

## ASIA OVERVIEW

Perhaps more than at any time since the depths of the Cold War, human rights were marginalized in Asia in 2002. While trade and business interests had gradually supplanted human rights as the focus of international dialogue in Asia in the preceding decade, it was the focus on security after the September 11, 2001 attacks on the United States and, to a lesser extent, the threat of nuclear war in South Asia, which relegated human rights to the periphery over the past year.

Beginning with the efforts to hunt down leaders of the Taliban and al-Qaeda in Afghanistan, and ending with the bombing of a nightclub in Bali, terrorism and the resulting “war on terror” dominated events in Asia in 2002. In between, shuttle diplomacy in India and Pakistan succeeded in helping to avert the biggest human rights catastrophe imaginable: a nuclear war between bitter rivals with no apparent political or doctrinal limits. But just as fears were fading about the use of nuclear weapons in South Asia, North Korea stunned its neighbors in East Asia with the announcement by the United States that Pyongyang had admitted to having an active nuclear weapons program and likely possessed enough weapons grade material to produce a nuclear weapon. Though President Bush had earlier branded North Korea as part of an “axis of evil” that included Iraq and Iran, the American response was largely muted, as it attempted to join forces with South Korea, Japan, and China to pursue a diplomatic rather than a military solution.

The emphasis on security came at a bad time for Asia. By late 2001 the region was beginning to pull itself out of the economic crisis brought on by the financial collapse of 1997. The longstanding argument about the juxtaposition between “Asian values” and human rights—the false choice between rights, stability and development, borne of the allegedly differing value that Asians place on individuality and community—was finally in its death throes and in the process of being abandoned by its proponents in Singapore, Kuala Lumpur, and Beijing.

But the commandeered planes that crashed on September 11, 2001 offered the opportunity for governments in the region to construct another false dichotomy to marginalize human rights. This time the antagonists were named “security” and “civil liberties.” Although Western governments and Asian activists long ago rejected the Asian values argument, in the aftermath of September 11 some Western governments expressed sympathy for and even encouraged prioritizing security over human rights. For Asians who have struggled for many years against overbroad national security laws and anti-crime campaigns aimed at quelling political dissent, this has been a crushing blow. Few argued the importance of security, but the unanswered question in Asia was: at what price?

The constant focus on terrorism and security overshadowed developments that in other times would have made headlines. In Nepal, full-scale civil war broke out between an unpopular government and a Maoist insurgency seemingly modeled on the scorched-earth tactics of Peru's Sendero Luminoso. On the other hand, Sri Lanka's intractable civil war, in which terrorism had played a major part, reached a pause as the most promising negotiations since 1995 began between the government and the Liberation Tigers of Tamil Eelam with the assistance of Norway. These moves towards war and peace, both of which had an international dimension because of the involvement of outside powers, received surprisingly little international attention.

In such a tumultuous year, it was difficult for good news to get much attention. But in a tiny corner of Asia a people who only a few years ago seemed destined to continue to suffer under the rule of an unpopular and violent occupying force finally gained their freedom. On May 20, 2002, East Timor became the world's newest state in a midnight ceremony attended by U.N. Secretary-General Kofi Annan and dozens of other world leaders. Only three years ago East Timorese were victims of the scorched-earth policy of the Indonesian military after voting for independence. Yet on May 20 the new East Timorese leader, Xanana Gusmao, and the Indonesian president, Megawati Sukarnoputri, managed to shake hands, thereby bringing a symbolic end to the conflict that had divided Indonesians and East Timorese for more than two decades.

Many important issues remain unresolved in East Timor and Indonesia, including the safe repatriation of thousands of East Timorese refugees and efforts to bring to justice the military and militia leaders responsible for the killings after the 1999 independence referendum. But the success of East Timor in obtaining independence and the end of systematic human rights abuses were a reminder to human rights defenders and people around the world that their idealism may some day be rewarded, even in places where it is hard to imagine that night can ever transform itself into day.

### **TERRORISM AND THE WAR ON TERROR**

The taking of measures to combat terrorism is not new. They always existed and they always posed problems for human rights. But the problem has intensified. September 11 gave a sort of legitimacy. Where states once criticized these measures, now what we find is a kind of tolerance.

*U.N. High Commissioner for Human Rights Mary Robinson*

Many in Asia were surprised when they heard Western politicians and commentators repeat again and again after the September 11, 2001 attacks that "everything has changed." While violence against civilians on such a large scale was a new phenomenon in the United States, in Asia average citizens have long lived with the destabilizing and debilitating effects of state and non-state terrorism. They have had to cope with the immediate effects of such violence—death and injury to family and friends—while being subjected to the sort of closing of political space that

often follows: arbitrary targeting of political opposition supporters to instill fear, martial law, states of emergency, and the suspension of civil liberties.

After the carnage caused, for instance, by the forced labor policies of the Khmer Rouge in the 1970s, the shelling of populated areas by resistance forces in Afghanistan in the early 1990s, or the military sweeps in Aceh in the late 1990s, victims received neither comfort nor compensation. Camps in places like Bangladesh and Sri Lanka remained full of refugees and internally displaced persons, for whom seemingly random violence meant an end to a stable and predictable life and its essentials, such as access to education, clean water, and health care.

This is not to suggest any shortage in Asia of sympathy for the victims or outrage at the devastation caused by the September 11 attacks. Most in Asia appeared to have been deeply moved and saddened by the attacks. Condemnation was widespread. But many understood the use of planes as bombs as part of a continuum, albeit more catastrophic, that included the kinds of atrocities so often experienced in places like Kashmir, Karachi, Colombo, and Mindanao. For them, the grisly reality of bombs and explosions was horrific, but hardly new.

What was different was the location of the attacks: in the heart of the most powerful country in the world. This showed that no one was immune, not even the greatest power in history. It seemed that the problems that Asians had known for so long would now be the problems of their wealthier and more distant brethren.

Yet Asians, too, had to cope with the fallout from events half a world away. The world's only superpower insisted on this. For Asian governments, support for the "war on terrorism" as defined by the United States was the price of continued good relations. In a unipolar world, no Asian country, not even powers like China and India, could afford to be seen as less than fully supportive of the war on terror.

When the planes crashed on September 11, they drove a large hole through the region's fragile human rights architecture. Perhaps more broadly than anywhere else in the world, the United States muted its criticism of opportunistic repression in Asia so as not to offend governments otherwise cooperating in the war. Long-standing U.S. concerns about human rights in Indonesia and democratic reform in countries like Malaysia, Singapore, and Pakistan were muted.

Many governments in Asia that sought to entrench rights-restrictive policies moved quickly to take advantage of the new political space afforded by the international war on terror. In insisting that countries are "either with us or against us," the United States in particular urged countries in Asia to pass domestic anti-terror legislation, arrest individuals perceived to be security threats, and to cooperate with the United States in intelligence gathering.

In Asia, sweeping national security and anti-terrorism laws, often inherited as part of the colonial legacy, have traditionally been used to suppress pro-democracy movements and human rights activists. While there was a need in some countries for new laws to deal with issues such as money laundering, most proposed or newly enacted legislation was notable for limiting the rights of criminal defendants and narrowing civil liberties, such as freedom of expression and freedom of association. The protests of local activists that existing criminal laws were adequate to deal with violent crimes and that the focus of anti-terror efforts should be on police measures related to prevention and enforcement fell largely on deaf ears.

Instead of acting as a positive force for human rights, the United States and its increasingly docile European allies began to speak about the subject as an afterthought. Where once they viewed new criminal laws and procedures in countries with weak legal and judicial systems skeptically through the prism of human rights, those same actions—increased powers of surveillance of phones and email, streamlined trial procedures, preventive detention, lengthened prison terms—were now seen as positive developments in the war on terror. What would previously have been denounced as overbroad and heavy-handed police measures were now either endorsed, as when Pakistan rounded up thousands of suspected Islamic militants, often with little or no evidence of individual culpability, or met with uncharacteristic silence—the silence of assent.

Leaders in countries such as India, Nepal, Cambodia, Malaysia, and Singapore were pleased to accommodate the new security agenda, which neatly dovetailed with their aspirations to increase state power and marginalize political opponents. There were two notable exceptions to this trend. One was South Korea, where hastily drafted anti-terrorism legislation languished in the National Assembly after the National Human Right Commission and local nongovernmental organizations (NGOs) argued that the legislation would be redundant and subject to misuse.

The other exception was Indonesia, where through most of 2002 the Indonesian government argued that the passage of broad anti-terror legislation and precipitous arrests of Islamic activists would only polarize the fragile political situation and possibly lead to more, not less, violence. President Megawati apparently feared alienating the Muslim constituencies and parties needed for re-election in 2004.

It is impossible to know if the Indonesian government was correct, but after the Bali bombing in October the president came under tremendous international pressure to sign an anti-terrorism decree and arrest leading Islamic activists. The decree, which created a vague definition of the term “terrorism” and allowed for detention of suspects for up to six months without charge, was signed amid concerns that it would allow the military to resume the role in law enforcement that for decades led to serious human rights abuses. The Indonesian military immediately moved to reactivate defunct elements of its domestic intelligence network and train special anti-terrorism squads that would effectively compete with their civilian counterparts.

Local activists saw worrying signs of tolerance for resurgent police states. For example, in March the Indian government rushed through the Prevention of Terrorism Act, which created a broad definition of the term “terrorism” and greatly expanded the state’s intelligence gathering and investigative powers. As with its notorious forebear, the Terrorists and Disruptive Activities Act, which was used to imprison political opponents and limit free expression, the new law was quickly used not just against alleged terrorists, but against those expressing unpopular views on subjects such as Kashmiri independence from India and Tamil independence from Sri Lanka.

China took advantage of the anti-Islamist nature of the war on terror to deepen its crackdown on ethnic Uighurs in Xinjiang province, arresting thousands of Muslims there in its latest “Strike Hard” campaign. China subtly collapsed the distinction between peaceful separatists, those involved in violent separatist activity, and

those participating in international terror networks. In what was seen as a quid pro quo for Chinese support for the war on terror, the United States in 2002 formally designated the small East Turkestan Islamic Movement as a terrorist group. The U.N. Security Council subsequently placed the group on its list of international terrorist organizations.

Members of the E.U. demonstrated the precedence of trade and economics over human rights in relations with China when, without the United States as a member of the U.N. Commission on Human Rights in 2002, no resolution on China was offered for the first time since 1991.

The war on terror left local human rights activists in places like Pakistan, Malaysia, Indonesia, and the Philippines isolated. Taking a principled stand against the passage of overbroad legislation and the rounding up of the usual suspects, they found themselves in the untenable position of being in opposition not only to their own governments, but to the new policies of their erstwhile allies in the West (and donor community), too.

Ironically, despite the dramatic transformation in Afghanistan after the fall of the Taliban and the rhetoric about an end to tyranny and creation of democracy, human rights proponents remained extremely isolated in Afghanistan. Though the Taliban was replaced in Kabul by the strongly pro-Western administration of Hamid Karzai, neither it nor the international community delivered on human rights.

Created after the carefully choreographed meeting of the loya jirga in June, the Karzai administration was heavily dependent on the United States and United Nations. Karzai himself depended on the United States for his personal security, while the country relied on Western aid in its efforts at reconstruction. Afghanistan quickly transformed itself from the world’s most ardent opponent of the West to one of its neediest supplicants.

But Afghanistan’s fragile peace depended almost wholly on the cooperation of regional and local warlords who instead of being demobilized and disarmed were in many cases armed and funded by the U.S.-led coalition, thereby insinuating themselves into power in the new administration. Many of these men have long records of gross human rights violations and may someday be the subject of investigations into war crimes and crimes against humanity. While no one denies that these new friends of the international community were the enemies of human rights, the international community cynically offered them the patina of legitimacy and consciously made the protection of rights a secondary consideration.

While the fall of the Taliban created opportunities for greater freedom and respect for human rights, these opportunities were largely missed. At the core of the problem was the decision by the United States to oppose the expansion of the International Security Assistance Force in Afghanistan (ISAF) beyond Kabul, leaving Afghans largely to fend for themselves if they opposed the policies of local warlords. At this writing, Germany and the Netherlands, which were due to take joint command of ISAF in early 2003, compounded this problem by also refusing to expand ISAF, instead opting to focus on building the Afghan army and police, a necessary step to be sure, but grossly inadequate to meet Afghanistan’s immediate security needs.

The United Nations Assistance Mission in Afghanistan (UNAMA) exacerbated this problem with its “light footprint” policy, in which human rights monitoring and protection have hardly been featured. This was particularly ironic given that the leader of UNAMA, Lakhdar Brahimi, was also the author of the 2000 U.N. report that recommended “a doctrinal shift in the use of . . . human rights experts in complex peace operations to reflect an increased focus on strengthening rule of law institutions and improving respect for human rights in post-conflict environments.”

The U.N. and others argued that confronting the warlords would risk political stability. But the risks in allowing violent forces to retain power may have been greater: an Afghanistan where human rights continued to be systematically violated with impunity, as they had been since the Soviet invasion in 1979, and a resumption of fighting among warlords who had a long history of mutual antipathy. Civil war and the resurgence of fundamentalism would then become genuine possibilities.

It was also likely that if the warlords were not disarmed and dislodged, elections scheduled for 2004 would merely serve to confirm them in their current positions, except with the added legitimacy of a popular vote (albeit one held at the barrel of a gun). In spite of all the international attention, unless human rights were made more of a priority Afghanistan was in danger of moving from being a failed state to a state that once again failed its people.

In 2002, the war on terror also led to the radical realignment of many multilateral and bilateral relationships within Asia and between Asia and the rest of the world. Old enmities were forgotten, at least temporarily, and new friendships established.

Nowhere was the transformation greater than in Pakistan. Before September 11, the military government of President Pervez Musharraf, who came to power in a 1999 coup, was almost completely shunned by Western governments. After the coup, Pakistan lost billions in international aid. But after deciding to side with the United States against the Taliban and al-Qaeda, Musharraf’s administration was rewarded with instant legitimacy and aid. Senior foreign affairs officials from around the world came to Islamabad to meet the military dictator. The U.S. rescheduled billions in debt, resumed economic aid, and authorized the first weapons sales since 1998. The World Bank and Asian Development Bank dramatically increased loans. Japan, the Commonwealth, and other Western governments also adopted a policy of turning a blind eye to problems of democratic governance and human rights in Pakistan.

In April 2002, Musharraf staged a rigged referendum in which electoral lists were not used and no efforts were made to prevent multiple voting to gain a five-year extension of his self-announced presidency. Official results claimed that 97.5 percent voted in favor, a result more akin to an election in Vietnam or Iraq than in the normally rambunctious political atmosphere of Pakistan. On August 22, Musharraf effectively announced that “*l’etat, c’est moi*” when he promulgated the “Legal Framework Order (LFO).” The LFO amended the constitution to strengthen the powers of the president at the expense of the legislative and judicial branches. Musharraf effectively arrogated to himself the power to make all important deci-

sions. This was a severe blow to a country with a strong legal and judicial tradition. On the day that Musharraf made this announcement, President Bush announced that, though democracy was important, he would not allow the LFO to affect the U.S. alliance with Musharraf. “He’s still tight with us in the war against terror, and that’s what I appreciate,” Bush said.

Action against terrorism also opened the way for American military forces to return to the Philippines for the first time since being asked to leave Clark Air Force base in Angeles City and the Subic Bay naval base in Olongapo City. Because of hostility engendered by United States support of the martial law government of Ferdinand Marcos, the Filipino Congress voted not to renew leases for these bases. American forces left in 1992. But after the September 11 attack, the United States identified the Abu Sayyaf group as an ally of al-Qaeda and deployed military advisors and special forces to the southern Philippines to assist Filipino security forces in attacking and apprehending members of the group. Observers in the Philippines view Abu Sayyef as more of a kidnapping and extortion ring than a radical Islamic group. The Filipino government also agreed to allow American military forces access to Clark and Subic Bay facilities to facilitate the war on terror, a decision that was deeply unpopular among activists in the Philippines.

Even the non-communist and communist states within the ten-member Association of Southeast Asian Nations (ASEAN) agreed to cast aside the organization’s longstanding policy of non-interference—often used as a mutual shield to avoid criticism of poor human rights records—to cooperate on law enforcement and extradition matters. No other subject in the history of the organization had ever been able to pierce this core animating principle.

So intent was the U.S. on drawing Asian countries into the war on terror that in 2002 it proposed Malaysia, whose prime minister, Mahathir Mohammed, has long been an outspoken critic of the United States, as the home of a new regional anti-terror body. The U.S. and others, including Malaysian human rights groups, the bar council, and some judges had long criticized Mahathir for the misuse of the colonial-era Internal Security Act (ISA) to detain political opponents and others in preventive detention indefinitely without trial.

The U.S. and E.U. had been sharply critical of the arrest, flawed trial, imprisonment, and physical mistreatment of Mahathir’s former heir apparent, Anwar Ibrahim. Anwar was arrested in 1998 and was serving sentences totaling fifteen years after falling out with his former mentor. But these concerns were muted as Malaysia offered its cooperation in intelligence gathering and investigations into alleged al-Qaeda cells in this officially Muslim country.

In October 2002, Mahathir, a long-time opponent of international standards on human rights, confidently summed up the new place of human rights in the post-September 11 world. He presented the measures taken in the United States, United Kingdom, and elsewhere as a defense of the ISA, saying, “It is more necessary than ever. Even the rich countries, the so-called liberal democracies, have decided that there is a need for some preventive action to stop people from doing things that are harmful. People have been detained in other countries now, just as we detain people because they are a threat to security.”

The heavy emphasis on security at the expense of human rights, particularly

freedom of expression and association, brought serious risks to Asia. The overwhelming majority of Muslims in Asia held moderate religious and political views and appeared to be far less interested in geopolitics than local concerns. The large vote in Pakistan for more radical Islamist parties in the 2002 parliamentary elections, the continued popularity of the ardently Hindu nationalist Bharatiya Janata Party (BJP) government in India, the rise of Islamic parties in Bangladesh (particularly in reaction to the aggressive “Operation Clean Heart,” in which thousands were arrested and some detainees died in police custody), were indicators of widespread hopelessness and failed politics in much of Asia.

The year 2002 made it clear that Asian leaders and their Western patrons and interlocutors must be careful to walk the fine line between preserving security and maintaining popular legitimacy. Otherwise, in an atmosphere of rising religious intolerance at home and the demonization of Islam abroad, the appearance that Western countries are actively supporting unpopular governments and their heavy-handed policies runs the risk of radicalizing public opinion and creating a self-fulfilling prophecy: intolerant, backwards looking, anti-modern states that could one day slide into fundamentalism.

### UNDER THE RADAR

In Nepal, full-scale civil war broke out between an unpopular government and a violent Maoist insurgency. Despite the severity of abuses by both sides—often a cycle of slaughters of police and army by the rebels and reprisals by government forces, often against civilians—the international community paid little attention. The government’s depiction of the conflict as Nepal’s war against terror helped it to secure military assistance from countries such as India, the United Kingdom, and the United States.

The “people’s war” in Nepal began in February 1996 after the Nepalese government rejected demands by the Maoist Communist Party of Nepal (CPN) to abolish the constitutional monarchy. In November 2001, the CPN withdrew from peace talks with the government and established an underground transitional government called the People’s Council. The government responded by declaring a national state of emergency and issuing the Terrorist and Disruptive Activities (Control and Punishment) Ordinance. Within months of the declaration of emergency, over 1,300 “suspected Maoists” had reportedly been killed by government security forces, with the death toll continuing to increase dramatically. Suspected Maoists included civilians once associated with Maoists as well as those possessing Maoist literature. Once suspected, rebels and civilians alike were at risk of detention, abduction, torture, and even summary execution. Freedoms of assembly, association, and movement were suspended during the emergency period. In August, the Federation of Nepalese Journalists reported that over 130 journalists had been arrested since November 2001.

For their part, Maoist rebels targeted civilians and law enforcement authorities. By February 2002 Maoists had reportedly killed over five hundred policemen, many of whom were either wounded or had surrendered. As part of their parallel politi-

cal system, Maoists set up “people’s courts” in areas where they exerted significant control to try cases and mete out punishment (including execution) for those perceived to be working against the revolution. By April over 440 civilians believed to be “enemies of the revolution” had been killed. The international community hardly noticed as Nepal slid into full-scale civil war, with rebels holding large swathes of territory and no serious attempts at international mediation.

In Burma, the level of international attention also was modest. The military government, the State Peace and Development Council (SPDC), freed the country’s elected leader and long-time dissident, Aung San Suu Kyi, from house arrest and entered a modest political dialogue with her National League for Democracy (NLD). Though expectations were raised by her release, there was virtually no progress toward a political settlement between the government and opposition. Few believed that the SPDC was prepared to make meaningful political concessions to the NLD or hold new elections.

While the U.N. special rapporteur on human rights and his staff gained largely unfettered access to a limited number of political prisoners and had some private interviews with victims of Burma’s forced labor policies, and the International Labor Organization set up a liaison office in Rangoon to monitor the government’s commitments to end forced labor, the human rights situation remained grim. The SPDC continued to conscript large numbers of child soldiers and the Burmese army stepped up its brutal push into ethnic minority regions, forcibly and violently relocating entire communities.

Attacks on religious minorities in Asia reached alarming proportions in 2002. In India over two thousand people were killed in state-supported violence against Muslims in the western state of Gujarat, which is led by the BJP. In Pakistan, the government’s continuing support of U.S. efforts against al-Qaeda led to a backlash that included targeted violence against foreign nationals and religious minorities, in particular Christians.

Attacks against Hindus in Bangladesh escalated dramatically following the October 2001 general election that brought the Bangladesh National Party (BNP) to power in coalition with hard-line Islamic parties. Christians, Buddhists, and dissenting Muslims were targeted as well, many for their perceived support of the opposition Awami League. Hindu homes were looted, vandalized, and burned and Hindu temples and sacred sites were destroyed. Scores of Hindu women and girls were raped. In some cases, they were gang raped in front of their male relatives. Hindus were also assaulted on the streets, in their homes, and at their workplaces. Systematic attacks resulted in a mass migration of Hindus to India, and in particular to the bordering state of Tripura. The government did little to prosecute or investigate the violence.

### REFUGEES AND INTERNALLY DISPLACED PERSONS

After the closure in the 1990s of the last refugee camps for Vietnamese and Cambodians, many assumed that the refugees problems in Asia were a thing of the past. The exodus of Vietnamese and Cambodians from repressive communist states gar-

nered headlines and high-profile and sympathetic political attention, while Afghan refugees in Iran and Pakistan were largely ignored.

In 2002, the reality was apparent to all. People from around Asia continued to flee repressive regimes, conflicts, natural disasters, and economic deprivation. Gone were the headlines and the sympathy.

By some accounts, there were as many as five million refugees and more than two million people displaced within their own countries in various parts of Asia. By far the largest number was Afghans. At the beginning of 2002 there were over two million Afghan refugees in both Pakistan and Iran and over a million displaced persons inside Afghanistan. After the fall of the Taliban, approximately 1.5 million refugees returned in 2002, while an estimated six hundred thousand displaced people went home. The flow overwhelmed UNHCR and international aid organizations, but Afghans voted with their feet in support of the end of war and the Taliban.

As a result of the conflicts in various parts of Indonesia—in Aceh, the Moluccas, Central Sulawesi and elsewhere—the number of internally displaced swelled to more than one million. Communal conflicts, caused by a complex mix of factors, sparked violence and caused Indonesians to flee from their homes in record numbers, with little attention from the region or the broader international community to their vulnerable status.

As a legacy of the 1999 violence in East Timor, approximately thirty thousand Timorese refugees remained in insecure camps in Indonesian West Timor, facing the decision of whether to return to East Timor or stay in Indonesia. As part of the separation process between Indonesia and East Timor, cessation clauses were due to be invoked in December 2002, leaving many Timorese who stayed in Indonesia without a clear legal status. Indonesia also did little to resolve the cases of approximately 1,200 East Timorese children separated from their families in the chaos of the 1999 violence in East Timor. Some of these children were living in coercive conditions in Indonesia far from their families and required international assistance with family reunification.

The military government in Burma continued to create a steady flow of refugees with its attacks on border ethnic areas, its policy of forced labor, land expropriations, and repression of political activity. Close to a half million refugees remained in Thailand, while on the western border more than fifty thousand mostly Chin refugees fled to India and up to two hundred thousand Rohingya refugees were in Bangladesh. Inside Burma, there were over half a million displaced people. There were worrying signs that the Thaksin government in Thailand was no longer willing to allow refugees to take refuge on Thai soil and that, as is often threatened by Thailand, it was considering forced repatriation. The United Nations High Commissioner for Refugees (UNHCR) continued its longstanding policy of weak intervention with both Burmese and Thai authorities.

The violence in Gujarat meant that more than one hundred thousand people were displaced from their homes in India. Residing in over one hundred makeshift camps throughout the state, displaced people received little relief and rehabilitation support from the state. At year's-end, most camps had been closed, though many people did not feel safe returning to their homes.

In 2002, a new refugee flow began out of the central highlands of Vietnam into

Cambodia. Approximately one thousand indigenous Montagnards fled harsh reprisals after organizing demonstrations against land expropriations and limits on religious freedom and in favor of regional independence. As is so often the case, corruption, particularly in relation to land grabs, helped to fuel discontent. Cambodia allowed some asylum seekers to be processed for resettlement in the United States, but violated its international obligation by returning hundreds more to Vietnam, where some were given lengthy prison terms for illegal migration.

The world also began to understand the dimensions of the North Korean refugee crisis. Because of the lack of access to North Korea and the difficulty of conducting research in China, estimates ranged from ten thousand to three hundred thousand North Koreans who had fled repression and starvation to reach China. There were several high profile cases of North Koreans trying to enter diplomatic compounds in Beijing but being forcibly removed. However, all who made it inside the compounds were eventually resettled to South Korea via third countries. Though China is a party to the Refugee Convention, refugees were frequently picked up by Chinese police and returned according to a bilateral treaty with North Korea. Some Chinese villagers who offered housing to refugees were punished. There were reports that some of those forcibly returned were killed, tortured or imprisoned. Because of North Korea's severe punishment of individuals who flee the country, even North Koreans who flee in search of humanitarian assistance because of famine often become refugees *sur place*, since once in China they possess a well-founded fear that they would suffer persecution if forced to return.

Nowhere was the lack of sympathy for refugees more apparent than in Australia. Though Australia long ago abandoned its "whites only" immigration policy and accepted a steady flow of immigrants from Asia, in 2002 Prime Minister John Howard continued to play the "immigration card" that had helped him win re-election the previous year. Australia continued to deny entry to asylum seekers who did not apply for entry through established channels. Instead, it detained and forcibly transferred those who tried to enter by sea, mainly Afghans and Iraqis, to other countries in the Pacific (the Republic of Nauru and Papua New Guinea), or expelled them to the edge of Indonesian waters. It effectively succeeded in closing its coastal borders to all unauthorized entrants, including bona fide asylum seekers.

Australia also unilaterally narrowed the definition of a refugee under the U.N. Refugee Convention and removed the possibility of judicial review in nearly all immigration cases. It created a new temporary protection visa regime intended to penalize and deter refugees who did not come directly to Australia from their country of origin or who failed to apply for resettlement into Australia from their first country of asylum—so-called secondary movers. It treated Indonesia as if it were a "safe third country" even though Indonesia was not a signatory of the Refugee Convention and had no national laws to allow the processing, protection, or settlement of refugees. During 2002, Australia did accept a number of asylum seekers in Indonesia and the Pacific detention facilities for resettlement, but it continued to deny that it had any special responsibility for resettlement of the caseload created by its non-admission policies.

Australia's closed-door policy was implemented in tandem with a policy of mandatory detention of all asylum seekers who arrived without authorization.

More than two thousand people remained in detention under extremely harsh conditions in remote locations such as the Woomera Detention Center in South Australia. This practice, which allowed for no review by a court or other independent body, violated the fundamental norm against arbitrary and unlawful detention. It also disregarded U.N. guidance stipulating that asylum seekers should only be detained in exceptional circumstances. In violation of the U.N. Convention on the Rights of the Child, Australia held hundreds of children, including many unaccompanied by their parents, in detention centers. The U.N. Working Group on Arbitrary Detention and a representative of the U.N. high commissioner for human rights both visited Australia during 2002 and expressed outrage at the arbitrary and brutal nature of the mandatory detention regime there.

### ACCOUNTABILITY FOR PAST CRIMES

The newest Asian country, East Timor, ended Asia's status as the only region that had never had a U.N. or domestic judicial process set up to address genocide, war crimes, or crimes against humanity. This was not for lack of candidates. Mao's "cultural revolution" in the late 1960s and early 1970s, Golkar's bloody purge of alleged Indonesian communist party members in the late 1960s, American carpet bombing and napalm drops in Vietnam, Cambodia, and Laos in the late 1960s and early 1970s, Pol Pot's reign of terror in Cambodia in the late 1970s, and the behavior of Soviet forces and local warlords in Afghanistan in the 1980s and 1990s were all appropriate subjects of inquiry.

East Timor could make a second claim to victimhood: between 1975-99 tens of thousands of East Timor's population of eight hundred thousand were killed by Indonesian forces or died from disease or starvation as Indonesia attempted to defeat separatists led by the man who would in 2002 become the first president of East Timor, Xanana Gusmao. But there was no sign of international support for addressing those crimes. For this reason, and because of fears that Indonesia could retaliate with measures that would destroy East Timor's economy, some Timorese leaders backed away from the idea of accountability. In late 2002, Gusmao—who was held prisoner by Indonesia for more than seven years—announced his opposition to the Dili court's "Special Panel for Serious Crimes," which was set up by the U.N. to conduct trials in alleged cases of crimes against humanity and other serious crimes committed in East Timor between January 1 and October 25, 1999. Gusmao objected that the special panel did not address the more extensive crimes of the previous twenty-four years.

The other piece of the accountability puzzle for East Timor, prosecutions in Indonesia, continued to be a complete failure. To head off action by the Security Council to create an ad hoc tribunal for the crimes committed in 1999 by its military forces and their agents, Indonesia promised to undertake investigations and trials in Jakarta of senior military officials and members of its colonial administration in East Timor. But prosecutors failed to indict the most senior figures in the military. Instead, many were promoted and appointed to sensitive posts elsewhere in Indonesia. In the few cases filed, charges were brought for failing to stop the

crimes rather than for planning and committing them. At this writing, only one prosecution had resulted in a conviction, and the sentence was only three years. Though Indonesia had not acted in good faith in its dealings with the Security Council, the Council showed no appetite for revisiting the subject, particularly when the United States and other U.N. members, such as Australia, were singularly focused on gaining Indonesian cooperation in the war on terror.

Perhaps the most compelling case for accountability in the world continued to be Cambodia. Between 1975 and 1979, approximately two million Cambodians (out of a population of eight million) were killed or died from starvation or disease. But the United States, China, and their allies decided it was more important to remove the Vietnamese army that dislodged the Khmer Rouge than to pursue justice. The price for Chinese support for a peace agreement was the inclusion of the Khmer Rouge as a party and no mention of Khmer Rouge crimes or justice for its victims. Finally, in 1997, the U.N. adopted a resolution calling for accountability. But while Prime Minister Hun Sen initially asked the U.N. for an international tribunal, when a U.N.-appointed group of experts proposed this, he refused, citing national sovereignty. In 1998, he stunned the country by embracing Khmer Rouge leaders Khieu Samphan and Nuon Chea and announcing that former Foreign Minister Ieng Sary would not be prosecuted in any circumstances. Negotiations proceeded, however, with the U.N. agreeing for the first time to a "mixed tribunal" in Cambodia made up of a combination of international and local judges and prosecutors.

But in 2002 negotiations broke down. The U.N. withdrew, citing irreconcilable differences over provisions in the law. The real issue was a determination by the U.N. that Hun Sen's government was not acting in good faith and did not actually want a tribunal. It also became clear to the U.N. that, given the regular interference by the Cambodian executive in judicial matters, it would be impossible to ensure that a mixed tribunal could act with sufficient independence to ensure fair trials or make the process credible.

While the U.N. is regularly and properly criticized for weakness on justice issues, its decision on Cambodia demonstrated a commitment to principles over expediency. Secretary-General Kofi Annan came under serious criticism and pressure from U.N. members over his decision to withdraw. The United States, France, Japan, and Australia pressed for symbolic trials, both because they misunderstood Cambodian public opinion, which was strongly in favor of an international tribunal, and out of a desire to improve relations with the Cambodian government. The suspicion among many Cambodians was that other countries were only willing to offer second-class justice for a country that no longer had geopolitical significance. But if any country deserved genuine justice it was Cambodia, which had been plunged into war and devastation by the decisions of outside powers. And it is worth remembering that more people died during the reign of the Khmer Rouge than the combined total for Rwanda, the former Yugoslavia, Sierra Leone, and East Timor—the four countries for which, at this writing, some form of international justice mechanism had been created. If justice for gross violations of human rights is ever to become the norm in Asia, the place to start is with international standards in Cambodia.

## HIV/AIDS

According to government and U.N. figures, there are now more people living with HIV/AIDS in Asia and the Pacific than in any other region except sub-Saharan Africa. In June, UNAIDS reported its estimate of about 6.6 million Asians living with HIV/AIDS, a number it said was rising dramatically. In India, the government clung to an estimate of 3.97 million people living with HIV/AIDS, essentially unchanged from its estimates for the last several years, a figure widely disputed by experts both in and outside the country who noted that the epidemic was likely to be growing very fast there. China reported a rise of more than 67 percent in HIV infections in 2002, but the absolute numbers of persons living with HIV/AIDS could be considered only a rough estimate in the absence of scientifically sound prevalence surveys.

Many thousands of Chinese citizens in Henan province were infected when they sold unscreened blood at state-sponsored collection centers that reinjected pooled blood products into donors.

Indonesia and Papua New Guinea also reported dramatic increases in infection rates. The high cost of medicines to treat HIV/AIDS meant that only a tiny fraction (an estimated thirty thousand) of the millions of infected Asians had access to treatment.

Despite the threat that HIV/AIDS posed to countries in Asia, and to emerging economies in particular, most governments in the region not only remained reluctant to admit the dimensions of the disease but also did not undertake the swift and comprehensive action necessary to prevent transmission and provide care for those already affected. In India, AIDS activists faced police harassment and even abuse. In China, prominent AIDS activist Dr. Wan Yan Hai was detained for a month for circulating a government report on the disease via e-mail. In Burma, where HIV/AIDS infection rates are believed to be extremely high, the state had yet to develop a national plan to address the epidemic.

Thailand and Cambodia were exceptions in the region: In Thailand, national prevention programs helped to reduce the rate of transmission by tens of thousands. Nonetheless, in August 2001, Thailand's Health Ministry announced that HIV/AIDS had become the leading cause of death in the country. In Cambodia, the state promoted condom use and initiated national policies to counter stigma and discrimination, although that did not prevent Cambodia from having one of the highest rates of growth in transmission in Asia.

The rapid spread of HIV/AIDS was fuelled by many factors, including the lack of national policies on discrimination (needed because of the widespread perception of the disease as a sign of moral degeneracy) and the unequal status of men and women, which forced women into unprotected sex both with partners and as commercial sex workers (often as the result of deceit or being sold or forced into prostitution). Across Asia, infection rates were highest amongst the most politically marginalized groups: drug users, sex workers, men who have sex with men, and ethnic minorities. Because of discriminatory treatment, members of these groups were often forced underground, lacked access to information and adequate health

services, and were subject to police harassment or criminalization. People living with HIV/AIDS in Asia whose status became known by others risked not only community harassment, but also being fired by employers or denied treatment in hospitals. In China, some uninfected children orphaned by AIDS were reportedly expelled from schools in Henan. The lack of freedom of association in China, Vietnam, Laos, and elsewhere made it difficult and even dangerous for victims of these abuses to organize openly to aid one another, to educate others about the disease, or to seek redress.

## AFGHANISTAN

2002 was a landmark year for human rights in Afghanistan. For the first time in over twenty years, Afghans had realistic hopes for stable peace, legitimate governance, increased development assistance, and new respect for human rights norms. At the same time however, ongoing security problems in many parts of the country continued to threaten many Afghans, especially vulnerable populations such as women and girls, orphans, widows, displaced persons, the disabled, and ethnic minorities.

The United States-led military campaign against al-Qaeda and the Taliban government led to the collapse of the Taliban regime in late November 2001. On December 5, 2001, Afghan representatives in Bonn, Germany, signed an agreement outlining a power sharing arrangement and the plans for the creation of a new constitution and democratic government by 2004. A small international peacekeeping force was created to patrol Kabul, the International Security Assistance Force (ISAF), headed by the United Kingdom and later Turkey. An interim authority, headed by Chairman Hamid Karzai, was sworn in on December 22, 2001, and ruled for six months. In June 2002, an emergency *loya jirga* ("grand council") convened in Kabul under the Bonn Agreement and elected Chairman Karzai as president of a second transitional government set to lead Afghanistan until 2004, at which time general elections were to be held. Diplomatic relations between Afghanistan and most nations were restored, United Nations agencies were reopened, and international and developmental organizations were granted new access to help Afghanistan rebuild after years of war and poor governance.

The fall of the Taliban regime allowed numerous military warlords to return to power, many of them former commanders during the anti-Soviet "jihad" of the 1980s who later became local strongmen during the early 1990s. As the Taliban collapsed, many of these warlords (who as allies of the U.S.-led coalition had received significant military and financial support) seized local areas they previously ruled and took control of the local political and security apparatuses. Some of these warlords were implicated in alleged war crimes committed this year against Taliban and al-Qaeda prisoners, reprisals against Pashtun villagers in the north and west of the country, as well as other human rights violations. Many of these warlords also