state government civil servants, demanding the release of detained colleagues in exchange.

By the close of 1990, escalating violence by militants and criminal gangs and extrajudicial killings by security forces in Punjab had claimed some 4,000 lives. The first nine months of 1991 registered a record 3,300 killings in the state. Among those killed were many candidates to the state assembly and national Parliament,[9] a number of whom were assassinated by militant groups contesting the elections. Militants boycotting the elections also engaged in indiscriminate attacks on civilians. Days before the polls, armed gunmen opened fire on passenger trains near the city of Ludhiana, killing at least 74 people. Originally scheduled for June, the Punjab elections were postponed until September following the election of Prime Minister Narasimha Rao. On September 18, the polls were again canceled.

Since 1984, government forces in Punjab, including the Punjab police, Border Security Force, Central Reserve Police Force and the Indian Army,[10] have resorted to widespread human rights violations in their fight against the militants, engaging in arbitrary arrests, torture, prolonged detention without trial, disappearances and summary killings of civilians and suspected militants.

Many of these executions involve persons who were first detained in police custody, and are then reported by the authorities as having been killed in an "encounter" with the security forces. Asia Watch investigated many cases of extrajudicial executions of Sikhs by the security forces in staged "encounters" in which the police allege that they came under attack by militants. In most cases the victims have simply been murdered in police custody. In some cases, the police have actually recruited and trained extrajudicial forces to carry out these killings.

Women receive particularly harsh treatment in police lockups. We have registered several cases of rape in police custody, and in addition we obtained documentation of other forms of physical abuse of women detainees. Living conditions in police lockups are dismal: detainees are usually provided no beds, no change of clothes, and no soap or toothpaste. They live in very overcrowded cells with terrible stench and insect infestation. Police can hold detainees for up to 90 days.

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of the militant organizations. Asia Watch has recently begun to monitor human rights abuses in Pakistan, which will be covered in future reports.

[9] Punjab has been ruled directly from New Delhi since May 1987 when the state assembly was dismissed.

[10] One army unit is permanently stationed in Punjab, and as of late 1990, additional army units were deployed in the border districts to supplement the police and paramilitary forces.

Detainees have also frequently "disappeared" in police custody; police frequently have defied court orders and thwarted efforts to locate detainees and produce them in court. Torture is practiced systematically in police stations, in prisons and in the detention camps used by the paramilitary forces throughout Punjab. Family members are frequently detained and tortured to reveal the whereabouts of relatives sought by the police. The police have also seized local newspapers and harassed journalists.

For their part, the militants have been willing to go to any lengths to enforce their will and undermine efforts toward a settlement. Sikh militants have pursued their campaign for a separate state by assassinating civil servants, political candidates and journalists. Militant groups have also engaged in indiscriminate attacks on civilians. These groups have flagrantly violated that law by killing, kidnapping and assaulting civilians. Other criminal gangs who find in the political crisis a lucrative business in extortion and arms smuggling have murdered and assaulted civilians, and have engaged in extortion and kidnapping, committed crimes under Indian law.[11]

Certain militant organizations have also issued death threats and have assassinated those Sikhs not supporting the separatist cause or resistant to efforts of some militant groups to impose a fundamentalist Sikh ideology. The leaders of several major militant organizations have issued press statements warning journalists to adhere to a strict code of conduct. Failure to abide by the militants' dictates is punishable by death.

The escalating violence in Punjab has spread to neighboring states, particularly Uttar Pradesh where some militants have become involved in smuggling across the Nepal border. State authorities, like their counterparts in Punjab, have given police officials blanket authority to act outside the law against suspected militants. On July 13, ten Sikh bus passengers traveling in Uttar Pradesh state were taken into custody and shot dead in what authorities have claimed was an armed "encounter" with police. An eleventh detainee has subsequently disappeared. Eyewitnesses to the detention interviewed by Asia Watch reported that none of the detainees were armed, and Asia Watch believes that the detainees may have been summarily executed. A number of eyewitnesses who have filed affidavits in the courts have subsequently been threatened by the police.

In the wake of Rajiv Gandhi's assassination, police in Tamil Nadu launched a massive search for the suspected assassins that included the arrests of thousands -- including many Sri Lankan refugees. Several thousand are reported to be held under the Terrorist and Disruptive Activities Act (TADA).[12] On June 24,

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[11] The conduct of insurgent forces (such as the militants in Punjab, Kashmir and Assam) is governed not by human rights treaties (to which only states may be parties), but by international humanitarian law, which applies during armed conflicts. Despite their separate fields of application, human rights and international humanitarian law share the common purpose of securing for all persons a minimum standard of treatment. For example, both human rights and humanitarian law conventions absolutely prohibit summary executions, torture and other inhuman treatment. The applicability of international humanitarian law does not negate the right of the Indian government to prosecute and punish violations of its own criminal laws so long as this is done in compliance with internationally-recognized standards of due process of law.

[12] TADA permits administrative detention without formal charge or trial for up to one year, and has been used widely against persons suspected of being militants or militant sympathizers in Punjab, Kashmir and Assam in addition to Tamil Nadu. Because TADA defines "disruptive activity" to include even the peaceful expression of political views, it has been used to crush legitimate political dissent throughout India. TADA suspends ordinary safeguards against torture by permitting a detainee to be held for interrogation in police custody for sixty days; ordinary law allows for only 15 days detention in police custody. During this period of detention, detainees are at a substantially greater risk of being tortured. TADA also severely restricts detainees' right to bail. Trial

the authorities in Tamil Nadu ordered the 85,000 Sri Lankan refugees in the state living outside refugee camps to register with the police or face deportation. Since then, thousands who failed to register have been arrested. In July, three Sri Lankans were detained under the National Security Act for reportedly publishing a Tamil periodical without a license and reporting "the activities of LTTE militants."

A government crackdown against suspected members and sympathizers of the LTTE also resulted in the widespread arrests. On July 17, the police arrested Mirasdar Shanmugam, who was believed to be a key link in the Gandhi assassination conspiracy. On July 20 his body was found hanging from a tree, and police claimed that he "escaped" from custody and "committed suicide" or "was killed by the LTTE." Asia Watch is gravely concerned that Shanmugam may have been killed in police custody to prevent him from disclosing information about the links between Tamil Nadu officials and the LTTE. A magisterial inquiry has been ordered.

PRISON CONDITIONS

Deaths in custody occur at an alarming rate throughout India, frequently as a result of torture. Such abuse is not limited to states battling insurgencies such as Punjab, Kashmir and Assam, but is in fact more pervasive in "the world's largest democracy" than in many authoritarian states in Asia. The rigid class system in India prisons -- which by law affords better treatment to prisoners of higher socioeconomic status -- and corruption in the police perpetuates the widespread system of abuse. Women are particularly at risk in prison, where custodial rape and other forms of sexual abuse pose a grave threat.

The majority of inmates in Indian prisons and jails are those awaiting trial, because of the slowness of the justice system. According to credible estimates, India has a very low incarceration rate, about 34 per 100,000 inhabitants.[13] But because of the overall size of the country's population, prison conditions affect a large number of individuals -- as many as a quarter of a million at any given time.

Overcrowding and poor physical conditions of the prisons are among the chief problems. These conditions, however, do not affect the entire prison population in an equal manner, because there is a rigid class system in the prisons in much of the country that is expressly mandated by law. Under this system, special privileges are accorded to the upper or middle classes, irrespective of the crimes they may have committed or the way they comport themselves in prison. Another very troubling phenomenon in Indian prisons is the existence of "convict officers." Under the current law, prison superintendents may appoint particular convicts as "officers," with duties customarily performed by guards in the prison systems of other countries. This practice is very troubling because it gives some inmates a high degree of power over others and leads to potentially dangerous and abusive situations.

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procedures under TADA violate international standards of due process by permitting the identities of witnesses to be kept secret, reversing the presumption of innocence and placing the burden on the accused to prove he is not guilty and permitting the introduction into evidence of confessions which may have been coerced. TADA also eliminates the right of appeal to the High Court, and restricting such appeals to the Supreme Court. The cost of such appeals are prohibitive for many detainees.

[13] This is one of the lowest known prisoner-to-population ratios, and certainly the lowest among the world's largest countries. For example, in the U.S. this ration is 426, and in South Africa it is 333. The Bahamas may be among the countries with the highest ratio in the world, above 900. We were unable to obtain a confirmation from the Bahamian government, but credible sources tend to suggest that this figure is correct.

Punishment in Indian prisons includes a variety of sanctions used worldwide -- for example, disciplinary segregation -- but the law also allows for a wide range of punitive use of physical restraints, a measure explicitly forbidden under the U.N. Standard Minimum Rules for the Treatment of Prisoners.

RECOMMENDATIONS

Preoccupied with its own survival, India's new government, under Prime Minister Narsimha Rao, has yet to take any significant steps to implement genuine human rights reforms and restore the rule of law in areas of civil conflict in Kashmir, Punjab and Assam. Like its predecessors, his government shares responsibility for the escalating violence with militant groups in those stats. However, the government's policy of repression has only resulted in an escalation of violence and a willingness on the part of authorities to turn a blind eye to abuses, including murder, rape and torture.

In order to restore respect for human rights the government of India must establish independent, impartial commissions of inquiry into all reports of extrajudicial executions, disappearances and torture carried out by the army and the security forces. Members of the army and the security forces found responsible for human rights abuses should be prosecuted and punished. The government of India should also repeal the Terrorist and Disruptive Activities Act (TADA) as its broad provisions have virtually criminalized legitimate political dissent and free speech and have suspended safeguards against arbitrary arrests and torture. Conditions in Indian prisons must be made to comply with the United Nations Minimum Standard Rules, and the class system in prisons should be eliminated. Finally, the International Committee of the Red Cross should be permitted to undertake the full range of its protection activities in areas of civil conflict, and the government of India and all of the militant groups should extend their full cooperation to the ICRC. Militant organizations must abide by the provisions of Common Article 3 of the Geneva Conventions which prohibit killings or other attacks on civilians.

KENYA

Human rights abuses, which have increased in Kenya as President Moi has sought to consolidate power, escalated dramatically in 1990 as a consequence of popular demands for multi-partyism. In order to punish opponents of one-party, one-man rule, the government has relied on detentions, criminal prosecutions, publication bans and violence. It has severely restricted freedom of speech, of the press, of association and of movement and has engaged in political manipulation to erode the independence of the judiciary. Prisoners are detained in abysmal conditions and the use of torture continues. Security forces have been guilty of widespread violence against Kenyan citizens. Kenyans of Somali ethnic origin have been subjected to discriminatory practices and refugees have been ill-treated.[14]

For many years, the West has pointed to Kenya as an example of stability and success. Western governments have lauded what the World Bank has called Kenya's "economic miracle" and have turned a blind eye to the flagrant abuses and excesses that have characterized the Moi regime. Britain, for example, has followed a policy of "quiet diplomacy," designed to protect some £1.5 billion of investment in Kenya, as well as access to strategic military and naval facilities. In recent years, the United States has been more directly critical of the government's human rights record, and made clear that aid would be conditional on specified improvements in human rights.

RESTRICTIONS ON THE RIGHT TO POLITICAL PARTICIPATION

Kenya has been a one-party state since 1982 when the Kenya African National Union (KANU) became the only legal party. Calls to open up the political system increased in May and June 1990, when former Cabinet Ministers, Charles Rubia and Kenneth Matiba, began pressing for a public debate on multi-party democracy and applied for a license to address a public gathering on the issue. The government reacted harshly. President Moi publicly rejected their demand for a license and announced that the "debate" was over. A KANU Branch Chairman, Wilson Leitich, ordered members of the KANU youth branch (known as youth-wingers) to chop off the fingers of anyone flashing the two-finger sign in support of multi-party democracy. Thugs beat up Matiba's wife at her home. Rubia and Matiba were arrested and detained in July 1990, together with Oginga Odinga's son, Raila Odinga, who had been previously detained in 1983 and 1987, and lawyers John Khaminwa, who had previously been detained in 1982, Mohamed Ibrahim and Gitobu Imanyara.

In February 1991, Oginga Odinga announced the formation of the National Democratic Party (NDP). In March 1991, the Registrar-General, Joseph King'arui, rejected the request by the NDP to be given legal status. Police briefly detained Oginga Odinga and searched his house. Gitobu Imanyara, editor of the *Nairobi Law Monthly*, was arrested and detained in March 1991. The February issue of the magazine had carried a feature article on the manifesto of the NDP. Another supporter of multi-party democracy, Paul Muite, Chairman of the Kenya Law Society, declared in his inaugural speech that he would press for the repeal of Section 2A of the Constitution, so as to allow for the formation of more political parties. In March 1991, the government obtained a court injunction restraining Muite from making political announcements on behalf of the Society.

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[14] For a comprehensive discussion of human rights abuses in Kenya, see *Kenya: Taking Liberties*, Africa Watch, July 1991, 432 pages.

In June 1991, the Law Society of Kenya joined forces with the Anglican Church and the National Council of the Churches of Kenya to hold a series of justice and peace conventions to take up issues of political change. These prayer meetings have also been banned. In July 1991, the High Court confirmed the rejection of the application to register the NDP. In August 1991, Oginga Odinga, together with former Cabinet Minister Masinde Muliro, former M.P. Martin Shikuku, and three others announced the formation of the Forum for the Restoration of Democracy (FORD). This was also declared to be illegal by the Registrar-General, and President Moi called for the arrest of the founders.

Joseph Owour Nyong'o, the bodyguard of Oginga Odinga, and 11 other people were arrested in August 1991 in connection with the activities of FORD. Claiming Nyong'o was distributing pamphlets, security police without a warrant broke into filing cabinets and took away documents related to FORD from Odinga's office. Police arrested six pro-FORD demonstrators in Nairobi and accused them of creating a disturbance in a manner likely to cause a breach of the peace by blowing whistles, waving placards calling for respect for democratic rights and shouting the slogan "There is no peace in Kenya." Another four alleged members of FORD were also arrested in Muranga.

Following President Moi's directive for a crackdown on the "illegal" FORD organization, police arrested Councillor Luyali Liyai of Shimanzi ward in Mombasa. He was released after 22 hours of interrogation but had to report to the police for further interrogation. Papers related to FORD were seized from Masinde Muliro, one of its founders. In September 1991, Masinde Muliro applied for a license to hold a public meeting on October 5, 1991 regarding the restoration of democracy in Kenya. President Moi banned the pro-democracy rally planned by opposition leaders, accusing them of plotting violence. He said that the members of the illegal NDP were the ones now operating under the disguise of FORD, and that they wanted to disrupt the country and cause chaos.

THE RISKS OF SPEAKING OUT

Lawyers

Lawyers, journalists and religious leaders have all suffered reprisals for their criticism of Moi's one-man rule. A number of lawyers have been in the forefront of challenging the government about human rights abuses, its contempt for the rule of law and denial of civil and political rights. Consequently, they have borne the brunt of the government's wrath. The Law Society of Kenya is facing constant pressure and in September 1991 was threatened with de-registration by the Secretary-General of KANU, Joseph Kamotho. Their call for the establishment of a tribunal to investigate and possibly remove the two expatriate British judges has earned them a contempt of court charge in March 1991.

Security officers have been placed prominently outside the offices of lawyers to intimidate clients. Legal consultations between lawyers and clients have been broken up by security officers claiming that they were illegal meetings. Human rights lawyers Gibson Kamau Kuria, Kiraitu Murungi and Wanyiri Kihoro have all gone into exile following fear for their personal safety. Mirugi Kariuki and Rumba Kinuthia are currently facing treason charges. Lawyers who have been detained include John Khaminwa, Mirugi Kariuki, Wanyiri Kihoro, Gibson Kamau Kuria, Mohamed Ibrahim and Gitobu Imanyara.

The security of tenure of judges and the Attorney-General was revoked in August 1988 and restored in 1990 after intense pressure from within and outside Kenya. British expatriate judges have been used by the government to deny applications for bail in politically sensitive issues and to throw out challenges to the

constitutionality of various charges. The power to permit cases to proceed gives these judges complete control at a preliminary stage of hearings. The Law Society of Kenya has questioned the juridical basis for some of their rulings. Applications for *habeas corpus* have never been known to be successful in the High Court.

In 1989, without the benefit of argument by either of the counsels, Justice Dugdale, one of the British expatriate judges most criticized by Kenyan lawyers for his disregard of legality, decided that the courts in Kenya have no power to enforce the Kenyan Bill of Rights. Since that ruling, attempts to utilize Section 84 of the Constitution to appeal against the abuse of fundamental human rights have been unsuccessful. Lawyers who have challenged the judicial impartiality of Justice Dugdale have been threatened and charged with contempt of court.

In September 1991, the Law Society of Kenya (LSK) wrote to British Secretary of State for Foreign and Commonwealth Affairs Douglas Hurd, calling on the British government to use all means at its disposal to secure the removal of Chief Justice Hancox and Justice Dugdale, claiming that Chief Justice Hancox and Justice Dugdale had been obstacles in ensuring the rule of law. The letter provoked criticism of the Law Society of Kenya from President Moi.

Journalists

Since 1988, four magazines have been banned, including *Beyond*, a publication of the National Council of Churches in Kenya, banned in 1988; the *Financial Review* and *Development Agenda*, banned in 1989; and the *Nairobi Law Monthly*, which the government attempted to ban in September 1990. Gitobu Imanyara, editor of *Nairobi Law Monthly*, succeeded in getting a temporary injunction against the banning, and in July 1991 the banning order was revoked. In 1990, the editor of the *Daily Nation* was arrested after attending a press conference given by Paul Muite on behalf of Charles Rubia and Kenneth Matiba and three editors of the *Sunday Standard* were charged with publishing false and alarming reports although the charges were later dropped.

Sensitivity to critical reporting by Kenyan leaders, police and security officers lead many journalists to exercise self-censorship. Several journalists have been physically assaulted by police and security officers, while covering events, and have had their notebooks and cameras confiscated or destroyed.

Paul Amina, a free-lance journalist and former detainee, was arrested in August 1991 by security police at the International Press Center in Nairobi. He was questioned about his relationship to and his knowledge of the foreign intelligence network in Kenya. His identification of a security officer at a press conference in July 1991 is thought to have provoked his arrest. The Mombasa KANU District Chairman, Shariff Nassir, said in September 1991 that he would storm Chester House in Nairobi with his KANU supporters in order to deal with critics of the government who held press conferences in the building. In particular, he criticized the founders of FORD, Oginga Odinga, Martin Shikuku and Salim Bamahriz.

Religious Leaders

Religious leaders have also been attacked for supporting multi-party democracy or criticising the government. President Moi is currently engaged in vitriolic attacks against religious leaders, who together with outspoken lawyers, are referred to by the government as the "unofficial opposition." President Moi publicly accuses them of being traitors plotting violence and puppets in the pay of foreign masters. Bishop

Alexander Muge, who had condemned corruption and illegal land acquisitions by senior officials, was threatened with death by the Minister of Labor, Peter Okondo, shortly before his fatal car accident in August 1990. Other religious leaders who have been harassed for criticising the government include Reverend Peter Njenga, Reverend Timothy Njoya, Reverend David Gitari, Bishop Henry Okullu and Archbishop Manasses Kuria. In March 1990, Reverend Lawford Ndege Imunde was arrested, charged with sedition for writing critical comments in his diary. In an affidavit he detailed the physical and psychological abuse he was subjected to in order to sign a self-incriminating statement. He was released in March 1991, on appeal.

ARRESTS AND DETENTIONS

The Kenyan government has widely used preventive detention and arrests on criminal charges to silence government critics. The Preservation of Public Security Act of 1966 provides for indefinite detention of political opponents. Recent cases of those who have been detained under this Act include John Khaminwa (1982 and 1990), Raila Odinga (1983, 1987 and 1990), Gitobu Imanyara, Mohamed Ibrahim, Charles Rubia and Kenneth Matiba (1990). Apart from those whose names are officially gazetted[15] as being detained there are many others detained out of the public eye. For example, in July 1991, Bernard Githinji Kiragu shot a senior special branch officer dead and seriously wounded another one before himself being killed in a shoot-out at Nyayo House in Nairobi, where he had been detained without trial for ten months and tortured. He was allegedly being prepared as a state witness in the upcoming treason trial against Koigi wa Wamwere and seven others. Two weeks previously, an unidentified man is alleged to have jumped to his death from Nyayo House.

The government has resorted to the criminalization of political opponents as a way of lessening criticism about preventive detention. Charges of treason, sedition and contempt of court are currently being used to silence opposition members. Former M.P. Koigi wa Wamwere, lawyers Rumba Kinuthia and Mirugi Kariuki, and five others are currently facing treason charges and allege that they have been tortured while in police custody. Former M.P. George Anyona, Ngotho Kariuki, Augustine Kathangu and Edward Oyugi were sentenced to seven years imprisonment in July 1991 on sedition charges. They claim to have been tortured while in police custody. Eight elected members of the Law Society of Kenya are currently facing charges of contempt of court.

On numerous occasions, the government has used trumped-up charges against and denied due process to its "enemies." The sedition case of Reverend Lawford Ndege Imunde, who was arrested in 1990, is one example. The sedition charges against Gitobu Imanyara were finally dropped when he was released from custody in May 1991. However, many Kenyans are still being held on sedition charges, and many of them have been denied bail and lack legal representation. Others have been charged with disturbing the peace for flashing two-finger salutes in support of multi-party politics.

TORTURE AND ILL-TREATMENT

Although torture is expressly forbidden under the Constitution and is officially denied by the authorities, it is a regular part of police interrogations. The torture chambers in Nyayo House in Nairobi have been specially designed so that they can be flooded with water and the floors of the building on which torture is carried out have been gazetted as Restricted Areas. The government has never investigated

[15] The term gazette in this context refers to an official log that records decisions regarding prisoners.

allegations of torture, even when independent medical examination has confirmed that the injuries of detainees accord with such allegations. Attempts to sue the government for torture have not been successful.

The most common forms of torture include submerging people in dark waterlogged cells for days on end without food; beating people on elbow and knee joints with sticks, bars and whips; rape; threats of death by shooting; hanging people upside down handcuffed or in chains for long periods of time; use of electric shocks; physical assault on genitals and allowing sick prisoners to suffer without medical attention.

At the trial of George Anyona and three others who were arrested in July 1990 and one year later found guilty of sedition, Anyona gave the following testimony about his pre-trial custody:

> At Kamiti Prison, we have been placed in a block consisting not of remand prisoners but of convicted prisoners, the majority of whom are lunatics....I do not know whether remand prisoners are supposed to be kept together. We are being kept incommunicado and are kept in cells throughout and only allowed out for a few minutes daily to empty our bowels...we have to wipe ourselves with our hands.
>
> We are kept in rooms with dim lights and like now, in this courtroom, my eyes are hurting. We sleep on a concrete floor which is very cold and are only provided with two old blankets...we have no soap, no towels or water, we have no time to wash as we are locked in cells throughout. We are made to wade through urine and human feces while queuing for the toilet in our bare feet which have sores. We have been provided with prison uniforms which we have been wearing permanently and I have seen prisoners walking naked in there.
>
> Ours looks like a political case and not a criminal one otherwise we should be treated like other prisoners facing criminal charges.

Anyona was not allowed to give specific details of torture in court. He was told by a magistrate that prison was "not expected to be a hotel."

The overall prison conditions are dismal. Official statistics regarding the numbers of inmates in Kenya are scarce, in 1986 however, a former commissioner of policey declared that although the stated capacity of the country's prisons was 14,000, they held at least 30,000 inmates. Africa Watch estimated that that number has since doubled. Overcrowding is at the root of many of the most serious problems, such as exceptionally poor sanitation, shortages of blankets and clothing (we received repeated testimonies of prisoners seen naked or half-naked in prisons), lack of medicine and medical equipment. Deaths from diseases such as cholera and meningitis are common and so are epidemics in many prisons.

Inmates are routinely subjected to beatings by the prison staff, frequently meant exclusively to intimidate. In addition, prisoners have to endure frequent rectal searches, done with the use of a cane and described by former inmates as torture. Disciplinary measures include solitary confinement, often accompanied by depravation of food, lack of exercise and lack of sunlight.

A particularly troubling phenomenon is the practice of housing political prisoners in the so called "lunatic" wings, or sections of prisoners housing mentally ill prisoners.

Women in Kenyan prisons suffer from conditions similar to those under which men are incarcerated, but they endure particular vulnerability and abuse, with beatings being the most common form of mistreatment. In addition, women in Kenyan prisons are not allowed to wear underwear and are not allowed to use any sort of sanitary protection during menstruation.

The Kenyan law allows for the use of firearms when a prisoner is trying to escape. A shoot-to-kill policy is routine within the prison system and frequently no attempts are made to incapacitate an inmate rather than kill him in an escape attempt. In addition, Africa Watch received reports of cases when allegations of attempted escape were used by prison officials to justify killings caused by abusive guards.

HARASSMENT OF REFUGEES

The Kenyan government's treatment of refugees is often flagrantly hostile. Various illegal and callous strategies have been used to discourage people from seeking sanctuary in Kenya, including harassment and assault by security forces and deliberate deprivation of emergency supplies. Refugees arriving at the border have been intimidated and obstructed by security forces before being able to register with international organizations; some have been beaten and even killed.

Somali refugees who arrived at the coast in January 1991 were detained on board their vessels and refused permission to disembark. Many died when overloaded boats capsized and vital relief was withheld. Refugees were subjected to appalling and inhuman treatment by the Kenyan authorities. Women, children and the elderly were particularly vulnerable to outbreaks of disease and many refugees were drowned.

Those that were allowed to disembark were kept in inadequate facilities without proper amenities. Journalists were prevented from visiting the refugees to report on their conditions. Those refugees who attempted to arrive overland found themselves stranded in a no-man's land between Kenya and Somalia, where they lacked food and water. Many were subjected to severe beatings by the security forces and some were even shot.

There have been purges of refugees from Uganda, Tanzania, Rwanda, Burundi, Somalia, Sudan and Ethiopia in the past. Even Kenyans who are ethnic Somalis have been subjected to discriminatory screening practices and forced to carry special pink ID cards. Kenyan refugees in exile are also hunted down by government spies and their families are threatened and persecuted in Kenya.

RECOMMENDATIONS

Africa Watch calls on the Kenyan government to implement the following changes in order to meet its international obligations:

- Permit nonviolent demonstrations on matters of national concern;

- Allow all Kenyans to speak freely and publicly, publish their writings and travel freely within and outside the country;

- Restore the independence of the judiciary;

- Abolish detention without trial;

- Cease all forms of torture, investigate all allegations of torture and prosecute any individuals who are found to have engaged in torture;

- Allow refugees to register according to international law and permit them to live without fear; reaffirm that all Kenyans, regardless of ethnic origin, are equal before the law.

MALAWI

Malawi's stereotyped international image as a key partner in the West's policy of "peaceful change in the southern African sub-region" -- and as a willing host to over 900,000 Mozambican refugees from that country's civil war -- stands in stark contrast to the Malawi government's appalling human rights record in relation to its own citizens.

RESTRICTIONS ON FREEDOM OF ASSOCIATION AND POLITICAL PARTICIPATION

Malawi is a *de jure* one-party state, precluding the right to free association. Anyone who attends a meeting of an "unlawful society," as defined under Sections 64-67 of the Penal Code, is presumed to be a member of that society unless he or she can prove otherwise. Malawians are constantly compelled to join the ruling party, and possession of a membership card is ruthlessly enforced by party organs, in particular the Young Pioneers.

The existence of a parliament does not give Malawians a choice. All candidates for Parliament are hand-picked by Life-President Banda. Parliament acts as a rubber-stamp for decisions taken by a small clique within the party, most of whom are from the Central Region from which Life-President Banda originates.

Addressing the ruling party Congress at the end of September 1991, President Banda explicitly rejected the multi-party system of government, defending Malawi's one-party system as a product of the circumstances prevailing after independence. The authorities have spared no effort in suppressing dissent both inside and outside the country.

ASSASSINATION OF POLITICAL EXILES

The government's intolerance of dissent has led to the assassination of critics in neighboring countries. The best-known case of political assassination in recent years is that of the exiled journalist and MAFREMO publicity secretary, Mkwapatira Mhango. Mkwapatira Mhango and eight members of his family died after a firebomb attack on his home in Lusaka on October 13, 1989. Before his death, he alleged that the attack had been the work of agents of the Malawi government. His brother Goodluck Mhango, an apolitical veterinary surgeon, was arrested in September 1987, shortly after the publication by his brother of an article which angered the Malawian authorities. However, the real target of the attack is believed to have been MAFREMO's chairman Edward Yapwantha who was staying in Mhango's house at the time.

Attati Mpakati, leader of the exiled Socialist League of Malawi (LESOMA), had eight of his fingers blown off by a parcel bomb in Maputo, Mozambique, in 1979. President Banda subsequently stated publicly that his "boys" were responsible for the attack. In March 1983 Mpakati was found murdered in a storm drain in Harare, Zimbabwe. Two Malawians, one of them a Zimbabwe television announcer, were arrested but released in June for lack of evidence. Two separate sources have given Africa Watch the name of a Malawian intelligence agent who they allege killed Mpakati.

Fred Sikwese, Principal Protocol Administrator in the Ministry of External Affairs, was arrested in February 1989, apparently because he was suspected of leaking information about Malawi's relationship

with South Africa. By the time his family visited him at Lilongwe Prison in early March he was weak from lack of food and, possibly, torture. He died in prison on March 10. His family was refused his body for burial and he was buried in the prison precincts the next day.

DETENTION WITHOUT TRIAL

Since January 1991, an estimated 88 political detainees have been freed in Malawi. None of them was ever given an official explanation as to why they had been detained. Under Malawi's 1965 Public Security Regulations Act Life-President Kamuzu Banda may order anyone to be detained indefinitely without charge. Political detainees have no right to challenge the reasons for their imprisonment before a court of law. Malawi has no justiciable Bill of Rights, so there is no possibility of appeal against violations of fundamental human rights. Nor is there any impartial investigatory body, such as an ombudsman or a human rights commission to hear citizens' complaints.

At least 19 other people remain in detention. The length of time they have been held - in one case since 1965 - indicates that they are held under the Public Security Regulations Act, and that their continuing detention is on the direct orders of Life-President Banda.

Among the 19 detainees are:

Orton Chirwa, 72, Malawi's first Minister of Justice and Attorney-General, co-founder of the ruling Malawi Congress Party (MCP) and later, leader of the exiled Malawi Freedom Movement (MAFREMO), and his wife **Vera Chirwa**, a barrister and lecturer in law. After ten years of detention in poor conditions, they are in poor health.

Orton and Vera Chirwa were abducted on Zambian soil by Malawi security agents on December 24, 1981 and subsequently sentenced to death by a "traditional" court, without access to defense counsel and denied the right to call witnesses.

In Malawi's Traditional Courts, judges are appointed by and answerable directly to President Banda, who generally specifies the verdict he would like to see in any politically-sensitive case. The rules governing the Traditional Courts have formalized the presumption of guilt.

Martin Machipisa Munthali, who was detained in 1965 on suspicion of involvement in an unsuccessful rebellion, is now believed to be Africa's longest-serving political detainee following the release of Nelson Mandela. According to some reports Munthali was sentenced to between seven and nine years' imprisonment, so his sentence should have expired by the mid- 1970s. He remains in detention in A Section in Mikuyu prison.

Aleke Banda, a co-founder with Orton Chirwa of the ruling party and later its Secretary General, who at the time of his detention in 1980 was Managing Director of Press Holdings.

ILL-TREATMENT, TORTURE AND DEATH IN DETENTION

In July 1991 Amnesty International reported that Orton Chirwa has again been placed permanently in leg-irons, as he was while awaiting trial in 1982, in flagrant breach of the United Nations Standard Minimum Rules for the Treatment of prisoners.

These rules also state in Article 37 that prisoners should be allowed to correspond with their families and some others. But according to Amnesty International Orton Chirwa and **Gwanda Chakwamba Phiri**, another former minister in the Banda government detained for his part in an alleged coup plot, are being punished by the prison authorities after trying to smuggle correspondence out of the prison. Since this incident - believed to have taken place in May 1991 - two warders thought to have been involved in these incidents and three of Phiri's children are reported to have been detained.

Although the conditions suffered by political detainees are extremely poor, the treatment of some convicted criminals is even worse. Since the early 1980s persistent criminal offenders have been subjected to a brutal punishment regime which is believed to have killed many.

The "hard core" program, as it is popularly known, was introduced in about 1982 or 1983. Persistent criminals -- the "hard core" -- are taken to Nsanje Prison or Dzeleka Prison on completion of their sentences. There they are stripped naked, chained to the floor of their cells and either denied food or, according to some accounts, given one-quarter rations. Many are reported to have died as a result.

PRISON CONDITIONS

Detainees at Mikuyu prison near Zomba are held in four sections; A Section, B Section, D Section and New Building. There are estimated to be about 120 inmates at Mikuyu, including political detainees. Prisoners receive three inadequate meals a day, of poor quality. Sanitary facilities are also inadequate. Prisoners remain in their cells or in the immediate vicinity all day. There is no exercise area and no organized exercise. The only time detainees can leave their section is for showers or to visit the sick bay. No reading matter is available except for a bible and a hymn book. There is no opportunity for organized religious worship.

ETHNIC DISCRIMINATION

Malawi practices racial discrimination as a matter of law and ethnic persecution as a matter of consistent policy. Since independence in 1964 President Banda and his main supporters, all Chewa-speakers from the Central Region, have pursued a policy of systematic exclusion of people from the Northern Region, as well as Yaos from the Southern Region, from political power.

Individuals are not usually detained explicitly on account of their ethnic origin, but a disproportionate number of those imprisoned for political reasons are from the disadvantaged ethnic groups. Thus for example, Orton and Vera Chirwa, Aleke Banda, and Goodluck Mhango are all from the Northern Region.

On February 2, 1989, President Banda summoned all the top civil servants and accused them of practicing regionalism. A number of northerner civil servants were sacked or redeployed to their home regions. Some northerners who criticized these measures were arrested. Prominent among these was Dr George Mtafu, Malawi's only neurosurgeon. Three weeks after the meeting with the President, he was detained without charge in Chichiri Prison, Blantyre, from where he was finally released in January 1991.

Another victim of this purge -- detained in July 1989 -- was **Margaret Marango Banda**, a former announcer with the Malawi Broadcasting Corporation and the northern regional chair of the national women's organization Chitukuko Cha Amai m'Malawi (CCAM). CCAM is headed by President Banda's "Official Hostess", Mama C. Tamanda Kadzamira. Margaret Marango Banda is believed to have criticized the alleged embezzlement of CCAM funds. She was subsequently held without charge in Zomba Central prison for 18 months until her release in January 1991.

HUMAN RIGHTS ABUSES AND CORRUPTION IN GOVERNMENT

President Banda has used his position of political power to accumulate massive wealth. Consequently, the economic management of the country can not be separated from issues of human rights. On the contrary, human rights abuses have occurred as a means of maintaining Banda in power in order to amass further wealth.

Press Holdings, the most important company in Malawi, is controlled personally by Life-President Banda, who holds 4,999 of the company's 5,000 shares "in trust for the nation". Press Holdings in turn produces some 40% of all the tobacco grown on Malawi's tobacco estates. President Banda is now believed to the world's richest private farmer of flue-cured tobacco.

Reports indicate that Aleke Banda's expulsion from the Party and subsequent detention without charge are connected to questions he asked about unsecured personal loans taken from Press Holdings' bank accounts by Life-President Banda. Mkwapatira Mhango angered the authorities by writing an article about alleged corruption an abuse of power in the CCAM. Mhango had drawn a highly sensitive analogy between the unpaid work of rural women for CCAM and *thangata*, the hated colonial system of forced labor.

MALAWI AND THE DONOR COMMUNITY

Britain is Malawi's main trading partner, accounting for about a quarter of Malawi's exports and a fifth of its imports.[16] Britain is also Malawi's second largest bilateral aid donor, with a total $40.8 million in 1987, about a fifth of the total. In August 1989, after the sackings and arrests of northern civil servants and teachers, Britain announced $16 million in balance of payments support to Malawi to finance imports from the UK. Malawi also receives military and police training from Britain.

In spite of promises by senior British government officials, including the Foreign Secretary, Douglas Hurd, to condition aid on human rights conditions, there has been no suggestion that British aid to Malawi will depend upon improvements in respect for human rights. In 1990 Britain even maintained funding to a major hospital project, while the Federal Republic of Germany and Canada withdrew aid

[16] This made the UK Malawi's largest market and the second largest source of imports after South Africa with 35 per cent.

because of human rights considerations.

CONCLUSION

Malawi has been a favored by donors in recent years primarily because of the influx of hundreds of thousands of Mozambican refugees. No one would suggest that these refugees should suffer by a cut-off of aid because of the Malawi government's failings in other areas. But aid allocated for military purposes or general economic support should be made conditional on a significant improvement in Malawi's dismal long-term human rights record.

RECOMMENDATIONS

The government of Malawi should:

- Prohibit the use of torture; all allegations of torture should be independently investigated and those alleged to be responsible brought to justice;

- Release all remaining political detainees;

- End the practice of having "Traditional Courts" hear capital or political cases. All those serving sentences imposed by these courts should have their cases reviewed by the High Court and victims of these courts, such as Orton and Vera Chirwa, should be released immediately and unconditionally;

- Repeal the Public Security Regulations and of those sections of the Criminal Procedure and Evidence and Penal Code restricting freedom of expression and freedom of association;

- Put an end to discriminatory practices against people of northern origin;

- Repeal all laws and regulations restricting the right to employment or freedom of movement on the grounds of racial or ethnic origin;

- End the monopoly of the Malawi Congress Party. Individuals should be guaranteed the right to form political parties, trade unions, churches and other associations. The offense of belonging to an unlawful society should be abolished and those serving sentences for such offenses should be released.

MALAYSIA

Since May 1990, seven people from the eastern Malaysian state of Sabah have been arrested and detained under the 1960 Internal Security Act (ISA), accused of participating in a plot "to take Sabah out of the Malaysian Federation." One of the seven was released after 60 days; the other six remain in detention. Asia Watch believes they were arrested for the peaceful expression of their political views and association with a political party that had run afoul of Malaysian Prime Minister Mahathir.

The seven detainees -- Benedit Topin, Albinus Yudah, Damit Undikai, Abdul Rahman Ahmad, Vincent Chung, Jeffrey Kitingan and the now released Maximus Ongkili -- were all connected directly or indirectly with the United Sabah Party (*Parti Bersatu Sabah* or PBS), a political party dominated by Kadazans, a largely Christian ethnic group. The party, which has long advocated greater autonomy for Sabah, was part of the ruling National Front (*Barisan Nasional*) coalition until just prior to national elections in October 1990 when in what Mahathir called a "stab in the back", it defected to the opposition. Even before that surprise move, however, PBS had been on a collision course with Kuala Lumpur, demanding readjustment of federal-state relations, a greater share of Sabah's revenue, more administrative autonomy and the expulsion of illegal Filipino and Indonesian immigrants.

BACKGROUND

Sabah, together with Sarawak, is one of two Malaysian states on the island of Borneo. The Borneo states have a different ethnic, cultural and historical background than peninsular Malaysia. Muslim Malays comprise some 57 percent of the population of peninsular Malaysia with Chinese constituting an additional 32 percent. Sabah has more than 25 indigenous ethnic groups, most of them non-Muslim Malays like the Christian Kadazans who dominate the PBS. The Chinese constitute about 14 percent of the population.

During discussions in the early 1960s about the formation of a Malaysian federation, which would join together the Federated Malay states, the two British colonies of Northern Borneo (Sabah) and Sarawak, and Singapore, the Borneo states were adamant about being treated as equal partners with the core of the Federation, the Federated Malay states. Then Chairman of the Sarawak United People's Party, Donald Fuad Stephens, told representatives of the federated states:

> ...please do not pursue the idea of making Brunei the 12th State, Sarawak the 13th State and North Borneo [Sabah] the 14th State of the Federation. We are frankly not interested.

For its part, Sabah drew up a memorandum, "Twenty Points," upon which its participation in the union was contingent. They included stipulations about the nature of state-federal relations; a guarantee of an eventual change of state administrative personnel from Malays to Bornean citizens (referred to as *Borneoization*); and the preservation of Sabah's distinct cultural identity. Some of the twenty points were incorporated into what became the Malaysian constitution; others were accepted orally but had no legal status. One of the seven detainees, Jeffrey Kitingan, has been particularly vocal about the Malaysian government's violation of the spirit of the original twenty points.

The Malaysian federation officially came into being on September 16, 1963 as a union of four equal

partners: Sabah, Sarawak, Singapore and the eleven federated Malayan states. In 1965, Singapore left the union, resulting in a dramatic change in Malaysia's ethnic and religious makeup. Singapore's non-Muslim Chinese population had provided a balance to the large number of Muslim Malays on peninsular Malaysia. The removal of this balance rendered ethnic Malays the dominant ethnic group and Islam the dominant religion.

Frequent Parliamentary amendments to the constitution, requiring a two-thirds majority vote,[17] have slowly weakened the Borneo states' position within the federation and have strengthened the position of the Muslim Malays through the strongest political party within the *Barisan Nasional*, the United Malays National Organization or UMNO, now headed by Prime Minister Mahathir. Examples include the passage of bills that made the official language of Malaysia Malay and Islam the official religion.

One amendment altered Sabah's status in the federation altogether. Originally, the section of the constitution that defined Malaysia grouped the eleven states of Malay as one unit, and the two Borneo states separately. Sabah was one of three components of Malaysia. The wording was changed in 1976 to a listing of all the states without distinction. Sabah had become one of thirteen.

THE CONFLICT BETWEEN PBS AND THE NATIONAL FRONT

The history of the PBS goes back to 1985 when the party won control from the incumbent *Berjaya* party in 1985. The *Berjaya* party had been comprised of Muslim Malays sympathetic to the aims of the federal government. This transfer of state power marked the beginning of a struggle between the Malay-dominated federal government and the Sabah state government, dominated by indigenous, largely non-Muslim ethnic groups.

In July 1990, the PBS party was reelected to Sabah's state government on a platform calling for greater autonomy and a reverting to the role outlined for Sabah in the Twenty Points. Specifically, PBS called for a dramatic redistribution of the revenue earned by exploiting Sabah's resources, mainly offshore oil. (At present, five percent of the profit goes to Sabah and 95 percent to the federal government; PBS proposed to make the split 50-50.) Today, it wants more administrative autonomy for Sabah; more appointments of Sabahans to the federal cabinet and civil service; an independent television station; an independent university; repeal of the ISA; and the expulsion of tens of thousands of illegal Filipino and Indonesian immigrants (generally Muslims, who, despite being merely temporary residents in the Federation of Malaysia, have been granted the right to vote).

Generally poor relations between Kuala Lumpur and Kota Kinabalu worsened in October 1990 when, four days before the national election, the PBS party suddenly withdrew from the *Barisan Nasional* and joined the opposition alliance party, *Semangat* '46 (Spirit of '46)[18]. While the timing of the defection seemed abrupt, the split may not have been entirely unanticipated. According to Sabah's Deputy Chief Minister Bernard Dompok, relations between PBS and the National Front had never been cordial since the

[17]The National Front alliance has maintained a two-thirds parliamentary majority in every election since formation.

[18] UMNO was founded in 1946, while Malaysia was still under British rule. Semangat '46 leaders claim that in power they will return the party to its original intentions.

day PBS came to power in Sabah in 1985. "We were really being tolerated in the coalition and [the Front was] waiting for us to pull out."

The defection led to no significant electoral loss for the National Front, which retained its two-thirds majority. Mahathir, however, was determined to undertake political retaliation. On the day after the PBS defection, he announced that UMNO would form branches in Sabah to compete for state power.

THE ARRESTS

The first four arrests occurred between May 18 and June 7, 1990, just before the Sabah state elections in July.

Damit Undikai, 54, was arrested on May 18, 1990, by Special Branch police forces for allegedly being the head of those plotting to remove Sabah from the federation. A retired Special Branch officer himself, Undikai was a member of the PBS. He was arrested at Centrepoint Building in Kota Kinabalu, Sabah's capital.

Undikai is married and has five children. After the initial 60-day interrogation period, his detention was extended two years. He is now being held in the Kamunting Preventive Detention Camp, in Taiping, Perak, some 280 kilometers north of Kuala Lumpur, as are the other five detainees. All are under two-year detention orders.

Benedict Topin, 37, was arrested on May 25, 1990. He was charged under Section 73 of the ISA for plotting "to take Sabah out of Malaysia." The Malaysian police claimed they were monitoring his activities since 1987. Topin is a member of the PBS party, and Executive Secretary of the Kadazan Cultural Association (KCA)[19]

After his arrest, Topin was moved to Kuala Lumpur. His family was notified but not allowed access to him until June 12, 1990, 19 days after the arrest, and then for only 20 minutes.

Albinus Yudah, 41, was arrested on May 25, 1990 en route to the Borneo Rest House where he worked was chief of security.

A father of eight, Yudah worked from 1969-85 as a police constable and was later a security guard at the Tanjung Aru Beach Hotel and with the Sabah Forest Industries. He also worked as a tourism promoter at the Tambunan Village Resort Center (TVRC) until August 1990. He is an active member of both the PBS and the KCA.

Abdul Rahman Ahmad, 51, was arrested on July 7, 1990 in his office at Sabah Police Headquarters. Prior to his arrest, Ahmad was the Assistant Superintendent of Police, attached to the Special Branch. He is under a two-year detention order and is in the Kamunting Detention Center.

Vincent Chung, former Yayasan Sabah manager for administration and personnel, was arrested on

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[19] Sabah Chief Minister Joseph Pairin Kitingan is president of the KCA by virtue of the fact that he was named *Huguan Siow*, or Supreme Chief of all Kadazans, for his work as a lawyer on behalf of Kadazans.

January 19, 1991.

Jeffrey Kitingan, 43, the younger brother of Sabah Chief Minister Joseph Pairin Kitingan, was arrested on May 13, 1991. On July 17, 1991, Deputy Home Minister Datuk Megat Junid Megat Ayab announced to the press that his detention orders were extended another two years by a letter signed by Home Minister Mahathir.

Director of Sabah's Institute for Development Studies (IDS), Kitingan had been an outspoken proponent of increased state administrative autonomy. He called for "a greater role for Sabah and Sarawak in building a Malaysian nation...Right now we are on the periphery." Kitingan is also director of the Sabah Foundation, the organization entrusted with developing Sabah's natural resources and investing its timber earnings in education, rural health services and other social welfare projects.

Kitingan had been arrested in early 1990 and charged on seven counts of corruption for various offenses related to the export of timber. He was released on bail. Prime Minister Mahathir said at the time that some leading Sabah political figures were trying to incite anti-Malaysia feelings in order to accrue more power and wealth for themselves. Corruption charges were also brought against Chief Minister Joseph Pairin in January 1991. Kitingan termed the charges "political persecution."

RELEASED

Maximus Johnity Ongkili, deputy chief director of the Institute of Development Studies, was arrested on January 3, 1991 while dining with three Sabah politicians in a restaurant in Kuala Lumpur. He was in the city accompanying Chief Minister Joseph Pairin, who was attending a session of Parliament.

Police reportedly wanted to investigate Ongkili's role in the IDS. He was suspected of engaging in activities detrimental to the country's security. On March 2, 1991, he was released unconditionally and returned to Kota Kinabalu.

Ongkili is strongly connected to Pairin, having been his press consultant during the state elections in July 1990 and in the national elections three months later. In addition to managing the daily affairs of the running of the IDS, he is a senior researcher. He is also the nephew of Pairin and Jeffrey Kitingan.

THE INTERNAL SECURITY ACT (ISA)

The ISA enables any police officer to arrest without warrant anyone considered likely to pose a threat to security of Malaysia. Those arrested can be detained for 60 days without charge or review, and the Minister of Home Affairs has the authority to extend the detention orders for up to two years, renewable indefinitely. Prime Minister Mahathir is also Home Affairs Minister.[20]

The ISA, adopted in 1960, was intended to be used in the context of an armed insurgency by the Communist Party of Malaya. According to Tunku Abdul Rahman, Prime Minister at the time of Malaysia's formation,

> [The] ISA introduced in 1960 was designed and meant to be used solely against the communists. My cabinet colleagues and I gave a solemn promise to Parliament and the nation that the immense powers given to the government under the ISA would never be used to stifle legitimate opposition and silence lawful dissent.

Under Mahathir, however, it has been used precisely for these purposes. Between October and December 1987, 106 opposition politicians, social activists, dramatists, environmentalists and others were arrested and detained under the ISA. Known as Operation Lallang, (*lallang* means "weed" in Malay), the crackdown targeted non-violent critics of the federal government.

In January 1991 Deputy Home Minister Datuk Megat Junid Megat Ayub told the House of Representatives that there were 142 detainees then under the ISA. Reasons for detention included Communist activities, religious extremism, and suspected participation in "Operation Talkak," the term used to refer to the alleged plot to secede Sabah from Malaysia.

The right of ISA detainees to be fairly charged and tried is restricted not only by the provisions in the ISA for indefinitely renewable detention without trial. It is also restricted by a June 1989 amendment passed by the Malaysian parliament removing the jurisdiction of courts to hear *habeas corpus* petitions from ISA detainees. According to the New York City Bar Association report, "Prime Minister Mahathir has acknowledged that the bill was intended to strength the hand of the executive personnel, lest they become too "wary" of detaining people under the ISA."

RECOMMENDATIONS

Asia Watch believes the arrest of the seven men was in violation of the internationally recognized right not to be subjected to arbitrary arrest and the right to freedom of expression. It is concerned that they were arrested because of their association with the PBS party and/or their demands for greater autonomy for Malaysia. Asia Watch calls on the Malaysian government to release the remaining six detainees immediately and unconditionally. It also calls on the Malaysian government and parliament to review the ISA and its amendments with a view toward repeal. Given its broad wording, the extraordinary powers given the executive branch and the restrictions on the civil rights of those detained under the ISA, it will in its present form continue to be the source of human rights abuses.

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[20] For a detailed analysis of the ISA, see Beatrice S. Frank et.al., *The Decline in the Rule of Law in Singapore and Malaysia*, Association of the Bar of the City of New York (New York: 1990).

NIGERIA

On or before October 1, 1992, Nigeria's government, the Armed Forces Ruling Council (AFRC), led by President Ibrahim Babangida, will, if all goes according to plan, hand over the reins of government to civilian leaders of the Third Republic. That occasion will be the culmination of President Babangida's carefully orchestrated program of transition to civilian rule. It will also be the end of a regime that has been characterized by brutality against individuals and civilian institutions that have dared to question its policies. Nigeria's young and active human rights movement, including groups such as the Civil Liberties Organization, the Committee for the Defence of Human Rights and the Constitutional Rights Project, has proven invaluable in documenting abuses by the government, and is regularly criticized and threatened by the government when overstepping what the government considers acceptable limits.

The level of government interference with civilian institutions has been particularly damaging because it has occurred during the transition program, which has greatly weakened the effectiveness of the institutions as alternative voices at a crucial time.[21] Even if a civilian government takes over as planned, the government's deliberate efforts to undermine the effectiveness of these institutions will ensure that what emerges will not be a strong judiciary or press, vibrant universities, an active labor movement and a population that believes in its ability to effect political change.

The harshness of the military can be traced to the implementation in 1986 of unpopular economic measures that were opposed by students, academics and workers throughout the country. Security officials responded harshly to protests, costing the lives of hundreds of demonstrators, many of them students.

According to the complicated rules of the transition process, thousands of Nigerians, including all former politicians, have been deprived of their right to run for office. Others, including members of the military, have not been allowed to vote. The "open ballot," in which voters line up behind a photo of their chosen candidate, has replaced the secret ballot. The government has tried to justify the new procedures by citing Nigeria's high illiteracy rate and past problems of vote rigging. However, as has been shown in countries such as Kenya, the "open ballot" greatly increases the level of voter intimidation and does nothing to reduce the level of vote rigging. In its most controversial move, the government banned all independent political parties and created two of its own, justifying the move by promising that the new parties would cut across ethnic, religious and regional lines. Recent political killings indicate, however, that the old problems of regionalism and violence still exist, and may in fact be worse than before.

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[21] For a detailed discussion of human rights and the transition program in Nigeria, see the Africa Watch report, *On the Eve of "Change," A Transition to What?*, October 1991.

SUBVERTING THE RULE OF LAW

Rule by decree has effectively placed the government above the law. More than 300 decrees have been passed during the last two military governments. Among their effects has been to legalize detention without trial and to prohibit the courts from reviewing government decisions. The government commonly promulgates decrees to give a "legal" basis to its own arbitrary actions. Many decrees are retroactive.

State Security (Detention of Persons) Decree 2 of 1984 (known as Decree 2), the most widely abused and feared decree, provides for virtually unlimited detention without charge. The application of the decree is extremely broad, affecting those suspected of involvement in "acts prejudicial to state security" or those who have "contributed to the economic adversity of the nation," as defined by the government. Over the years, however, the government has used Decree 2 to imprison, sometimes for years, various of its critics and enemies, real and imaginary. The government has never released the total number of those who have been detained under Decree 2, but human rights groups estimate that it is somewhere in the thousands. The government has also used Decree 2 to detain relatives and acquaintances of suspects it has been unable to apprehend. After the unsuccessful coup attempt of April 22, 1990, for example, a number of family members and friends of suspects were arrested and detained under Decree 2, some of whom are still in detention, including Dorah Mukoro, who gave birth in detention.

In order to prevent the regular courts from hearing particularly sensitive cases, the military government has established special tribunals, which lack internationally recognized judicial safeguards. Tribunal jurisdiction extends to cases involving armed robbery, treason, corruption, illegal oil sales, drug trafficking, and the transition to civilian rule.

Some tribunals do not have any right of appeal. Even when appeals are provided for, they are heard by the Special Appeal Tribunal, and the verdicts must then be confirmed by the AFRC. Sentences by tribunals are generally severe, particularly for armed robbery and treason, which carry a mandatory death sentence with no right of appeal. Some of the tribunals, including the Recovery of Public Property Tribunal, carry with them a presumption of guilt.

Until recently, military officers sat on the tribunals along with judges. Tribunals now "consist of a serving or retired Judge of the High Court of a State or of the Federal High Court or of the High Court of the Federal Capital Territory, Abuja." This change, however, does nothing to address the lack of judicial safeguards, including a presumption of guilt, inadequate representation, disproportionately stiff sentences, and inadequate provision for appeal. In addition, the continued existence of a parallel court system weakens the authority of the regular courts.

Years of neglect by the current government and its military predecessor have taken a severe toll on the legal system. Problems include police brutality, corruption of lawyers and judges, intolerable delays, untrained personnel and abysmal prison conditions.

In interviews with Africa Watch in Lagos in February 1991, Nigerian lawyers and human rights activists noted that one of the major problems with the justice system is the length of time suspects are held in pre-trial detention, usually in unbearably crowded conditions, when torture and ill-treatment are common. Lack of legal representation, for reasons of cost, ignorance of rights and interference by police, is a major problem in criminal cases. A Legal Aid Council was established in 1976, but it is woefully underfunded

and understaffed.

Corruption in the judiciary has undoubtedly worsened under the Babangida regime, which has shown a lack of respect for the courts at the highest levels. Judges' lack of security of tenure helps to encourage corruption. In addition, judges who have been unwilling to accommodate the government have suffered reprisals.

Lack of training of judicial officers is a serious problem. According to a study by the Nigerian Institute of Advanced Legal Studies, slightly less than half of Nigerian judicial officers were members of the Bar. The problem is particularly serious in the magistrates courts, where police prosecute cases, and in the area courts (rural courts of the north), where illiterate and untrained judges are known to be corrupt and unethical.

Although bail is provided for in Nigerian law, it is usually applied infrequently and incorrectly. Bail may be granted either by the police before the first court appearance or thereafter by the courts, but it is often either not applied or subject to bribes.

ATTACKS AGAINST ACADEMIC FREEDOM

Military rule has brutalized Nigerian universities. Deep cuts in economic support, bans on the national student organization and the academic union, and the pervasive presence of security agents on campus has stifled the learning process and created an atmosphere of fear.[22] According to a Nigerian professor, "practically all the factors that make a university autonomous have been interfered with by one decree or the other."

Nigerian students are currently facing a renewed crackdown, which began in late May 1991, apparently in reprisal for an ultimatum issued on April 27 by the National Association of Nigerian Students (NANS). Hundreds of students were arrested, and on May 28, 1991, two students at the Yaba College of Technology in Lagos were killed during a clash between armed security men on campus and students protesting the arbitrary proscription of their union by the college rector. It appears likely that government sponsorship of vigilante groups on campus has been at least partly responsible for the unrest. The groups are allegedly composed of security agents and students who are paid by the government to disrupt demonstrations and attack student leaders.

Seven student leaders who were arrested in late May and early June were detained under Decree 2 in harsh conditions in two Lagos prisons until their release on August 21. Several of them were tortured. Upon their release, the students were forced to sign an "Undertaking to be of Good Conduct," according to which they promised not to discuss or write about their detention or participate in further protests and swore to report to the government on students "about to cause trouble."

According to Education Minister Babatunde Fafunwa, a government program to be revealed later this year would require every student union leader to undergo special training so as to acquire the ability to cultivate a responsible constituency. Fafunwa later announced that

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[22] For a detailed assessment of academic freedom in Nigeria and 13 other African countries, see the Africa Watch report "Academic Freedom and Human Rights Abuses in Africa," April 1991.

the "leadership" program would "promote development-oriented student unionism as against the preaching and practicing of non-conformism."

UNDERMINING LABOR RIGHTS

The government's assault on the labor movement has, like its onslaught on the students, met with considerable "success." Motivated by the protests of labor organizations to the government's economic program, the government clamped down harshly and has been in control of unions ever since. In 1988, the government dissolved the country's national federation of trade unions, the Nigerian Labor Council (NLC), and appointed a sole administrator to run the affairs of the congress for six months, after which the government released a white paper prohibiting the NLC from adopting any ideology and barring it from forming a political party and from affiliating with other labor organizations except for the Accra-based Organization of African Trade Unions Unity (OATUU). The white paper also set out a program for trimming the number of trade unions from 41 unions to between 15 and 20 by a process of amalgamation. Under the process, unions such as the Nigerian Union of Journalists (NUJ) will lose their present autonomy.

The reconstituted NLC has, for the most part, been ineffective in representing its constituency. It occasionally protests government actions, but has not mounted a serious campaign on behalf of any union issue. Over the last several years, when the economic plight of Nigerian workers has worsened considerably, the government has banned some unions, weakened others and nullified rights to collective bargaining. To prevent labor unions from involvement in the transition, the government has banned the NLC from supporting a political party. Civil servants are banned from joining either party.

INTERFERENCE WITH FREEDOM OF THE PRESS

Military rule has taken a severe toll on the Nigerian press, which includes some 30 weekly and daily papers and 52 magazines, and has been widely hailed as the most vibrant and free in Africa. Two of the most powerful papers, *New Nigerian* and *Daily Times*, are government owned, but many privately owned papers are widely circulated and highly respected.

Recently, however, the press has been accused of becoming more timid. Although many stories in the print media are quite critical of the government, journalists told Africa Watch in February and March 1991 that because the government tolerates only those stories which are not threatening, self censorship has become common. They noted that topics such as student demonstrations, religious unrest and official corruption are poorly covered because the government is known to be particularly sensitive to them.

Despite the existing censorship, newspapers often publish stories that anger the government. Its typical response is to question errant journalists, perhaps detain them and, if the offense is deemed to be particularly grave, to shut down the paper. For example, the Lagos State government recently temporarily closed down the *Guardian*, a respected daily, for its coverage of the student deaths at Yaba Technical College. Coup attempts are, of course, another sensitive area. After the 1990 coup attempt, a number of journalists were detained and publications closed down for publishing stories that the government did not consider sufficiently patriotic. Other papers took their cue from the crackdown and did not thoroughly cover the story.

Journalists note that because censorship is effectively accomplished at press houses, the

government rarely needs to get directly involved. Rumors are rife of government bribes handed out to editors and publishers. Another government tactic is to circulate the names of "unfriendly" papers to advertisers who are advised to take their business elsewhere.

A number of journalists complain that a major problem with their work is lack of access to information. An official secrets act classifies all government documents, and many military leaders are unwilling to grant interviews.

As important as the print media is to Nigerians, it does not approach the significance of radio and TV -- entirely government owned -- which are the only news outlets for the majority of Nigerians who are illiterate. Unfortunately, the situation will not change under the new government, at least not immediately, as the new Constitution also stipulates government ownership of the broadcast media.

CONCLUSION

If a democratic government manages to emerge from the confusion and brutality that has characterized the transition program, it will undoubtedly have a very rocky beginning. It will need time and patience from Nigerians across the political spectrum to establish itself and to ensure that the military, who have abused human rights with impunity, will not use the inevitable fragility to infringe on civilian rule again.

RECOMMENDATIONS

Africa Watch calls on the Nigerian government to implement the following recommendations in order to ensure a greater role for democratic institutions in the final year of the transition program:

- Respect the right to political participation by permitting all Nigerians to vote for the candidates and parties of their choice;

- Review all other military decrees and abrogate all those which negatively affect the exercise of human rights;

- Eliminate special tribunals and ensure that all trials take place before civilian courts that guarantee internationally recognized judicial safeguards;

- Release all the students who are currently in detention; legalize NANS and begin a dialogue with its members;

- Allow the NLC to reconstitute itself to be more representative of the rights of workers;

- Put an end to restrictions on freedom of the press, including detentions and deportations of journalists; closure of press houses, and the use of government informants and bribery to ensure "loyalty."

SOUTH AFRICA

South Africa left the Commonwealth just over three decades ago, on May 31, 1961, beginning the country's long period of international isolation. Its departure from the Commonwealth was hastened by the international outcry over the Sharpeville massacre in March 1960, in which police shot dead 67 blacks who protested the pass law system, the declaration of a state of emergency and the banning of opposition political organizations such as the African National Congress (ANC).

International sanctions followed, beginning in 1962, when the United Nations General Assembly urged its members to sever diplomatic ties and boycott South African goods. A combination of trade, cultural and sporting embargoes was imposed, followed in 1977 by a mandatory arms embargo. The 1985 decision by international banks to freeze loans to South Africa precipitated a debt crisis which in turn forced South Africa to meet creditors' demands.

Following the introduction of reforms in February 1990, pressure to end sanctions has increased. In April 1991, the European Community decided to end its five-year sanctions, which was followed by the lifting of sanctions by the United States in June 1991.

For more than a decade, the South African sanctions issue has dominated Commonwealth summits. The Commonwealth Committee of Foreign Ministers on Southern Africa (CFSA) welcomed the country's recent reforms but noted that "very little had changed on the ground." In February 1991, the CFSA, chaired by Joe Clark said that "mere statements of intention" on the part of South Africa were insufficient for sanctions to be lifted. Mr Clark added:

> It is [the Commonwealth's] firm view [that it was] crucial to maintain sanctions through all stages...of demolishing apartheid...up to and including the adoption of a new constitution.

On July 10, 1991, Chief Emeka Anyaoku, Commonwealth Secretary General said:

> [I would prefer] that enough agreement will have been reached in South Africa [by the time of the 1991 summit]... We are on the last lap of the race. The tape is in sight; but is has not yet been touched.

Since the introduction of reforms in 1990, the major obstacle to agreement for a peaceful settlement in South Africa is the continuing violence which is unprecedented in the nation's bloody history. Few of South Africa's black townships have been left untouched. In the past eighteen months, political violence has claimed the lives of more than 3,000 black South Africans in fighting between supporters of the ANC and the Inkatha Freedom Party. In the past year 40 anti-apartheid activists have been assassinated by death squads linked to government forces. Despite governmental claims of a "new South Africa" and the abolition of apartheid legislation, the death toll continues to rise, freedom of the press to report on the violence is circumscribed and schools have been forced to close down. The limited steps taken in the past to address the violence have failed.

THE KILLINGS

Since 1984, more than 11,000 black South Africans have died in violence between supporters of the ANC and Inkatha. A powerful and ruthless state security machine has playing a decisive role in shaping the course of politics in South Africa through the sophisticated use of violence and the employment of Inkatha as an instrument. In a report released in January 1991, *The Killings in South Africa; the Role of the Security Forces and the Response of the State*, Africa Watch found that:

- The South African police (SAP) have repeatedly joined with Inkatha in their attacks on United Democratic Front (UDF) and ANC supporters. (The UDF recently disbanded). In these attacks, the SAP have transported Inkatha vigilantes in police vehicles; shot and killed unarmed residents, burned and looted homes, and used tear gas and bullets to prevent residents from defending themselves against Inkatha assailants;

- The SAP and kitskonstabels, who are given a mere six weeks of training, have searched, harassed and threatened UDF and ANC aligned residents and handed them over to members of Inkatha;

- The SAP have refused requests for police intervention to disarm Inkatha groups and to prevent and halt Inkatha attacks;

- The SAP have assaulted township residents and looted their homes when conducting weapon raids and have refused requests by them to disperse Inkatha attackers;

- The South African government has refused to respond adequately to evidence of security force involvement in the violence.

Longstanding suspicions of police bias and involvement have further been corroborated by the revelations of former members of the security forces and the publication of documents in July 1991, showing covert police funding. Former Law and Order Minister Adrian Vlok acknowledged payments of $90,000 to Inkatha and $500,000 to its trade union, United Workers Union of South Africa (UWUSA). President De Klerk also confirmed that the South African Defence Force (SADF) had trained a unit of 150 Zulu fighters. According to the government, they were trained for "security work and V.I.P. protection." The fighters claim that they received urban and guerrilla warfare training and were used by Inkatha to attack ANC supporters in Natal. Human rights groups have connected both the SADF and the SAP to death squad attacks which, in recent years, have claimed the lives of more than 100 anti-apartheid activists, with 40 killed in the past year alone.

The government continues to implement its policies of repression through legislative and administrative mechanisms such as the Internal Security Act and the Public Safety Act, which were used to silence political opposition in the past and which were only slightly amended in June 1991. The five-year nationwide state of emergency was lifted on June 7, 1990, but remained in effect in Natal until October 1990. To date, seven black townships are still declared unrest areas. In 1990, 1,671 people, more than double the number in 1989, were detained
without trial. More than half of these detentions took place in the nominally independent homelands of Venda and Bophuthatswana.

The cumulative effect of more than 15 years of township violence is the demise of the country's black school system. Student and teacher strikes, protests and vandalism of school property have culminated in the highest failure rate of black high school examinations in South Africa. While many schools closed

down, others became overcrowded, resulting in a 36% passing rate for blacks and 97% for whites in December 1990. The international community has pledged increased assistance in this area. In February 1991, CFSA endorsed a program of training for black South Africans and underlined that "there was an urgent need to take action in this field."

While the death toll continues to rise, the government has made only minimal efforts to establish independent commissions to investigate the violence. In March 1990, the President established a commission of inquiry into extrajudicial executions and death-squad allegations, under the leadership of Justice Harms. But the commission had limited jurisdiction and could investigate only those acts committed inside South Africa, despite the fact that more than 60 murders were committed in frontline states and Europe. The commission, whose report was dismissed as a "whitewash" by South African human rights organizations, was hampered by an uncooperative police force, missing files and witnesses who failed to appear. Significantly, however, the Harms and the subsequent Hiemstra and Goldstone Commissions into political violence pointed to the failure of the security forces to uphold professional neutrality. Justice Goldstone accused the police of using force "quite immoderate and disproportionate to any lawful object sought to be attained." Members of the police were said to be undisciplined and to have lacked concern for the consequences of using lethal ammunition.

Addressing the causes of violence, Black Sash, a pressure group that has investigated and publicized human rights abuses, referred to the "overwhelming circumstantial evidence of outbreaks of violence being orchestrated; of existing conflicts being used to exacerbate the violence; of police partiality." The Independent Board of Investigation into Informal Repression (IBIIR), an independent monitoring organization, has collected evidence of incidents of intimidation by Inkatha, deliberate attacks by Inkatha members on squatter camps as well as numerous sworn affidavits by policemen alleging police involvement with Inkatha. A survey by the media and monitoring groups covering the Transvaal violence from July 1990 to May 1991 held Inkatha responsible for 66% of the acts of aggression and the ANC for 6%.[23] Of the fire-arms used, 51 -- which includes AK 47s or explosives -- were attributed to Inkatha, and 2 to the ANC. Twenty-one "traditional weapons," such as assegais and spears, were attributed to Inkatha and 3 to the ANC. In 10 cases, other weapons such as pangas, axes, petrol bombs and necklaces were attributed to Inkatha, compared with five cases attributed to the ANC. The Human Rights Commission claims that from February 1990 to the end of June 1991, 383 people were killed and 3,739 injured in police actions. In response to the allegations of its involvement, the police offered categorical denials and initiated only a few prosecutions and investigations.

The killings have continued despite various peace initiatives, such as the agreement in January 1991 between the leadership of the ANC and Inkatha. Although abundant evidence, substantiated by the disclosure of state funding of Inkatha, has implicated state authorities in the killings, the government has taken only minimal initiatives in addressing the issue. On August 19, 1991, a four-man committee, consisting of two academics, a retired newspaper editor and a retired accountant, was established to monitor the spending of secret government cash. On September 14, 1991, an agreement to halt the violence was signed by the government, the ANC and Inkatha. During the signing of the agreement -- which includes a code of political conduct, forbids provocative statements or actions and is intended to promote political tolerance -- 3,000 Inkatha fighters, refusing to disarm, chanted outside the building. The pact provides for the reconstruction of violence-torn communities and establishes special courts to deal with political

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19 The survey was released by the Community for Social Enquiry (CASE).

violence. In the week preceding the agreement, at least 135 lives were lost in bloody fighting that erupted after gunmen ambushed Inkatha supporters and killed 23 people. On the eve of the signing of the pact, 16 men were killed and 32 injured in fighting between the two rival groups outside Johannesburg.

REPORTING ON THE KILLINGS

A series of legislative measures make it difficult for journalists in South Africa to investigate and report the violence. The Criminal Procedure Act allows a magistrate to order someone to appear before him or her if that person "is likely to give material or relevant information as to any alleged offence, whether or not it is known by whom the offence was committed." Under this act, various journalists have been ordered to identify their sources of information, forcing them to break their professional code of conduct. The Protection of Information Act prohibits the possession and publication of any document obtained from a "prohibited place" and carries a fine of up to $3,000, ten years imprisonment or both. The police are currently investigating the document obtained by the *Weekly Mail* and *Guardian* (London) that discloses the government's funding to Inkatha, to determine whether the documents were stolen. Freedom of the press is further inhibited by the Police Act, which imposes a fine or a sentence of up to five years, or both, on a journalist who publishes false information about the police without having "reasonable grounds" for believing it to be true. It is up to the journalist to prove that he or she had those "reasonable grounds." Reporting in the case of police activity becomes virtually impossible, as the journalist is unlikely to have any sources except the victim and the police.

VIOLENCE IN THE HOMELANDS

Violence has also affected South Africa's four nominally independent homelands. Since February 1990, security force actions resulted in the killing of 23 people, detention without trial of 633 and injury to 481 in Bophuthatswana; and the killing of 15, detention of 42, and injury to 28 in Ciskei. In Venda 20 were killed, 94 detained, and 5 injured. Monitoring groups as the Transvaal Rural Action (TRAC) and Lawyers for Human Rights (LHR) have documented direct South African military involvement in the violence. In Bophuthatswana, the violence reached a peak in January 1991 after a local ANC branch was launched in Braklaagte, and fighting erupted between supporters of the homeland regime and opposition. A strong military presence to suppress opposition has been maintained in Braklaagte since it was forcibly incorporated into Bophuthatswana in 1988, merely by redrawing the homeland boundaries,

Numerous reports from the IBIIR accuse the South African security forces of collaboration with the homeland authorities, who are also backed by vigilante groups, such as a Ciskei intelligence group called the International Researchers, headed by ex-SADF members. Its aim is to suppress discontent against the prevailing social and economic conditions. Since the Ciskeian authorities gained power by overthrowing the Sebe regime in 1990, three abortive coup attempts have been launched against them. The 1988 coup attempt in Bophuthatswana also failed. Through its intervention, the SADF was instrumental in keeping the homeland authorities in power. As intended, the abject poverty in the homelands has resulted in total economic and military dependency on South Africa. Although it is implicated in the violence, no attempt has been made by the South African government to address the situation in the homelands, which it continues to regard as "separate" states. (No other country recognizes their "independence"). Homeland authorities have in the past expressed the possibility of reincorporation, but to date no steps have been taken by the government to reincorporate the homelands and to recognize them for what they have always been, an integral part of South Africa.

In their haste to reward President de Klerk for his important initiatives in dismantling apartheid laws, the Commonwealth, the European Community, the United States and other members of the international community have failed to pay attention to the misery in the homelands, unrepresentative structures explicitly created to contain black political aspirations. An unacceptable and ineffective substitute for black political rights in the country -- the attempt to create a "white" South Africa with black homelands at the peripheries has failed. Instead, a blueprint for repression has been created. The reincorporation of the homelands as part of a broader process of reform is a problem the government would rather ignore. But the Commonwealth, which has substantial leverage, should not allow the South African government to exclude from the agenda an issue that lies at the heart of apartheid and affects the lives and future of over nine million black South Africans.

"The tape" is not yet "in sight." Only when independent structures capable of holding the government accountable for the continuing violence, and punishing security forces implicated in the killings, can the initiatives started by President De Klerk put South Africa on the road to lasting reform. The international community has an important role to play in this process, not only by suggesting guidelines according to which commissions of inquiry and administrative and judicial procedures can be established to bring an end to the violence, but also by intensifying their monitoring of the negotiation process to ensure a genuine negotiated settlement.

RECOMMENDATIONS

The South African government should:

- Establish administrative and judicial procedures that provide for the prompt and effective discipline or prosecution of those who have abused the new guidelines;

- Establish independent judicial commissions of inquiry into the role of the police and defence forces, and act on the evidence collected. The government should investigate on its own initiative serious human rights cases that come to its attention, regardless of whether a formal complaint has been filed;

- Make public the results of those investigations, including information about any disciplinary action the government has taken or any prosecution it has initiated;

- Hold joint forums with police and political groups to hear grievances and raise awareness of rights; retrain security forces with an emphasis on peacekeeping and protection;

- Invite genuinely independent domestic and international monitoring groups to monitor the violence, ensure a truly negotiated settlement and help implement the changes;

- Take steps to speed up the judicial process that will allow it to deal more effectively with violence related crimes;

- Ensure that the courts are adequately equipped to try violence related cases without delay; ensure that the security forces afford witnesses adequate protection by investigating the possibility of legal reforms that would enhance the prospect of witnesses cooperating with the prosecutions;

- Engage in negotiations with all representative groups in the homelands in order to bring an end

to the violence and to establish guidelines according to which they can peacefully be reincorporated into South Africa.

The international community should:

- Call on the South African government to publicly investigate the role of police and military in formal and informal repression in both the townships and homelands;

- Urge the South African government and the homeland authorities to speed up the peaceful reincorporation of the homelands into South Africa.

SRI LANKA

Since June 1990, when fighting resumed between government forces and the Liberation Tigers of Tamil Eelam (LTTE), Sri Lankan security personnel, government-linked vigilante groups, and members of the LTTE have engaged in a consistent pattern of gross violations of human rights and humanitarian law, including massacres of hundreds of civilians, arbitrary arrests, abductions and torture. In the same period, the war has displaced over one million people since June 1990, over 100,000 of whom have fled to India. The Sri Lankan military's indiscriminate bombing and strafing of civilian areas has destroyed homes, hospitals and businesses. By targeting the main power grid, it has left Jaffna and the surrounding area without electricity for more than a year, making storage of medicines and blood for transfusions virtually impossible. In the eastern part of the country, over 1,000 people may have disappeared since January 1991. Some seven to ten disappearances a month of suspected supporters of the Sinhalese nationalist Janatha Vimukti Peramuna (JVP) have been reported from the south since January 1991.

In July 1991 the most intense battle of the civil war in the northeast took place. On July 9, 5,000 Tamil militants attacked an army base at Elephant Pass which guards the railroad and main road between the Jaffna peninsula and the mainland. This base can be reached only by air. Armed with new 14.5 mm artillery, the LTTE laid siege to the camp, frustrating the army's aerial attempts to rescue some 800 soldiers, many seriously wounded, who were trapped within. Not only did this battle involve more combatants than any previous encounter, but it also proved that the LTTE was capable of conventional warfare against the Sri Lankan army. More than three weeks of face to face combat resulted, in which as many as 2,000 combatants and hundreds of civilians may have been killed. The siege was broken on August 3 by a relief column of over 10,000 soldiers.

A government blockade on transport to the north of all essential supplies including food and medicine, which had resulted in severe food shortages by late July, was relaxed on August 8, but there is still a lengthy list of prohibited items, including batteries, gasoline and matches. There has been no electricity in the north since June 1990.

There were also reports that the LTTE had pressed hundreds of civilians into service digging bunkers and otherwise aiding its defense, and that LTTE guerrillas had kidnapped over 100 doctors and nurses from northeastern Sri Lanka to treated those wounded in the Elephant Pass battle.

The government's response to international criticism of human rights abuses has been largely superficial. Despite a new eagerness on the part of the Sri Lankan government to improve its human rights image by appointing commissions of inquiry to address certain highly publicized human rights cases and issues, such as disappearances, the results of these inquiries so far have been disappointing. Human rights violations continue on a massive scale and the perpetrators of these abuses go largely unpunished.

The government's failure to adequately address charges of massive human rights violations became one the main accusations used by the opposition in their bid for impeachment of President Ranasinghe Premadasa and a return to a British-style parliamentary system. On August 28, In Colombo, over 100 parliamentarians, including 40 from the ruling party, moved to bring impeachment proceedings against President Premadasa on charges of treason, bribery, misconduct and intentional violation of the Constitution. The motion charged that the President

> failed to protect and intentionally and knowingly prevented the investigations and conduct of inquiries and/or to punish those responsible for the .... murder of the well-known journalist Mr. Richard De Zoysa, the disappearance of Mr. Lakshman Perera, the disappearance of Mr. Krishna Hussain and thousands of others including youth who were arbitrarily abducted, tortured, killed and otherwise disposed of by hired killer groups.

It also accuses Premadasa of operating a "police state" to intimidate political opponents and discourage public dissent.

The president responded to the impeachment motion by suspending parliament until September 24, and ejecting eight leading dissidents from the ruling United National Party (UNP).

VIOLATIONS OF HUMANITARIAN LAW

Several incidents in 1991 illustrate the way in which parties to the Sri Lankan civil war have indiscriminately attacked non-combatants. On May 3, 1991 four workers from Medecins Sans Frontieres were injured, two seriously, when a military helicopter fired at their clearly marked vehicle. The team was following a route which it said was provided by Special Operations Command in Colombo. The Sri Lankan government initially claimed that the helicopter pilots were actually targeting another vehicle which was travelling behind the MSF vehicle and which had fired shots. The MSF workers deny there was any other vehicle in the area. In response to international protest, the Sri Lankan government appointed a one-man commission of inquiry into the attack, which concluded that the team had been on the wrong road during a curfew and that no government personnel was responsible for "any wrongful act of omission or commission." MSF officials, who called the inquiry a "whitewash," suspended operations in Sri Lanka until the government could guarantee their safety. The commission of inquiry suggested steps to prevent such attacks in the future and in July, MSF and the government signed an agreement to expand MSF's program in Sri Lanka. The May attack, however, focussed international attention on the Sri Lankan military's continuing attacks on non-combatants and indiscriminate use of aerial bombardment in northern Sri Lanka.

A second incident took place on June 11, 1991. Minutes after an LTTE landmine blew up an army tractor, killing two soldiers, angry government troops reportedly massacred over 100 civilians in the village of Kokkaddichcholai in Batticaloa District. According to local sources 56 bodies were burned, 67 were buried and 40 people were hospitalized. There are also unconfirmed reports that as many as 21 women were raped during the attack. Residents of Kokkaddichcholai managed get news of the massacre to journalists in Colombo, forcing the government to respond with unprecedented speed. It appointed a three-person commission of
inquiry into the massacre and began holding hearings at the airforce base in Batticaloa on July 29, 1991.

ARMING OF HOME GUARDS AND OTHER CIVILIANS

The government practice of arming and training of extra-military forces and anti-LTTE Tamil militant groups to fight alongside their regular forces has led to escalating violence between Muslim, Tamil and Sinhalese civilians. (Most Sri Lankan Muslims also speak Tamil but are regarded as a separate ethnic group in Sri Lanka.) In August 1990, after a series of brutal massacres of hundreds of Muslim civilians by the LTTE, Muslim leaders demanded that the Sri Lankan government arm their communities. The

government responded by establishing Muslim "home guards" in eastern Sri Lankan villages who were soon accused of retaliatory killings of Tamils and other civilians in neighboring villages. Similarly, Sinhalese "village defense units" were armed by the government in April 1991 after a massacre in a village south of Moneragala reportedly killed some 40 Sinhalese civilians, according to an Amnesty International report.

In July 1991, according to the *Sunday Times of Sri Lanka*, the army announced it was stepping up recruitment to The National Guards Battalion (NGB), a volunteer force which normally receives only five days training, with a view toward deploying it in eastern Sri Lanka. Defense officials were quoted as saying they planned to continue to deploy civilian homeguards and members of "non-LTTE Tamil groups" to protect the districts of Trincomalee, Batticaloa and Ampara. In the last 18 months, these three districts have been the sight of some of the worst massacres of civilians by all parties.

The government was reportedly also negotiating with India in July for the release of several hundred members of rival Tamil militant groups held in camps in Tamilnadu with plans to repatriate them to Sri Lanka to fight against the LTTE. Asia Watch is concerned that if poorly trained militias are authorized to use lethal force without adequate supervision, the result will be a sharp increase in human rights abuses.

VIOLATIONS OF HUMAN RIGHTS LAW

The Sri Lankan government took a few steps toward establishing human rights safeguards in 1991, but as of this writing, it is too early to assess their efficacy.

Disappearances of people in the custody of government forces have been a hallmark of the Sri Lankan civil war over the past eight years. After much pressure from human rights organizations and the international community, the Sri Lankan government appointed a Presidential Commission of Inquiry into the Involuntary Removal of Persons, which began hearings on August 5, 1991. It has a severely limited time frame. According to press reports of the five-person commission 601 complaints received by August 5, 535 were rejected because they occurred before January 11, 1991. (Ten of thousands of disappearances took place in the period 1987-91, but they are not being considered by this commission.) Of the remaining 66 cases, 13 have been traced. The other 53 are still being investigated. All of these cases are reported to be from the south since security considerations prevent investigations in the northeast.

In the face of severe criticism over the treatment of detainees, the number of disappearances in custody, and the difficulty families experienced in tracing their detained relatives, the government in August appointed a four member Human Rights Task Force headed by J.F.A. Soza, a retired Supreme Court Justice. According to a government statement, the Task Force will function for three years beginning on August 23, 1991 and is designed to "monitor the observance of the fundamental rights of persons detained in custody otherwise than by judicial order." It will establish and maintain a central registry of detainees and ensure observance of their human rights and humane treatment. It is also charged with the responsibility to regularly inspect places of detention, investigate complaints and "take immediate remedial action."

ACCOUNTABILITY

One of the major criticisms levelled against the Sri Lankan government in recent years has been its failure to prosecute even well-publicized human rights violations by its own forces. Two famous cases in question are the murder cases of lawyer Wijedasa Liyanarachchi and journalist Richard De Zoysa.

The inquiry into the murder in police custody of Wijedasa Liyanarachchi, a lawyer with ties to the JVP, in September 1988 is perhaps the most publicized of all recent government investigations. On March 18, 1991 the Colombo High Court found three police officers guilty of Liyanarachchi's abduction but not his death, despite detailed testimony by medical examiners and witnesses at the hospital where he was brought by police on September 2, 1988, which indicated that he died of massive injuries caused by beatings with blunt weapons.

All three officers were charged with murder last year, but pleaded guilty to amended charges of conspiracy and wrongful confinement. They were sentenced to prison terms, but the sentences were suspended and fines were imposed. The senior officer later committed suicide.

The case of the journalist Richard de Zoysa received more attention overseas. To date, all attempts to convince the Sri Lankan government to appoint a commission of inquiry into the abduction and murder of de Zoysa have failed. De Zoysa's death, in February 1990, became the focus of an international campaign which demanded accountability for the activities of government-linked death squads thought to be responsible for thousands of deaths and disappearances between 1987 and 1991. On February 7, 1991 a motion in Parliament to appoint such a commission of inquiry was defeated because of pending defamation suits brought against De Zoysa's mother, Dr. Manorani Saravanamuttu, by the police officers named in connection with his abduction. Those opposed, according to the Colombo newspaper, *The Island*, claimed that an independent inquiry would raise "the very matter which is the subject of pending judicial proceedings," and that since "abduction and murder are offenses under the penal code of Sri Lanka..." they should be "determined by the established courts of the country." No decision has yet been reached.

De Zoysa was abducted from his home on February 18, 1990 at about 3:30 am by six armed men, two of them wearing police uniforms. His body was found the next day. His mother, who witnessed the abduction, identified one of the abductors as Senior Superintendent

of Police Ronnie Gunesinghe. Dr. Saravanamuttu, her attorney, Batty Weerakoon, and two police officers assigned to guard him have all received death threats in connection with the case.

The motive for Richard De Zoysa's killing has never been clearly established, but increasingly those involved believe he was killed for his human rights reporting.

Less than a month after his killing the state-owned news agencies Lankapuvath and the Sri Lankan Broadcasting Service, began a smear campaign against De Zoysa, claiming that investigations into his death revealed that he was a JVP activist who had threatened coworkers and others and police alleged that "Mr. De Zoysa had used Inter Press Service News Agency to transmit several false messages on human rights in Sri Lanka..."

RECOMMENDATIONS

The establishment of the commissions of inquiry on disappearances and treatment in custody are welcome developments, but until the government makes clear its intention to prosecute human rights offenders in its own security forces to the fullest extent of the law, their existence will have little meaning. No such prosecutions have taken place, to Asia Watch's knowledge, and the de Zoysa case illustrates how individual investigations are obstructed.

The Presidential Commission of Inquiry into Illegal Removal of Persons should be extended to cover Disappearances which occurred before January 11, 1991, and all findings should be made public. If, as many people have suggested, it is found that the vast majority of those who disappeared during this period have been killed, their families are owed that information and those responsible should be brought to trial. The Indemnity (Amendment) Act should be repealed as a further indication of the government's willingness to act on these cases.

The Presidential Commission should be extended when its first mandated term expires in January 1991. This is necessary given the large number of cases from 1991 which have yet to be investigated.

The newly-formed Human Rights Task Force must be allowed to operate independently and should be afforded immediate and unrestricted access to all detainees. All arrests and detentions should be promptly registered and the Human Rights Task Force must be provided with this documentation.

All parties to the war in the northeast have been responsible for avoidable and indiscriminate attacks on civilians. For its part, the government should ensure that only well-trained and disciplined forces under the direct control of responsible officers are authorized to use lethal force.

Aerial bombing should be curtailed as long as civilian casualties are disproportionate to the military advantage gained.

UNITED KINGDOM

The United Kingdom receives relatively little attention from the international human rights community. Yet in recent years freedom of expression in Britain has been restricted; there is an appalling use of lethal force by all sides of the conflict in Northern Ireland, and the U.K emergency legislation there suspends certain basic due process guarantees; and conditions in many British prisons violate international standards. This is not an exhaustive list of human rights problems in the United Kingdom, but it represents three areas covered in recent Human Rights Watch reports, which are summarized below.

FREEDOM OF EXPRESSION

Britain is a parliamentary democracy with an essentially ceremonial monarchy. Its judiciary enjoys a great degree of independence with respect to criminal trials and civil adjudications, it has no power to overturn acts of Parliament. While numerous decisions affecting freedom of expression may be made by local governments (for example, police determinations about demonstrations or local councils' decisions to fund community organizations), all criminal and civil law emanates from Parliament. Since there is no written constitution, there is no permanent codification of basic rights that transcend a Parliamentary majority.

Britain is still, compared to many other countries, a relatively free society. Books are not banned or burned; writers do not sit in prison for insulting the Queen or the Prime Minister; scholars, artists and filmmakers pursue their work without the heavy hand of state intervention. And yet a recent Helsinki Watch/Fund for Free Expression investigation determined that the scope of free expression is shrinking.

Official Secrecy

Deference to government and a penchant for secrecy where matters of state are concerned is a strong strain in British society, manifested in a number of laws restricting freedom of expression. The Official Secrets Act provides criminal penalties for revealing a broad range of foreign policy, defense and military information, regardless of whether the material is in the public interest or has been previously disclosed elsewhere. The law of confidence acts as a gag on hundreds of thousands of government employees and contractors. When cabinet ministers want to steer the press away from "sensitive" stories, they issue "D-notices" recommending suppression or delay.

In 1989, facing widespread criticism over the *Spycatcher* case -- where the government enjoined the publication of the memoirs of a former intelligence agent -- and the prosecutions of two civil servants, Sarah Tisdall and Clive Ponting, for leaking information to the press, the government introduced a reform of the Official Secrets Act. Although the scope of the law was narrowed, there remains an absolute ban on disclosures about security and intelligence services, no matter how trivial. There is also a ban on disclosure of material pertaining to Britain's defense and international relations if the government asserts it will "endanger the interests of

the United Kingdom abroad" or "seriously obstructs the promotion or protection of those interests."

In addition, despite a strong campaign by civil liberties advocates to include it, the new law, like the

one it replaced, permits no room for a defense that disclosure is in the public interest or that the material involved is in the public domain or has been previously published elsewhere.

Some new offenses have also been created. It is now an absolute offense to reveal from official sources the name of a person whose telephone has been tapped or whose mail has been intercepted even if the act took place unlawfully without a warrant. Had this been in place in 1985, it almost certainly would have resulted in the prosecution of former MI5 agent Cathy Massiter, who in a television interview revealed that MI5 had tapped the telephones of trade union leaders. The new Act's provision on "the interests of the United Kingdom abroad" would probably also have resulted in the conviction of Jonathan Aitken, a journalist and politician who was acquitted after a trial on charges that he revealed information given to him by a British general about the war in Biafra that was at odds with the official government version. The Act has also been broadened to apply to leaks overseas and for the disclosure of information an official *purports* to be about security and intelligence, even if in fact it is not.

While there have not yet been any prosecutions under the new Act, the ban on disclosure of defense-related information could be invoked to apply to reports on the adequacy of British protection for the Falkland Islands, or the status of the country's troops in Hong Kong. The provision barring disclosures "relating to international relations" would apply to revelations that British Cabinet ministers were working to undermine sanctions against Iran or South Africa. Furthermore, it is virtually inconceivable that the Official Secrets Act would permit disclosure of a British version of the U.S. "Iran-Contra" scandal.

In contrast to Canada, New Zealand, the United States and other European countries, there is no general right of access to government information in the United Kingdom.

Another informal but effective device for controlling public information is the "D-notice" system. Material that may be sensitive is reviewed by the Defense, Press and Broadcasting Committee, composed of representatives of the Ministry of Defense, the Home Office and the Foreign Office, along with media officials. While the group has no official status, it issues general guidelines and "Private and Confidential Notices," known as "D-notices," which can recommend suppression or delay of stories. In December 1987, editors and broadcasters threatened to abandon cooperation with the system after the government enjoined the BBC from broadcasting "My Country Right or Wrong," a documentary about the British intelligence service, despite its having been cleared by the D-Notice committee. The injunction was upheld, but some months later the government allowed the programs to be broadcast after examination of the transcripts.

Without exception, British media acceded to Ministry of Defense request during the Gulf War not to run a story on the theft of an army computer containing battle plans for the Gulf War. As in the U.S., British Ministry of Defense guidelines required journalists to be accompanied at all times by military "minders."

Defamation

British defamation law recognizes no defense that the plaintiff is a public figure or that the expression involved was in the public interest. The burden is on the defendant to prove the truth of the challenged claim. In fact, many judgments have been awarded in cases where the facts subsequently proved to be accurate, such as Cabinet Minister John Profumo's suit over the allegation that he shared a prostitute with a KGB officer, and Liberace's against the *Daily Mirror* in 1959 for implying that he was gay.

The most-publicized recent defamation suits in Britain have involved awards of 500,000 pounds to novelist and former Member of Parliament Jeffrey Archer, over the suggestion that he had sex with a prostitute (despite proof that he gave her 4,000 pounds); 300,000 pounds to actress Koo Stark and one million to musician Elton John. The highest award ever levied on a private person was against Nikolai Tolstoy, who was ordered to pay 1.5 million pounds to Lord Aldington over a pamphlet he wrote about the forced repatriation of Cossacks and Yugoslavs at end of World War II.

British libel laws have a very wide reach. Publisher Robert Maxwell was able to sue the author of a critical article by his biographer and critic, Tom Bower, in the U.S. magazine *The New Republic*, because it has 136 British subscribers. American actor Sylvester Stallone is suing *The Independent on Sunday*'s diarist, Francis Wheen, for questioning his patriotism. Encouraged by a 450,000 pound award won in Britain by a Greek citizen against a Greek newspaper that had circulated only 50 copies in Britain, former Greek Prime Minister George Papandreou sued *Time* magazine over a bribery allegation.

Public Protest

There is no affirmative right in the United Kingdom to engage in peaceable public assembly or to hold a meeting in a public place. Even to stand on a soapbox at the famous Hyde Park Speaker's Corner requires prior permission from the Department of the Environment. Urged in 1986 to include a right of peaceful assembly in the revision of the Public Order Act, the Home Office refused, but sent around a circular urging local police to bear the concerns of protesters in mind.

Not only does Britain lack affirmative protections for public protest, but the 1986 reforms significantly expands police power to control public marches, meetings and picketing, capitalizing on a period of public concern over a series of events in the mid-1980s including inner-city riots, strikes by miners, marches by racist groups, and anti-nuclear demonstrations.

There is no practical right of appeal from police decisions to restrict or ban public assembly, unless they are found to lack any reasonable basis -- something British courts have been strongly disinclined to find.

The broad power to order changes in the site or numbers of a demonstration carries the potential for interference with the intended message and impact of the protest. For example, a demonstration against the South African Embassy could be moved to the New Zealand High Commission, or a mass trade union picket could be limited to a dozen persons.

Not only may the police ban or impose restrictions on a specific demonstration, but if the Chief Constable believes these are not sufficient, he or she can apply to the local authority for permission to impose blanket bans on all processions for up to three months, subject to the approval of the Home Secretary. Blanket orders aimed at preventing marches by the racist National Front have resulted in the cancellation of "Save the Whales" rallies and the annual May Day procession in London sponsored by trade unions.

In short, the fate of demonstrations is largely in the hands of the local public authority, with no effective recourse against arbitrary decision or political discrimination in the use of public facilities.

The 1986 Act also imposed, for the first time, a national requirement that police be given six days'

advance notice of demonstrations, with criminal penalties for failure to comply. Where formerly police could impose conditions on marches only on grounds that "serious public disorder" may result, they now may take action based on anticipation of "serious disruption of the life of the community" or "serious damage to property" or if they believe that the purpose of the gathering is to intimidate people. The revised act also explicitly permits the police to impose limits on the numbers and the sites of meetings, demonstrations and pickets.

The Police and Criminal Evidence Act of 1984, which expanded police powers of search, arrest and detention, also broadened their authority to seize otherwise confidential papers for purposes of investigation into a "serious arrestable offense" -- for example, to seize journalists' untransmitted film. After a March 1990 protest rally against the unpopular "poll tax" turned violent, London police demanded that television stations and newspapers hand over unused film so they could find and charge suspects. When they refused, the police obtained court orders to compel 29 news organizations, including the Associated Press, to hand over film taken at the rally. In addition to raising freedom-of-the-press issues, this action endangered journalists. At a later rally in October, photographers were singled out for attack from members of the crowd fearful of being photographed.

Broadcasting

The Broadcasting Act permits the Home Secretary "at any time, in writing, [to] require the authority to refrain from broadcasting any matter or classes of matter as specified ..." In 1988, Home Secretary Douglas Hurd, invoking these powers, barred the BBC and the Independent Broadcasting Authority from "broadcasting any words spoken whether in the course of an interview or discussion or otherwise, by a person who appears or is heard on the program in which the matter is broadcast where ... the person speaking the words represents or purports to represent" or whose words "solicit or invite support for" a list of specified organizations, including not only proscribed "terrorist" groups like the Irish Republican Army, but two legal political parties -- Sinn Fein, the legal political arm of the IRA, and a smaller group, Republican Sinn Fein.

Hurd justified his action on the grounds that the appearance on radio or TV of members of paramilitary groups had "caused widespread offense" to listeners and viewers. Prime Minister Margaret Thatcher endorsed the ban: "To beat off your enemy in a war, you have to suspend some of your civil liberties for a time."

The broadcasting ban has also resulted in a lessening of coverage of events connected with Northern Ireland, and in self-censorship because of difficulties in interpreting it. Deciding whether someone who is not a member of a listed organization will speak in "support" of a listed organization or will "solicit or invite support for such an organization" is not always easy. A broadcaster must either pre-record an interview and expurgate prohibited words, or play it safe and refrain from interviews. A number of people who are not members of listed organizations have been banned, including Brighton Labour Councillor Richard Stanton, former M.P. Bernadette Devlin McAliskey, American author Margie Bernard, and an uncle of Paul Hill, one of the "Guildford Four."

The broadcasting ban is not the only occasion when the British government has invoked its powers over broadcasting. There have been a number of other instances involving Northern Ireland or other matters allegedly involving national security:

- "At the Edge of the Union," which included an interview with the chief of staff of the Irish Republican Army, was cancelled by the BBC in 1985 after the government asked for its withdrawal on the grounds that it was "against the national interest." The Chairman of the BBC's Board of Governors denied political interference in the decision, but the action led to a one-day strike by television and radio journalists all across the country.

- In 1988, the BBC rejected an appeal from Foreign Secretary Geoffrey Howe to delay the broadcast "Death on the Rock," a program questioning the government's version of events surrounding the killing of three IRA members in Gibraltar. The program focused on the controversy over whether the unarmed IRA members had been shot while trying to give themselves up, or, as the government claimed, because they had made "threatening gestures." The government asserted that the broadcast could affect the fairness of the inquest into the matter, but none of those interviewed had been questioned by government or asked to appear at the hearing.

- "The Secret Society," a series of six programs, was banned by BBC Director-General Alistair Milne in January 1987 because one concerned the secret $800 million Zircon spy satellite, developed in defiance of an understanding that defense projects over 250 million pounds would be disclosed to the House of Commons Public Accounts Committee. Police raided producer Duncan Campbell's home and the offices of the BBC in Glasgow, taking away many files pertaining to the program, unused film and all six films in the series.

RECOMMENDATIONS

Helsinki Watch and the Fund for Free Expression have called upon the British government to take a series of steps to restore rights of freedom of expression that have eroded in recent years. While endorsing no specific structural reform -- such as the adoption of a Bill of Rights or the incorporation into British law of the European Convention on Human Rights -- we strongly encourage the British Government to enact a scheme of permanent protection for individual liberties, including freedom of expression. We also call upon the government to:

- Repeal the Official Secrets Act -- or, at a minimum, reform it to provide for a defense that the disclosure at issue serves the public interest or has been previously published elsewhere -- and adopt a freedom of information law;

- Bar the use of injunctions against the press for publishing material obtained in breach of confidence;

- Revise the defamation laws to provide a higher burden of proof for plaintiffs -- particularly those who are public officials or well-known public figures -- and stronger defenses for those sued, such as the fact that publication serves the public interest;

- Revise the Public Order Act to recognize an affirmative right of peaceable assembly and limit police and local authority power over assemblies and demonstrations to the imposition of impartially-applied time, place and manner restrictions;

- Rescind the Northern Ireland "broadcast ban," and reform the broadcasting statute to insulate the British Broadcasting Corporation and independent television and radio from government interference with program content.

NORTHERN IRELAND

A state of emergency has existed in Northern Ireland since its partition from the Irish Free State in 1922. Various emergency laws enacted during this seventy-year period have given security forces -- the police and the British Army -- broad powers to stop people on the street, to question and search them, to search their homes, to detain them for as long as seven days without charges, and to exclude people from Northern Ireland or Great Britain. The right to trial by jury has been suspended. Political violence is a daily occurrence, and death is commonplace; about 2,900 people have died in political violence associated with "The Troubles" since 1969.

At the time of partition, following an uprising and extensive disturbances, the six northeast counties of Ireland were separated from the other 26 counties and became the United Kingdom province of Northern Ireland. The 26 counties became the Irish Free State and subsequently, in 1949, the Republic of Ireland, independent from the United Kingdom.

The population of Northern Ireland is about 1.5 million, of whom about 60 percent are Protestant and 40 percent Catholic. Protestants are largely Unionists -- people who want to maintain the union with the United Kingdom. Most Catholics, on the other hand, are Nationalists, who wish to reunite with the Republic of Ireland, which has a population of about 3.5 million, of whom 95 percent are Catholic.

For fifty years Northern Ireland governed itself through a Parliament at Stormont Castle in Belfast. The province was relatively stable from the mid-1920's until the mid-1960's. But following a resurgence of politically-motivated violence in the late 1960's, the United Kingdom prorogued -- or discontinued -- the Stormont Parliament in 1972 and instituted direct rule of Northern Ireland from the U.K. Parliament in Westminster.

It is widely acknowledged that during the Stormont period Catholics suffered serious discrimination in employment, housing and political representation. This discrimination led, in the mid- and late 1960's, to

peaceful civil rights demonstrations which were met by Unionist resistance, including violence by some Unionists and, on occasion, by the Royal Ulster Constabulary (RUC), the Northern Ireland police. This, in turn, led to the re-emergence of the Irish Republican Army (IRA), a Nationalist paramilitary group, and of comparable Unionist paramilitary groups (chiefly the Ulster Volunteer Force (UVF)).

British troops were sent to Northern Ireland in 1969 and quieted things for a brief period, but violence soon erupted again. In 1972, at the peak of the violence, there were 467 deaths, 1800 explosions and over 10,000 shooting incidents. In 1990, there were 76 deaths, 287 explosions and 396 shooting incidents.

Emergency legislation to deal with political violence began with the Civil Authorities (Special Powers) Act (NI). In effect from 1922 until 1973, this act provided police with broad powers to search and arrest, to intern suspects without trial, to seize property, and to ban publications and demonstrations.

Since repeal of the Special Powers Act, police powers to deal with political violence have been provided by the Northern Ireland (Emergency Provisions) Act (EPA), originally enacted in 1973, and the Prevention of Terrorism (Temporary Provisions) Act (the PTA), in effect since 1974. The EPA applies only to Northern Ireland; the PTA applies to all of the United Kingdom. Both acts have been regularly renewed by the UK Parliament.

These emergency acts provide the authorities with extensive powers to deal with the unrest in Northern Ireland, including:

- the power to stop and search people -- anyone can be required to answer questions regarding his or her identity and recent movements;

- the power to arrest, detain and interrogate suspects for up to seven days without a criminal charge and without an appearance before a judge;

- the power to search residences without prior judicial authorization;

- the power to exclude people from Northern Ireland, England or all of the United Kingdom without a trial and without judicial review; and

- the power to detain people by executive order (this power of "internment" has not been used since 1976).

The legislation also:

- declares certain paramilitary organizations illegal and makes membership in them a criminal offense;

- suspends trial by jury for a large number of "scheduled offenses," including murder, armed robbery, possession of explosives, and certain lesser offenses; and

- sets a lower standard for the admissibility of confessions than is applicable in the rest of the UK.

The U.K. has enacted other legislation and issued administrative orders that affect people charged with or suspected of connections with politically-motivated violence, such as the 1988 Criminal Evidence (Northern Ireland) Order, curtails the right of suspects not to have inferences drawn from their silence.

A Helsinki Watch fact-finding mission to Northern Ireland concluded that human rights abuses are persistent and on-going, that they affect Protestants and Catholics alike, and that they are committed by both security forces and paramilitary groups in violation of international human rights and humanitarian laws and standards.

As to some of the specific findings of the mission: over half (54.4 percent) of the 2,900 deaths since 1969 have been of civilians with no known connection to political violence. Another 31.1 percent have been police or soldiers. Paramilitary groups make up the rest; 10.6 percent of the deaths were of Republican paramilitaries (Nationalists who favor a unified Ireland) and 2.6 percent were Loyalists (Unionists who favor maintaining union with the United Kingdom).

The mission found the level of violence by paramilitary groups appalling: paramilitaries accounted for 2,313 deaths between 1969 and 1989 -- 1,608 people were killed by Republicans and 705 by Loyalists. And most of those killed, 1,206, were civilians with no known connection to political violence (574 of these were killed by Republicans and 632 by Loyalists). During the same period, Republican paramilitaries killed 847 members of security forces, and Loyalist paramilitaries 10.

Paramilitary groups use such barbaric tactics as the Irish Republican Army's "human bombs" -- people strapped into vehicles loaded with explosives and sent to bomb security checkpoints -- as well as bombs aimed at civilian targets. Loyalists carry out "tit-for-tat" killings by going into Catholic areas and killing Catholics at random in revenge for Republican killings of Loyalists. The level of violence presents serious problems for law enforcement officials.

Killings of civilians by paramilitary groups violate international humanitarian law. In addition, killings by paramilitary groups of security force members and opposing paramilitaries violate the principles underlying customary international humanitarian law. Helsinki Watch urges paramilitary organizations in both communities to put an end to such violence.

As for killings carried out by security forces, the Helsinki Watch mission found that police and soldiers killed 329 people between 1969 and 1989; of these, 178 were civilians, 123 were Republican paramilitaries, 13 were Loyalist paramilitaries, and 15 were themselves security force members. Helsinki Watch believes that the United Kingdom should enact legislation that strictly controls the use of lethal force in Northern Ireland. The legal standard for the use of deadly force by security forces at present is "such force as is reasonable in the circumstances." The mission found that the reasonableness standard provides too much leeway for the use of lethal force and leads inevitably to abuses.

The use of plastic bullets -- supposedly non-lethal weapons -- for crowd control has also resulted in fatal shootings. Fourteen people have been killed by plastic bullets fired by security forces since 1973.

The Helsinki Watch mission found that security force members who have killed civilians or paramilitaries are rarely prosecuted. Since 1969, police or soldiers have been prosecuted in only nineteen cases in which killings took place while they were on duty. And in only three of these cases have defendants been found guilty of murder or manslaughter. The only member of the regular British Army to have been found guilty of a murder committed while on duty received a life sentence, but he was released after serving only two years and three months of his sentence, and was allowed to rejoin his regiment.

One problem in prosecuting security forces is that, once a police officer or soldier intentionally kills someone, he or she may be charged only with the offense of murder; no lesser charge, such as manslaughter, can be filed. The Helsinki Watch mission found that this requirement is a major barrier to prosecuting security forces.

Because police or soldiers are so rarely prosecuted for fatal shootings, often the only time a family can discover what happened to the person who was shot and killed is during a coroner's inquest. The Helsinki Watch mission found that coroners' inquests are subject to inordinate delays, that coroners' juries are not permitted to reach full verdicts, that security force members implicated in deaths are not required to testify, and that victims' families and their attorneys are denied access to evidence before the inquests begin.

The Helsinki Watch mission found significant problems in detention, including long periods of detention, physical abuse of detainees, and delays in permitting access to counsel. The U.K.'s Prevention of Terrorism Act permits detentions for up to seven days. The European Convention on Human Rights requires that detainees be brought "promptly" before a judge. In 1988, the European Court of Human Rights ruled that a detention of four days and six hours did not meet the "promptness" requirement. The UK then formally derogated from that provision of the European Convention.

The Helsinki Watch mission heard many charges of physical abuse of suspects in detention from both detainees and attorneys. Some of these charges have been sustained by court decisions. The mission also found that a detainee's access to his or her attorney is frequently delayed.

The power to intern without trial remains part of the emergency laws of Northern Ireland, although it has not been used for fifteen years.

The Helsinki Watch mission found that security forces frequently stop, search and question people on the street, and concluded that such treatment is sometimes inhuman and degrading. In addition, police and army have conducted thousands of destructive house searches, some of which appear to violate Northern Ireland laws, and a high percentage of which do not produce weapons or equipment used for bombings.

The Helsinki Watch mission found that the right to a fair trial has been significantly compromised. First, the right to trial by jury has been withdrawn from defendants in cases that allegedly involve political violence ("scheduled offenses"). Helsinki Watch also concludes that the list of scheduled offenses is over-inclusive.

The Helsinki Watch mission found that the standard for the admissibility of confessions in Diplock Courts permits the admission into evidence of unreliable confessions, some of which may have been secured by abusive treatment in detention. The mission also found that the right to silence has been eroded by new rules that permit a court to take adverse inferences from a person's refusal to speak to police during the investigatory stage of a case or to testify in court.

The Prevention of Terrorism Act provides for orders excluding from Northern Ireland or Great Britain people suspected of involvement with terrorism. These people have been excluded without a hearing and without notice of the charges against them -- a form of internal exile. Those who are excluded are simply informed that they are suspected of involvement with terrorism.

RECOMMENDATIONS

Helsinki Watch recommends:

- That the standard for use of deadly force be "absolute necessity" -- that is, deadly force should be permitted only when *absolutely necessary*, and only *in proportion to* the actual danger encountered by security forces;

- That the government ban the use of the plastic bullet;

- Thorough, prompt and impartial investigations of all cases in which lethal force is used by security forces. Further, that officers who abuse their investigative powers be appropriately disciplined. The failure to discipline officers properly in the past has led to a high level of public cynicism concerning the accountability of security officers;

- That the lesser charges of manslaughter and unreasonable or excessive use of force be added to the Northern Ireland Criminal Code for cases involving the use of lethal force by security forces;

- That the Coroners' Laws and Rules in Northern Ireland be brought into line with the laws and rules in England and Wales;

- That the UK repeal its derogation and assure that detainees are brought before a court within 48 hours;

- That the Royal Ulster Constabulary (RUC) investigate all such charges, appropriately discipline the officers responsible, and institute procedures to halt such practices. Helsinki Watch also recommends the video- and audiotaping of all interrogations with strict regulations against unwarranted disclosure;

- That detainees have immediate and regular access to attorneys;

- That the power to intern without trial be abolished;

- That search and entry powers be made contingent upon a judicial warrant, absent exigent circumstances;

- The gradual resumption of jury trials for scheduled offenses, with full protection accorded to

witnesses and jurors, and a provision giving a defendant the right to waive a jury trial;

- That the number of scheduled offenses be reduced. The Attorney General should be required to "schedule in" those cases s/he believes should be tried in the non-jury Diplock courts, rather than to include automatically all scheduled offense cases, "scheduling out" only a few;

- That the Emergency Provisions Act standard for the admissibility of confessions be abolished and that the standards used for ordinary offenses be used for scheduled offenses as well;

- That the Criminal Evidence (NI) Order 1988 be amended to remove the provision that allows such adverse inferences to be taken;

- That the PTA orders of exclusion be abolished.

PRISON CONDITIONS

The United Kingdom has one of the highest prisoner-to-population ratios in Europe, and it currently stands at about 97 per 100,000. Overcrowding throughout the prison system is a serious problem (prisons are filled at 103 percent nationwide[24]) but it is particularly dramatic in local, pre-trial prisons, some of which are overcrowded by 50 percent.

Sanitary conditions are dismal in many British prisons. Many institutions are old, Victorian-era structures where cells lack integral sanitation. Prisoners use chamber pots to relieve themselves and they have to do so in the presence of their cellmates. Inmates spend most of the time in their cells and between 7 p.m. and 8 a.m. are unable to leave the cell at all in order to empty the pot. The effect is that many cells may become smelly and insect infested.

Other hygiene-related problems noted during our visits to six prisons in England and Wales, and two institutions in Northern Ireland, include lack of clean clothing and bedding and insufficient availability of showers.

We heard frequent complaints about the quality and quantity of food. Especially troubling seemed the timing of meals. (At pre-trial prisons, inmates take their meals in their cells.) The last meal is served at 4 p.m. in many institutions, and breakfast is at 8 a.m. Inmates thus go for 16 hours without food, leading some prisoners to complain that they were often hungry.

Excessive idleness is another serious problem for prisoners. At the large, pre-trial prisons, where few work or educational programs are available, inmates spend as many as 23 hours each day in their smelly, overcrowded cells.

[24] A prison that is filled at 100 percent of its capacity is in fact overcrowded. In any institution at any given moment, some cells are temporarily unusable due to repair or other reasons.

ZIMBABWE

INTRODUCTION

The lifting of the 25-year long State of Emergency in July 1990 has had a positive effect on the human rights situation in Zimbabwe. However, in spite of that move and the decision, in June, of the leadership of the ruling Zimbabwe African National Union-Patriotic Front (ZANU-PF) to abandon its commitment to the one-party state, there are increasing threats to civil and trade union rights and academic freedom. The Ministry of Political Affairs provides ZANU-PF with a base within the civil service from which to extend political control and entrench the principle of party supremacy throughout the state machinery, funded annually by Z$50 million of taxpayer's money.

INTIMIDATION OF POLITICAL OPPONENTS

Since its formation in April 1989 members of the Zimbabwe Unity Movement (ZUM) have frequently been arrested and detained for short periods. Usually they are held for less than seven days, with the result that no written reasons for detention have to be provided for them under the Emergency Powers (Maintenance of Law and Order) Regulations. On May 18-19, 1991, 113 members of ZUM were arrested for allegedly holding an illegal meeting in Gweru. Earlier, on January 27, the police cancelled a meeting in Bulawayo.

At the end of July members of ZUM alleged that their candidates were being intimidated in the run-up to district municipal elections the following month. In mid-July Patrick Kombayi, the Movement's national organizing secretary, was barred for the second time from contesting a seat in Gweru. As a result the incumbent Mayor Francis Chikwira, the ZANU-PF candidate, was elected unopposed.

Although ZUM presents no major electoral threat to the ruling party -- it holds just two seats in Parliament -- its members continue to be the victims of official harassment, particularly at election time. In Harare Province the official news agency reported allegations by ZANU-PF supporters that voters were being bribed with "beers, meat, cotton and pots (sic)". In their turn opposition candidates standing for ZUM and the UANC as well as independents accused the ruling party of intimidation and unorthodox methods of accumulating votes. ZUM's Harare Provincial chair alleged that an unspecified number of ZUM candidates had been disqualified, paving the way for ZANU-PF candidates to be elected unopposed.

Harare Town Clerk Edward Kanengoni, who is the ZANU-PF Secretary for Production in the Province and was also the returning officer for the municipal elections in the capital, was accused of issuing lists of ZUM candidates and their sponsors to ZANU-PF supporters, who then used threats to persuade them to withdraw their candidacy. Kanengoni was described as "judge, jury [and] executioner" and the most powerful man in Harare. Whatever the truth behind the ZUM allegations, the Town Clerk was clearly not an impartial election official, as under two of his official positions he is responsible directly to the ZANU-PF political bureau and answerable to its central committee.

THREATS TO ACADEMIC FREEDOM

In November 1990, the government rushed through Parliament the University of Zimbabwe Amendment Bill after a hurried debate which allowed no time for the public and members of the University to express their views. The University Amendment Bill was not published before being passed, an exception to normal Parliamentary practice. A Higher Education Council was also established. The Council is now controlled by government appointees with powers to determine what examinations to set and who to employ or dismiss in all institutions of higher education in the country.

In protest, students at the University staged a peaceful, three-week long boycott of classes starting on April 30. The student action prompted an editorial in the state-owned *Herald* newspaper suggesting that the government should order a mass expulsion, and public allegations by Foreign Affairs Minister Nathan Shamuyarira of links between the student unrest and the main opposition party, Zimbabwe Unity Movement (ZUM). The students voted to return to classes following a series of official ultimatums including threats to close the campus by Higher Education Minister David Karimanzira, who publicly described as a "waste" the expenditure by government on the University of over 2 million Zimbabwe dollars (U.S. $560,000) a week while students were on strike and staff were still being paid. In July the Minister abruptly cancelled a meeting with student leaders at three days' notice. Agreement to hold the meeting had been central to the students' decision to end their strike. Talks between the Minister and Students' Union leaders finally broke down in mid-August.

Earlier, in September 1988, riot police used teargas to and baton charges to break up a demonstration of university and polytechnic students protesting government corruption. In September 1989, on the first anniversary of the anti-corruption protest, police again came onto campus to break up a planned seminar on the corruption issue. Violence escalated, particularly after the arrest of leaders of the Student Representative Council (SRC). The student leaders were first detained under emergency powers and later charged with issuing a subversive document. At least 70 students were arrested; all charges were eventually dropped. For the first time in the country's history, the University was closed.

The University Vice-Chancellor, Professor Walter Kamba, has now announced his resignation with effect from the end of the current academic year, citing political interference in the running of the University. He had publicly opposed the new legislation, saying he did not want the powers it would give him to suspend students and dissolve the Students' Representative Council.

The new laws give President Mugabe, who holds the *ex officio* post of University Chancellor, the power to nominate the Vice-Chancellor, taking the decision out of the hands of the University Council. As head of the ruling party, any appointment he makes will inevitably be seen as political. The sudden resignation of Professor Kamba has made imminent the President's first use of his new powers. The Amendment also changes the composition of the University Council, increasing its membership from 37 to 42 and increasing the number of Council appointments in which the Minister of Higher Education has a say from 12 to 25.

The Educational Amendments also contained a proposal to establish a new University in Zimbabwe's second city, Bulawayo, thus effectively silencing any criticism of the Bill as a whole by Members of Parliament or ordinary citizens from Matabeleland who might otherwise have criticized the measure.

THE EROSION OF CONSTITUTIONAL RIGHTS

When Zimbabwe achieved independence in 1980, the terms of the settlement agreed at the Lancaster House conference provided that the Declaration of Rights in the Zimbabwean Constitution could only be changed by a 100 per cent vote in Parliament for ten years. Now, however, it can be amended by a two-thirds majority. A 1990 amendment changed Section 15 of the Constitution which forbids inhuman or degrading treatment or punishment. The sentence of whipping of juvenile offenders was found to be unconstitutional in a celebrated judgement of the Supreme Court in 1989. Justice A.R. Gubbay (now Chief Justice of Zimbabwe) ruled that whipping could have a brutalizing effect and would hinder efforts to rehabilitate the offender.

The government's initial response to the Supreme Court ruling was to repeal those sections of the Criminal Procedure and Evidence Act which allowed the courts to impose the punishment of whipping. However, it appears the government's motive in introducing a subsequent constitutional amendment is that whipping is a cheaper and easier sentence to carry out than a term of imprisonment. Africa Watch believes such thinking should not be a consideration in favor of a form of punishment which is cruel and inhuman.

Another constitutional amendment, on the use of hanging, appears to have been introduced because of an impending test case on November 5, 1990 in the Supreme Court during which the defense intended to argue that hanging is also an inhuman or degrading punishment, and therefore a breach of the Declaration of Rights. The government prevented the case from coming to court by issuing an amnesty for a number of prisoners facing the death penalty.

Aside from the substantive issues involved, these amendments have dangerous implications for the future protection of fundamental rights in Zimbabwe. They create a precedent for amending the constitution whenever the Supreme Court rules that there has been a breach of the Declaration of Rights, which during the last decade had proved to be an important protection for Zimbabweans against government excesses.

In response to the proposed amendments the Catholic Commission for Justice and Peace, the country's leading human rights organization, commented:

> The strength of a justiciable Declaration of Rights is that the power of interpretation of the rights is taken out of the hands of the Executive and the Legislature and is given to the Judiciary. For the legislature to cut down the scope of a fundamental right after it has been defined by the judiciary, or even before the judiciary has exercised its judgement, establishes a dangerous precedent and flies in the face of the separation of power and the independence of the judiciary.
>
> Fundamental human rights provisions must be inviolable. They cannot be viewed in the same light as other constitutional provisions, to be amended when convenient to Government. Any attempt to diminish or dilute these rights ... must be firmly resisted.

In January 1991 Chief Justice Gubbay warned the government that the courts might rule the amendments to Section 15 of the Constitution "invalid". President Mugabe replied with a public invitation to the Chief Justice to resign:

RESTRICTIONS ON THE RIGHT TO STRIKE

The social and economic pressures caused by unemployment, unofficially estimated at half the labor force, and inflation, officially estimated at 24%, are widely believed to be the driving forces behind the Zimbabwe government's amendment to the Labor Relations Act, and the attempts to increase party political control over the civil service through the Ministry for Political Affairs.

The Labor Relations Act was originally designed to protect workers' organizations from arbitrary government interference and provide guarantees against arbitrary dismissal. Some trade unionists have interpreted the amendment, coupled with the government's proposal to abolish the Labor Relations Board, as a sign that it no longer feels the need to maintain a State of Emergency in order to wield arbitrary powers. The Amendment outlaws the right to strike in sectors defined by government as "essential", and makes it easier to hire and fire employees.

The power to ban strikes in essential sectors was also used extensively by the government *before* the lifting of the State of Emergency, particularly in the fields of health and education. In May 1990, thousands of Zimbabwean schoolteachers striking over low salaries and inadequate leave conditions were ordered to return to work after the government invoked state of emergency powers and declared teaching an essential service. In June 1990, over 1,000 teachers were dismissed after they defied an order to return to work. The High Court ruled that their dismissals were improper, and all but a handful -- 8 strike leaders whose cases were said to be under investigation -- were re-employed.

In August 1991, the Zimbabwe Teachers' Union rejected an across-the-board pay increase offered to civil servants by the government, and accused it of betraying a promise to allow free collective bargaining between workers and employers. The Association's leadership called for a halt to negotiations involving the teachers, the Executive Council of Health Professionals and the Public Service Association until "proper machinery" had been set up.

POLITICAL CONTROL OF THE CIVIL SERVICE

On July 2 Moven Mahachi, the Minister of Home Affairs, who is also the Secretary for Commissariat in the ruling party's Political Bureau told supporters in Gwanda that the party was always supreme, and that local party officials reserved the right to give instructions to local civil servants. Although Mahachi was later contradicted by the Minister for the Public Service, Edison Zvobgo, it is clear from other published statements that ZANU-PF intends to make senior civil servants directly answerable to the Party via the Ministry for Political Affairs. Zvobgo has also made it clear that "incompetent civil servants will be retired", and that measures are in hand to streamline Zimbabwe's "bloated civil service" as part of the government's Structural Adjustment Program.

As with the inclusion of what were previously Emergency Powers in the amendment to the Labour Relations Act, so ZANU-PF ministers also appear determined to establish party supremacy over the machinery of government, and to continue to pursue the goal of a *de facto* one-party state, despite public statements to the contrary. In September 1990, the ZANU-PF Central Committee decided that the

government would not seek to enact a one-party state, but instead would "organize and mobilize the people" to support the idea.

This decision was announced despite an explicit commitment to the establishment of a one-party state in ZANU-PF's constitution. President Mugabe was praised for allowing a free debate on the issue within the Central Committee and then indicating his readiness to abide by its decision.

UNSOLVED "DISAPPEARANCES" AND DEATHS

No progress was reported during 1990/91 in investigations into the "disappearances" of scores -- and possibly hundreds -- of people, mainly from Ndebele ethnic regions, between 1982 and 1985. While no one seriously entertains any hope that they will be found alive, until they are officially declared to be dead their families have no legal claim on their assets, leaving some destitute and unable to claim compensation from the state.

A June 1988 amnesty -- reinforced by an amendment to Section 31 of the constitution on July 22, 1990 -- provides an escape route for human rights violators in the security forces. The amnesty means that such people go unpunished; it also signals that the government does not regard such crimes as sufficiently serious to warrant punishment; and it removes from citizens any possibility of redress for crimes committed by government servants.

While there have been no reported instances since the lifting of the State of Emergency of extrajudicial killing or detention without trial, Africa Watch is concerned about the circumstances surrounding the deaths -- apparently after being struck by a car while walking along the main Bulawayo-Harare highway -- of Amos Dlamini and Kenneth Ncube on March 23, 1991.

Dlamini and Ncube were members of the Open Forum, a Bulawayo-based organization founded by Dlamini which invited politicians, academics and businessmen to address meetings of the Forum on such issues as trade liberalization, the one-party state and the human rights abuses committed by the security forces in Matabeleland in 1982-85. They were returning home after a Forum meeting which had been addressed by a former government minister, Dr. Callistus Ndlovu. As Industry Minister, Ndlovu had had direct ministerial responsibility for the Willowvale vehicle assembly plants which were at the heart of the "Willowgate" scandal which rocked the government in 1988-89. Dr. Ndlovu had started out in political life as a member of PF-ZAPU but subsequently crossed the floor to join ZANU-PF, which has won every election since independence in April 1980.

Dlamini was a veteran member of PF-ZAPU, and like other members of the Open Forum was disillusioned with the Unity Agreement with ZANU-PF. Before his death, Dlamini told a reporter he was wanted for questioning by members of the security services about the activities of the Forum. Other members of the Forum are known to have been questioned by the police. Dlamini criticized the press for failing to report the activities of the Forum, but had predicted -- disturbingly in view of his untimely death -- that journalists would come to cover his funeral.

RECOMMENDATIONS

Africa Watch call upon the government of Zimbabwe to:

- Cease harassment of political opponents of the government, including members of ZUM;

- Repeal the amendment to Section 15 of the Constitution, and ensuring that corporal punishment of juvenile offenders remains unconstitutional;

- Guarantee the independence and integrity of academic institutions;

- Launch a public inquiry into the unresolved question of "disappearances," both of prisoners held in police custody and of people abducted apparently by security forces in rural areas of Matabeleland and Midlands. The aim of such an investigation would be to determine their whereabouts, to enable death certificates to be issued where appropriate, to facilitate the payment of compensation to their relatives, and to prepare for criminal prosecution of those responsible for the "disappearances."

APPENDIX

RECENT HUMAN RIGHTS WATCH PUBLICATIONS DEALING WITH COMMONWEALTH NATIONS

Worldwide:	*The Persecution of Human Rights Monitors*, 12/90, 122 pp.
	Human Rights Watch World Report, 1/91, 560 pp.
Africa:	*Academic Freedom and Human Rights Abuses in Africa*, 4/91, 176 pp.
Ghana:	"Government Denies Existence of Political Prisoners," News From Africa Watch, 8/91
	"Official Attacks on Religious Freedom," News From Africa Watch 5/90
	"Lawyers Detained for Commemorating Judges' Murder," News From Africa Watch 7/89
Guyana:	*Electoral Conditions in Guyana*, 10/90, 32 pp.
India:	*Human Rights in India: Kashmir Under Siege*, 5/91, 168 pp.
	Prison Conditions in India, 5/91, 44 pp.
Jamaica:	*Prison Conditions in Jamaica*, 5/90, 80 pp.
Kenya:	*Taking Liberties*, 5/91, 448 pp.
	"Illegal Expulsion of More than 1000 Refugees," News From Africa Watch, 12/90
	"Screening of Ethnic Somalis," News From Africa Watch, 9/90
	"Political Crackdown Intensifies," News From Africa Watch, 5/90
	"Once Again: The Nairobi Law Monthly and its Editor under Fire," News From Africa Watch, 4/90
Malawi:	"Government Releases Many Political Prisoners, News From Africa Watch, 4/91
	Where Silence Rules, 10/90, 112 pp.
Malaysia:	"Malaysia: Detainees in Sabah," News from Asia Watch, 10/91

Nigeria:	*On the Eve of "Change", A Transition to What?*, 10/91, 55 pp.
	"Behind the Wall," News From Africa Watch, 4/91
	"Twenty-seven Executed After Unfair Trial," News From Africa Watch, 7/90
South Africa:	*The Killings in South Africa*, 1/91, 104 pp.
	No Neutral Ground, 8/89, 160 pp.
	"Forced Incorporation in Ciskei Bantustan," News From Africa Watch, 1/90
Sri Lanka:	"Human Rights in Sri Lanka: An Update," News From Asia Watch, 3/91
	"Journalist Murdered/Death Squad Killings Continue," News From Asia Watch, 3/90
United Kingdom:	"Great Britain Holding 35 Iraqi Resident as Prisoners of War," News From Middle East Watch, 2/91
	Human Rights in Northern Ireland, 10/91, 192 pp.
Zimbabwe:	"A Government Moves to Curb Academic Freedom," News From Africa Watch, 11/90
	"Release of Detained Politicians," NFAW, 5/90
	Zimbabwe: A Break With The Past?, Human Rights and Political Unity, 10/89, 109 pp.