

# ACADEMIC FREEDOM

THE PURSUIT AND DISSEMINATION OF KNOWLEDGE REMAINED DISPROPORTIONATELY DANGEROUS ACTIVITIES AS EDUCATORS AND THEIR STUDENTS WERE FREQUENT TARGETS OF VIOLENCE AND REPRESSION SPONSORED OR COUNTENANCED BY REGIMES BENT ON STIFLING CRITICAL ANALYSIS AND DISSENT. IN THE WORST CASES, THESE GOVERNMENTS USED INTIMIDATION, PHYSICAL ABUSE, AND IMPRISONMENT TO PUNISH CAMPUS-BASED CRITICS, AND, BY EXAMPLE, TO REPRESS CIVIL SOCIETY. MORE COMMONLY, GOVERNMENTS PURSUED THE SAME ENDS BY SILENCING ACADEMICS AND CENSORING THEIR TEACHING, RESEARCH, AND PUBLICATION ON IMPORTANT SUBJECTS. MANY COUNTRIES ALSO CONTINUED TO DENY EQUAL ACCESS TO EDUCATIONAL INSTITUTIONS TO WOMEN AND MEMBERS OF DISFAVORED MINORITY GROUPS. TEN YEARS AFTER THE LANDMARK WORLD CONFERENCE ON EDUCATION FOR ALL HELD IN JOMTIEU, THAILAND, A SIMILAR GATHERING HELD IN APRIL IN DAKAR, SENEGAL, FOUND THAT DESPITE SOME IMPROVEMENTS IN LITERACY RATES AND ACCESS TO EDUCATION, IN MANY COUNTRIES BUFFETED BY POLITICAL INSTABILITY OR FINANCIAL DOWNTURNS, EDUCATION REMAINED OUT OF REACH OF SIGNIFICANT PORTIONS OF THE POPULATION.

## Repression of Academics

DUE TO THEIR ROLE IN ADDRESSING CONTROVERSIAL QUESTIONS AND SHAPING PUBLIC DEBATE, EDUCATORS AND RESEARCHERS IN MANY COUNTRIES FACED IMPRISONMENT, TORTURE, AND EVEN MURDER. THESE ATTACKS WERE MORE BROADLY AIMED AT DISCOURAGING OTHER ACADEMICS FROM PURSUING POLITICALLY SENSITIVE LINES OF INQUIRY AND ULTIMATELY AT BLOCKING SOCIAL DEBATE AND DISSENT.

SEPARATIST VIOLENCE IN ACEH, INDONESIA, WAS THE CONTEXT FOR THE MURDER OF AFWAN IDRIS, RECTOR OF THE AR RANIRY STATE INSTITUTE OF ISLAMIC STUDIES (IAN), WHO WAS SHOT ON SEPTEMBER 16 AT HIS HOME IN BANDA ACEH, ACEH'S CAPITAL. IDRIS WAS CONSIDERED A STRONG CANDIDATE FOR THE PROVINCE'S GOVERNORSHIP AND SERVED AS A MEMBER OF THE INDEPENDENT COMMISSION SET UP BY FORMER INDONESIAN PRESIDENT HABIBIE TO INVESTIGATE PAST GRAVE HUMAN RIGHTS ABUSES IN ACEH. UNDER IDRIS' TENURE, IAN BECAME A CENTER FOR DEBATE AND DISCUSSION ON ACEH'S POLITICAL STATUS FOR A NUMBER OF NONGOVERNMENTAL GROUPS. ALTHOUGH AT THE TIME OF WRITING NO ARRESTS HAD BEEN MADE IN CONNECTION WITH THE MURDER, ACEHNESE NGOS REPORTED THAT THE MOTORCYCLE USED BY THE GUNMEN WAS SEEN SHORTLY AFTER THE SHOOTING ON THE GROUNDS OF THE MOBILE BRIGADE (BRIMOB) POLICE COMPLEX.

THE EGYPTIAN GOVERNMENT CONDUCTED A CAMPAIGN OF INTIMIDATION AGAINST ACADEMICS, APPARENTLY ALARMED BY THE POSSIBILITY OF CRITICAL ANALYSIS OF THE COUNTRY'S OCTOBER PARLIAMENTARY ELECTIONS. AUTHORITIES CLOSED THE IBN KHALDUN CENTER FOR DEVELOPMENT STUDIES, A LEADING POLITICAL SCIENCE RESEARCH CENTER, ON JUNE 30, AND DETAINED SIXTEEN OF ITS STAFF, INCLUDING SAAD EL-DIN IBRAHIM, CHAIR OF THE SOCIOLOGY DEPARTMENT AT THE AMERICAN UNIVERSITY IN CAIRO, FOR OVER FIVE WEEKS WITHOUT BRINGING ANY CHARGES. THE DETAINEES WERE RELEASED ON BAIL IN MID-AUGUST, BUT SEVERAL WERE REARRESTED ON SEPTEMBER 25 PURSUANT TO VARIOUS CHARGES, RANGING FROM ACCEPTING FOREIGN FUNDING WITHOUT GOVERNMENT APPROVAL (RELATED TO THE IBN KHALDUN CENTER'S FINANCING BY THE EUROPEAN UNION) TO ISSUING NEGATIVE STATEMENTS ABOUT EGYPT'S INTERNAL SITUATION. IBRAHIM BLAMED THE ARRESTS ON THE IBN KHALDUN CENTER'S DOCUMENTATION OF WIDESPREAD FRAUD DURING THE PREVIOUS EGYPTIAN PARLIAMENTARY ELECTIONS.

AS PART OF ITS BROAD PATTERN OF ATTACKS ON ACADEMICS, IN MARCH, THE EGYPTIAN EDUCATION MINISTRY DOCKED THE PAY OF THIRTY-SIX TEACHERS AND A HEADMASTER, ALL FROM QENA IN UPPER EGYPT, FOR HAVING ATTENDED A TRAINING PROGRAM AIMED AT PROMOTING CIVIC EDUCATION. THE TEACHERS WERE FINED AMOUNTS RANGING FROM NINETEEN DAYS' TO TWO MONTHS' SALARY. AT LEAST ONE TEACHER WAS TRANSFERRED TO AN ADMINISTRATIVE POST. THE TRAINING SESSIONS WERE ORGANIZED BY THE GROUP FOR DEMOCRATIC DEVELOPMENT, A LEADING EGYPTIAN NGO, WHOSE EARLIER ACADEMIC SEMINAR ON TRANSFORMING ISLAMICIST GROUPS INTO LEGITIMATE POLITICAL GROUPS WAS CANCELLED BY GOVERNMENT ORDER IN JANUARY. THIS HARASSMENT PLACED EGYPTIAN ACADEMICS AND NGOS IN A DEFENSIVE POSITION PRIOR TO THE ELECTIONS AND PROMPTED SEVERAL NGOS TO RETURN GRANTS FROM FOREIGN FUNDERS, THUS SCALING BACK OR ALTOGETHER STOPPING THEIR SUPPORT OF CRITICAL ACADEMIC RESEARCH.

THE CHINESE GOVERNMENT ALSO CONTINUED TO CONTROL ACADEMIC LIFE AND IN SOME AREAS INCREASED PRESSURE ON EDUCATORS WHOSE WORK TOUCHED ON SENSITIVE ISSUES OF RELIGIOUS AND ETHNIC IDENTITY, FOR INSTANCE IN TIBET AND IN YINJIANG, A WESTERN PROVINCE WITH A PREDOMINANTLY MUSLEM UIGHUR POPULATION. ON MAY 25, THE HEAD OF A PART-TIME UIGHUR SCHOOL WAS DETAINED IN URMUQI AND, BECAUSE HE CONDUCTED CLASSES IN ARABIC THAT DREW MUSLEM STUDENTS, ACCUSED OF OPENING A RELIGIOUS SCHOOL, ALTHOUGH THE BULK OF THE SCHOOL'S ACTIVITY CONSISTED OF LITERACY CLASSES AND COURSES IN CHINESE, ENGLISH, RUSSIAN, AND JAPANESE.

## Censorship and Ideological Controls

THE FREEDOM OF ACADEMICS TO RESEARCH AND TEACH WAS CONSTRAINED IN VARIOUS COUNTRIES EITHER DIRECTLY, THROUGH GOVERNMENT CONTROL OF FACULTY APPOINTMENTS, OR INDIRECTLY, UNDER STIFLING CENSORSHIP LAWS. EVENTS IN 2000 DEMONSTRATED THAT REGARDLESS OF THE MEANS USED, CONSTRICTION OF SCHOLARSHIP DROVE AWAY QUALIFIED ACADEMICS AND COARSENEED THE QUALITY OF PUBLIC DEBATE.

ACADEMICS IN SERBIA CHAFED UNDER GOVERNMENT LIMITS ON THEIR WORK. THE UNIVERSITY ACT OF 1999, IMPOSED UNDER PRESSURE FROM FORMER YUGOSLAV PRESIDENT SLOBODAN MILOSEVIC, SUBJECTED FACULTY MEMBERS TO POLITICAL OVERSIGHT AND DEPRIVED THEM OF THE RIGHT TO SELECT THEIR ADMINISTRATORS. AT THE TIME OF WRITING, THE ACT WAS STILL IN FORCE DESPITE STUDENT DEMONSTRATIONS DEMANDING ITS RESCISSION. AS A RESULT OF THIS LAW BELGRADE UNIVERSITY ALONE LOST SOME 190 INSTRUCTORS AND PROFESSORS. ONE PROMINENT EXAMPLE WAS OBRAD SAVIC, A PROFESSOR FOR TWENTY-TWO YEARS AND A LEADING PROPONENT OF DEMOCRATIC REFORM AND ACADEMIC FREEDOM. ON MAY 16, THE UNIVERSITY TERMINATED HIS CONTRACT AFTER NOT PAYING HIS SALARY SINCE MAY 1999. THE DECISION TO TERMINATE SAVIC CAME SHORTLY AFTER HE HAD PUBLISHED AND DISTRIBUTED A PUBLICATION ENTITLED "IN DEFENSE OF THE UNIVERSITY," IN WHICH HE CRITICIZED THE MILOSEVIC GOVERNMENT'S EFFORTS TO STRANGLE FREE INQUIRY ON UNIVERSITY CAMPUSES. HE POSTPONED HIS MOST RECENT PROJECT, A SERIES OF INTERNATIONAL SEMINARS ON DEMOCRACY ORGANIZED IN CONJUNCTION WITH THE NEW SCHOOL UNIVERSITY IN NEW YORK, FEARING GOVERNMENT RETALIATION AGAINST SEMINAR PARTICIPANTS. SAVIC TOLD HUMAN RIGHTS WATCH THAT HE WAS GIVEN NO OPPORTUNITY TO CONTEST THE UNIVERSITY'S DECISION TO TERMINATE HIS EMPLOYMENT.

TUNISIAN AUTHORITIES ALSO SOUGHT TO STIFLE POLITICAL DISSENT WHEN THEY DISMISSED PROMINENT HUMAN RIGHTS ACTIVIST DR. MONCEEF MARZOUKI ON JULY 29 FROM HIS POST AS PROFESSOR OF MEDICINE AT THE UNIVERSITY OF SOUSSE. MARZOUKI, A FORMER PRESIDENT OF THE TUNISIAN LEAGUE FOR HUMAN RIGHTS (LTDH), WAS THE SPOKESPERSON FOR THE NATIONAL COUNCIL ON LIBERTIES IN TUNISIA (CNLT). MARZOUKI RECEIVED A NOTICE OF DISMISSAL FROM THE MINISTRY OF HEALTH ONE DAY AFTER PRESIDENT ZINE EL-ABIDINE BEN ALI DENOUNCED CRITICS OF HIS GOVERNMENT AS "MERCENARIES" AND "TRAITORS." MARZOUKI'S DISMISSAL FOLLOWED YEARS OF PERSECUTION: IN 1993, THE TUNISIAN GOVERNMENT PROHIBITED HIM FROM CARRYING OUT ANY MEDICAL RESEARCH AND CLOSED DOWN THE CENTER FOR COMMUNITY MEDICINE, WHICH HE HAD FOUNDED; IN JUNE 1999, HE WAS ABDUCTED BY PLAINCLOTHES SECURITY OFFICIALS AND HELD INCOMMUNICADO FOR SEVERAL DAYS.

KUWAITI ACADEMICS FACED LEGAL ATTACKS AGAINST THEIR EXERCISE OF FREEDOM OF EXPRESSION INSTIGATED BY RELIGIOUS CONSERVATIVE GROUPS USING VAGUELY WORDED ARTICLES IN KUWAIT'S PENAL CODE AND PRESS LAW. THESE LAWS ALLOW FOR SENTENCES OF UP TO ONE YEAR IN PRISON AND A FINE OF UP TO 1,000 KD (U.S. \$3,260) FOR DISSEMINATING "OPINIONS THAT INCLUDE SARCAASM, CONTEMPT, OR BELITTLING OF A RELIGION OR A RELIGIOUS SCHOOL OF THOUGHT, WHETHER BY DEFAMATION OF ITS BELIEF SYSTEM OR ITS TRADITIONS OR ITS RITUALS OR ITS INSTRUCTIONS." USING THESE LAWS, ON OCTOBER 4, 1999, KUWAIT'S MISDEMEANOR APPEALS COURT SENTENCED AHMAD AL-BAGHDADI, THEN CHAIR OF KUWAIT

University's Political Science Department and an expert in Islamic law and history, to one month in jail for a 1996 article in a Kuwait University student newspaper (*al-Shu'ala*). The article discussed popular acceptance of some religious notions in the context of a wider social debate regarding gender segregation in Kuwaiti universities. One day after being imprisoned, Baghdadi went on a hunger strike and had to be hospitalized four days later due to heart problems. On October 19, Amir Sheikh Jaber al-Ahmad al-Sabah, Kuwait's ruler, pardoned Baghdadi, who has since returned to teaching. Another instructor at Kuwait University, philosophy professor 'Aliya Shu'ayb, had her two-month prison sentence reduced to a 100 KD (U.S. \$326) fine after she was found guilty of defaming religion in her collection of poetry, although the book had been in circulation since 1993. Shu'ayb contended that the charges against her stemmed from her studies of sexuality among students at Kuwait University.

A controversy in Hong Kong highlighted the precarious position of universities there as they faced the encroachment of central control by the territory's Beijing-appointed administration. Chung Ting-yu, a prominent pollster and director of the Public Opinion Program at Hong Kong University (HKU), claimed on July 7 that HKU vice-chancellor Cheng Yiu-chung had pressured him on behalf of Chief Executive Tung Chee-hwa to cease polling popular support for the chief executive. Chung's surveys, which had revealed deteriorating popular support for Tung, had been attacked by pro-Beijing administrators and media as suffering from a "pro-democracy" bias. In a welcome move, HKU responded to intense student and public demands for an inquiry by convening an independent panel of three prominent jurists and academics to investigate the matter. The panel found on August 29 that vice-chancellor Cheng and pro-vice-chancellor Wong Siu-lun had indeed pressured Chung. The two resigned as a result of the findings. Despite these resignations and the panel's inquiry, several professors stated that the incident had signalled the academic community to avoid politically sensitive research.

India, too, witnessed a deterioration in its academic freedom as Muslim and Christian educational facilities came under attack in states governed by the Hindu nationalist Bharatiya Janata Party. At the institutional level, the BJP and its allies continued to implement their program of "Hinduizing" education by mandating Hindu prayers in certain state schools and revising text books to include anti-Islamic and anti-Christian propaganda. On April 9, police searching for two suspects attacked the Jamia Millia Islamia, a Muslim institution of higher education in Delhi, and ransacked the dormitories and vandalized the campus mosque.

Muslim educational facilities also remained under pressure in Turkmenistan, where the government of Saparmyrat Niyazov banned all private Muslim religious education unless provided by the officially sanctioned Muftiat. Niyazov's educational plan also called for three-generation background checks of potential students' moral character and the abolition of the teaching of foreign languages in the country.

## Suppression of Student Activism

Student groups constituted an important element of political life in many countries. While at times their actions took them far outside of academic concerns, more often students were subjected to scrutiny and repression because of their exposure to critical ideas and their ability to mobilize in the relative shelter of university campuses.

In Yugoslavia, students played a critical role in the electoral defeat of Slobodan Milosevic, whose government had increasingly targeted students in response to the development of a loosely-structured, student-led opposition movement known as Otpor (Resistance). Numerous university professors, human rights activists, artists, church representatives, and members of the Serbian Academy of Science and Arts publicly supported or joined the group. On May 16, Ivan Markovic, the former Yugoslav minister of telecommunications and a high official of the Yugoslav Left (JUL), one of the parties in Milosevic's ruling coalition, accused Otpor of being a "terrorist organization." Authorities soon dropped this charge after it proved untenable, but continued to harass Otpor. In May and June, the police detained and interrogated some 500 Otpor activists. Authorities stepped up their attacks in August as the September national elections approached and Otpor launched a campaign calling for a high turnout of young voters. Otpor claimed that police detained hundreds of its members in August alone and beat at least ten who were in custody. Furthermore, police refused to investigate attacks on Otpor activists by plainclothes thugs believed to have worked for the Milosevic government.

Iranian students also remained active in the ongoing struggle between reformists and conservatives. Repeated calls for self-restraint under the doctrine of "active calm" by students prevented a reprise of the bloody riots that engulfed several campuses in July 1999, although attacks on student activists by mobs reportedly connected to government security forces continued. In the worst such incident, on August 26 a mob attacked the seventh annual gathering of the largest student pro-reform organization, the Office for Consolidating Unity (*Daftar Tajkim Vahdat*), in the city of Khorramabad, and prevented prominent government critics Abdolkarim Soroush (a philosophy professor) and Mohsen Kadivar from addressing the group. Government forces at the scene were reportedly unable or unwilling to protect the students. Over the next several days of violence, dozens were injured and one police officer was killed.

In a troubling development, in Lebanon, which had enjoyed a relatively open academic environment in the Middle East, students demonstrating peacefully in Beirut for the withdrawal of Syrian military forces from Lebanon faced an unduly forceful reaction from Lebanese security forces. On April 17 and 19, army and security troops forcibly broke student-led demonstrations in Beirut, injuring thirteen people, two of them seriously. Military tribunals sentenced at least ten students to prison terms ranging from ten days to six weeks for distributing leaflets.

## Access to Education

Equal access to education is one of the most widely recognized principles of international human rights law, enshrined in article 26 of the Universal Declaration of Human Rights and the subsequent international conventions implementing it, including the Convention against Discrimination in Education, article 13 of the International Covenant on Economic, Social, and Cultural Rights, and article 28 of the Convention on the Rights of the Child. The unfortunately broad catalogue of failures in achieving this ideal reflected the global prevalence of discrimination, especially when aggravated by conditions of poverty, conflict, and war.

On April 26, UN Secretary-General Kofi Annan launched a ten-year initiative on girls' education at the opening of the World Education Forum in Dakar, Senegal. Forum participants pledged to ensure that all children, especially girls, have access to quality basic education by 2015. Nevertheless, reports submitted by 190 countries regarding their educational systems showed that women and girls remained the most widespread victims of educational discrimination.

Information gathered by Human Rights Watch mirrored these findings on the range of obstacles blocking equal access to education by girls and women. These vary from the blatant discrimination by the Taliban in Afghanistan, which continued to bar females from all public educational institutions, to other less obvious though equally pernicious forms of discrimination around the globe. Human Rights Watch's research in South Africa confirmed reports that sexual violence in schools against girls created a culture of violence that discouraged girls from continuing their education. Turkey, Turkmenistan, and Uzbekistan continued to prohibit female students from wearing religious attire, thereby effectively blocking these students' access to educational facilities.

Discrimination on other grounds also was widespread. In the United States, lesbian, gay, bisexual and transgender students faced discrimination by their peers and, in some instances, public administrators. As set out more fully in the chapter on children's rights, these students were part of a large number of students around the world who were denied their right to education because of discrimination based on race, gender, religion, ethnicity, or nationality.

Ethnic discrimination against Roma continued on an institutional level in Eastern Europe and the Balkans, as Croatia, Macedonia, Bulgaria, Slovakia, Hungary, and the Czech Republic failed to provide equal access to educational facilities to Romani students and, in the latter two countries, channelled them toward corrective programs designed for mentally handicapped or learning disabled children in disproportionately high numbers.

## Relevant Human Rights Watch

### Reports:

*Tunisia: The Administration of Justice in Tunisia: Torture, Trumped-Up Charges and a Tainted Trial, 3/00*

*Turkey: Human Rights and European Union Accession Partnership, 9/00*

*United States: Fingers to the Bone: United States Failure to Protect Child Farmworkers, 5/00*

*Federal Republic of Yugoslavia: Curtailing Political Dissent: Serbia's Campaign of Violence and Harassment Against Government Critics, 4/00*

# BUSINESS AND HUMAN RIGHTS

## Introduction

The recognition that business and human rights were inextricably intertwined continued to grow throughout the year and moved beyond a simple debate over the need to adopt codes of conduct. Those companies that previously stated a commitment to human rights continued to develop programs to implement their policies. As in previous years, the apparel and footwear industry and the energy industry were the focus of scrutiny because of their long-standing problems.

However, the issue of business and human rights moved beyond the sole focus on corporations. Increasingly, governments—either individually or through multilateral institutions—became part of the effort to ensure that human rights were not sidelined by commercial considerations. Through court cases, scrutiny over the corrupting influence of oil revenues, or because of multilateral institutions' efforts to address these issues, governments emerged as a crucial actor in the debate over business and human rights.

## The Apparel and Footwear Industry

As the U.S. and European apparel and footwear industry continued to develop and implement monitoring and compliance programs—principally through the development of the White House-sponsored Fair Labor Association (FLA), the Council on Economic Priorities (CEP) Social Accountability 8000 Program (SA-8000), and the new Workers' Rights Consortium (WRC)—to ensure the rights of workers in the industry were respected throughout the world, controversies emerged about the effectiveness of the various initiatives. At the same time, litigation emerged as another method of ensuring corporate respect for workers' rights.

## Controversy on College Campuses

Throughout the year, university students in the United States stepped up efforts to ensure that their schools did not sanction abusive labor practices through their apparel licensing agreements. Unlike previous years, however, the students focused their efforts on two key demands: that universities withdraw from the FLA, a monitoring body made up of corporations and human rights organizations, and instead join the newly formed Workers Rights Consortium (WRC), a monitoring body made up of student organizations, university officials, and labor organizations. These demands led to a heated debate over the quality of various voluntary monitoring organizations and was best epitomized by the actions of Nike in 2000.

On April 24, Phil Knight, Nike's chairman and chief executive officer, announced that he would not donate any more money to his alma mater, the University of Oregon, because the school had joined the WRC instead of the FLA, where Nike is a founding member. Previously, Knight donated approximately U.S. \$50 million to the university and planned to donate millions more until the university joined the WRC. A few days later, on April 29, Nike terminated negotiations with the University of Michigan over the renewal of a six year multimillion dollar licensing agreement because of the university's support for the WRC.

On July 2, university professors stepped into the fray. Under the auspices of the Academic Consortium on International Trade (ACIT), more than 200 scholars wrote an open letter to universities stating concerns about the way decisions to join either the FLA or the WRC were made by universities and suggested that both initiatives may actually be detrimental to the cause of workers' rights. ACIT also urged universities to consider other initiatives such as SA-8000, to undertake more research and consultation before joining any particular monitoring group, and warned that raising wages of workers further may have detrimental effects because "the net result would be shifts in employment that will worsen the collective welfare of the very workers in poor countries who are supposed to be helped" by these initiatives. The FLA criticized ACIT, arguing that it had unfairly compared the FLA to the WRC. The WRC attributed ACIT's criticism to an effort to undermine the credibility of these initiatives since ACIT was not part of the decision-making process. While it was too early to assess whether any of these initiatives was completely adequate since none of them had been fully implemented, the controversies surrounding factory monitoring strongly suggested that these internecine disputes would continue in the absence of enforceable legal standards requiring corporations to respect workers' rights.

## Litigation Against Apparel Companies

On June 3, the U.S. Ninth Circuit Court of Appeals overturned a lower court decision and ruled that twenty-three garment workers in Saipan could anonymously sue garment manufacturers because disclosing their identities could subject them to retaliation by employers, the Chinese government, and third-party "recruiting companies" since they had paid agents recruiting fees to migrate from China in order to work in Saipan and allowed the case to be heard in Hawaii rather than in Saipan. The workers had filed a class action suit against twenty-two companies for violations of the Fair Labor Standards Act and accused apparel companies of conspiracy under the Racketeering Influenced Corrupt Organizations Act (RICO). Earlier, on March 29, eight defendants in the lawsuit: Calvin Klein Inc., Jones Apparel Group, Liz Claiborne Inc., The May Department Stores Company, Oshkosh B'Gosh Inc., Sears Roebuck and Company, Tommy Hilfiger USA Inc., and Warnaco Inc. agreed to a U.S. \$5.7 million settlement with the plaintiffs that would be used to fund a rigorous independent monitoring program to monitor working conditions in Saipan. Previously, in 1999, Bryland L.P., Chadwick's of Boston, Cutter & Buck, The Dress Barn, Donna Karan Inc., Gymboree Corp., J. Crew Inc., Nordstrom Inc., Phillips Van-Heusen, and Polo Ralph Lauren also settled with the plaintiffs in exchange for funding an independent monitoring program. At this writing, Abercrombie & Fitch Inc., Associated Merchandising Corp., Brooks Brothers Inc., Gap Inc., J.C. Penney Co., Lane Bryant Inc., Levi-Strauss Inc., The Limited Inc., Talbots Inc., and Woolrich Inc. were among the companies that had yet to settle with the plaintiffs. Barring a comprehensive settlement, the trial was expected to begin in February 2001.

## The Energy Industry

Oil prices rose sharply in 2000 to levels more than three times that of 1997–98 largely due to an imbalance between global supply and demand. As energy companies and energy exporting countries profited from the price rise, the energy industry increasingly recognized that these large revenue streams could negatively impact prospects for good governance, fiscal and political accountability, and human rights. In particular, large revenue streams generated by oil development provided an incentive for corrupt governments to subvert democratic processes and limit freedom of expression in order to evade public accountability. Two examples of this phenomenon were developments in Kazakhstan and Angola.

## Kazakhstan

A corruption scandal involving President Nursultan Nazarbayev and his associates, coupled with a deteriorating human rights situation, strongly suggested that Nazarbayev was seeking to consolidate political and economic control over this oil-rich country—a key player in the development of Caspian pipelines—at the expense of good governance and human rights.

For example, on June 12, 2000, the United States Department of Justice (DOJ) requested information from the Swiss authorities regarding the “alleged use of U.S. banks to funnel funds belonging to certain oil companies through Swiss bank accounts and shell companies in Switzerland and the British Virgin Islands for ultimate transfer to present and former high-ranking officials of Kazakhstan,” in order to determine whether these transactions violated the Foreign Corrupt Practices Act and the Racketeer Influenced and Corrupt Organizations Act (RICO) as well as U.S. money laundering and extortion statutes.

The DOJ cited transactions totaling U.S. \$114,922,577 from March 1997 to September 1999, which were transferred from several international oil companies including Amoco Kazakhstan Petroleum Company, Amoco Kazakhstan (CPC) Inc. (both companies are now part of BP), Phillips Petroleum Kazakhstan, and Mobil Oil Corporation (now part of ExxonMobil), to James H. Giffen, a close associate of Nazarbayev and financial advisor to the Kazakh government. Giffen subsequently transferred U.S. \$55,969,000 of these funds to accounts belonging to Akezhan Kathegeldin, a former prime minister of Kazakhstan, Nurlan Balgimbatov, another former prime minister and current president of the powerful state-owned KazakhOil company, and President Nursultan Nazarbayev, or their families. At this writing, Giffen, as a U.S. citizen and the conduit for these transfers, was the primary focus of the DOJ investigation. The DOJ had not determined whether any of the U.S. oil companies acted illegally.

During the period that these transactions took place (March 1997 to September 1999), the Nazarbayev government took action to undermine freedom of speech, assembly, and association in Kazakhstan to prevent independent media reporting of such activities, and to deny Kazakh citizens the right to express their opinions and change their government.

The government used six main methods to harass the independent media: it filed criminal charges of engaging in “criminal speech” against individuals and publications; confiscated publications for alleged violations of the Law on the Mass Media; bankrupted publications through the awarding of large libel damages to government officials; disrupted publications’ activities through harassment by the tax inspectorate or the customs authorities, and by denying access to state printing and distribution networks; and through informal and formal censorship of reporters.

One particularly illustrative case concerned the independent newspaper *Dat*. On September 10, 1999 an Almaty district court found *Dat* guilty of criminal libel and ordered to pay 35 million tenge (approximately U.S. \$457,000) to the head of the state-funded Kazakhstan-1 television channel. *Dat* routinely published articles on government corruption and in this case, reprinted an account of a July 7, 1997 press conference in which a former employee of Kazakhstan-1 claimed that the station misused government funds. After the decision, police seized *Dat*’s computer equipment and other property, and froze its bank accounts. Five days after the court’s decision, Phillips Petroleum Kazakhstan Ltd. transferred U.S. \$30,000,000 into a Swiss account for its legitimate participation in the Caspian Offshore Oil Consortium. From these funds, U.S. \$20,519,000 was then transferred to Giffen, who then transferred the funds to accounts in the British Virgin Islands belonging to companies registered to Nazarbayev and Balgimbatov, according to the DOJ. The juxtaposition of these two events—the government’s closing of *Dat* and the transactions involving Nazarbayev and Balgimbatov—underscored the linkages between human rights and corruption.

The electoral process was also undermined. In May 1999, the Kazakh parliament adopted amendments to the Law on Elections requiring that potential candidates for elected office submit documents to the Central Electoral Commission certifying their mental health and barred from election any candidates who had been found guilty by a court of any administrative violations or of corruption. On October 7, 1999, less than a month after the last financial transaction, Nazarbayev, then fifty-eight, signed constitutional amendments that eliminated the sixty-five year age limit on officeholders, increased the president’s term from five to seven years, and removed the 50 percent minimum public participation threshold for presidential elections that were part of the 1995 constitution. On October 9, 1999, Nazarbayev announced that presidential elections would be held on January 10, 1999—two years earlier than scheduled. Opposition candidates did not fare well. Three were barred from running, including former prime minister Kathegeldin, because they had either violated administrative provisions regulating public meetings or participated in unregistered public organizations—laws that severely curtailed freedom of assembly and association. Kathegeldin had left the government in 1997 after a dispute with Nazarbayev and emerged as the leading opposition political figure. Ultimately, Nazarbayev won the election with more than 79 percent of the vote and secured the presidency until at least 2006. However, the Organization for Security and Cooperation in Europe (OSCE) refused to send observers because the election so clearly fell far short of international standards for free and fair elections.

On July 17, 2000, Swiss authorities confirmed that they had frozen accounts connected with the DOJ and their own investigations. The Swiss investigation began in 1999 following a request by the Kazakh government to seize the accounts of former prime minister Kathegeldin, whom it accused of tax evasion, money laundering, and abuse of office. When investigating the allegations, the Swiss found far greater sums of money held in accounts controlled by Nazarbayev. They froze those accounts and identified an account controlled by Kathegeldin’s son-in-law that held approximately U.S. \$6 million. Kathegeldin said that he had originally tried to return the money to Nazarbayev, but could not, and left it undisturbed. Kazakh government officials denied that they held foreign bank accounts altogether and denounced reports that such accounts had been identified and frozen by U.S. and Swiss authorities.

These requests underscored the Kazakh government’s hostility to political opponents and its ongoing efforts to harass the most visible opposition politician, Kathegeldin, in particular. Kazakh authorities also requested Kathegeldin’s arrest and extradition to Kazakhstan to face money laundering and abuse of office charges while he was traveling through Moscow and Italy in September 1999 and July 2000, respectively. On both occasions, Kathegeldin was briefly detained, but released after strong protests by the international community because the charges were believed to be politically motivated and improperly used the international police system (INTERPOL). Nevertheless, questions remained about the U.S. \$6 million account linked to Kathegeldin.

In addition to pursuing political opponents abroad, Nazarbayev signed a law on July 21 to grant himself lifetime powers, including rights to remain on the powerful Kazakh Security Council, to head the parliamentary assembly of Kazakh peoples, to make national addresses on television and before parliament, to attend government meetings, to advise any future president on policy matters, and to immunity from prosecution. Opposition parliamentarians strongly criticized the law and suggested that Nazarbayev was moving towards making himself president-for-life, like his counterpart Saparmyrat Niyazov in gas-rich Turkmenistan.

## Angola

On April 3, 2000, as part of a larger agreement on economic reform, the International Monetary Fund (IMF) and the Angolan government reached an agreement to monitor oil revenues, known as the "Oil Diagnostic," that would be supervised by the World Bank and implemented by KPMG, an international accounting firm that also had the Angolan central bank as a client. It was an effort by the international financial institutions to assess the percentage of government oil revenues that were deposited in the central bank. The Angolan budget had previously been opaque, raising concerns among multilateral financial institutions, NGOs, companies, and governments that oil revenues were being used secretly to finance arms purchases and that future oil production was mortgaged for immediate oil-backed loans. Some oil revenues bypassed the Ministry of Finance and the central bank and went directly to the state-owned Sociedade Nacional de Combustíveis de Angola (Sonangol) company, or to the presidency to procure weapons. These payments being secret, they also sparked allegations of official corruption. More such allegations emerged in June 2000 when André Tarallo, former Africa director of France's Elf Aquitaine (now TotalFina-Elf), testified to French authorities investigating corruption charges against the company that the Elf Corporation had paid large sums (up to U.S. \$0.40/barrel) to African leaders, including Angolan President José Eduardo dos Santos, primarily through a slush fund the company held in Liechtenstein. Dos Santos and TotalFina-Elf vigorously denied the allegations.

In this context, Angolan government attacks on the rights to freedom of expression and association undermined these and other rights and targeted journalists' efforts to ensure governmental accountability. Gustavo Costa, of the Portuguese-language newspaper *Expresso*, for example, was charged with defamation and slander for writing about cabinet corruption in April 1999, and on December 24, 1999 received a suspended prison sentence, was fined U.S. \$500 and ordered to pay U.S. \$2,000 compensation for "defaming the chief of the Civil Office of the President, Jose Leitao." Costa's trial was closed to the public and the media, and he complained that he was pressured to reveal his sources. His lawyer lodged an appeal to the Supreme Court, but it had yet to be heard.

In September 2000, the Angolan government introduced a new press law that severely restricted freedom of expression. It prescribed sentences of two to eight years of imprisonment for any journalist who impugns the president's honor or reputation; allows the authorities the right to determine who can work as a journalist; empowers them to seize or ban publications, including foreign publications, at their discretion; and allows the arrest and detention of journalists for thirty days before charges are filed. The law also removed truth as a defense against libel involving the president or office of the president, enabling the authorities to imprison journalists who write accurate reports if these are deemed to impugn the president's honor or reputation. The law was reportedly intended to curtail increased domestic press questioning of the government following the publication of a report by a U.K.-based NGO, Global Witness, exposing the links between oil and high levels of government corruption involving President dos Santos and his associates.

Despite such censorship, however, public dissatisfaction over government mismanagement grew in Angola and the *Economist Intelligence Unit* (EIU), reported in August 2000 that "public criticism of the government has grown noticeably, particularly focusing on official corruption.... The resurgent peace movement has also been active in articulating growing exasperation with the country's political leadership over the impression that the country's enormous, and growing, oil wealth has failed to produce any tangible benefits to the general population."

The IMF/World Bank Oil Diagnostic, scheduled to run from September 2000 until late 2002, was a partial response to questions about the government's use—or misuse—of oil revenues. The success of the oil diagnostic would hinge on the quality of information provided to KPMG by the government and informed third-parties, such as the international oil companies. Yet, several weaknesses limited the agreement's effectiveness. Rather than agree to a full-scale audit of its oil revenues, Angola's government agreed to a basic agreement that would only compare projected oil revenues with the actual amount of money deposited in the central bank. The oil diagnostic would not have the capacity to trace the flow of funds out of the central bank, nor to investigate the use of any funds that were generated by oil revenues that were not deposited in the central bank, such as those previously funnelled through the presidency or Sonangol for covert arms purchases. Further, the terms of reference and the reports of the oil diagnostic—a baseline report conducted in September, followed by quarterly updates, and a final report in late 2002—were not to be made publicly available, despite the agreement's purported aim to increase transparency and government accountability.

## The Role of the International Community

Two key developments within multilateral institutions highlighted a growing awareness that these institutions must address business and human rights: the launch of the U.N. Global Compact and a decision by the European Bank for Reconstruction and Development (EBRD) to suspend public sector lending to Turkmenistan because of its refusal to move to a multiparty democracy. These efforts sent a strong message that the multilateral institutions supported corporate responsibility and good governance, but they did not show that these institutions would consistently apply strong standards to ensure adherence. At the same time, U.S. courts began to address the parameters of corporate liability for human rights violations.

### United Nations Global Compact

On July 26, U.N. Secretary-General Kofi Annan convened a meeting with the heads of U.N. agencies, corporations, labor unions, and NGOs to launch the U.N. Global Compact, a voluntary initiative to promote corporate responsibility and cooperation between companies and the U.N. Comprising a set of nine principles that supporting corporations were required to endorse, coupled with minimal reporting requirements, and supporting guidelines that were intended to ensure that corporations "complicit" in human rights violations would not be allowed to partner with the U.N. The Global Compact was hailed by the U.N. as a major step forward in pushing corporations to respect human rights, including labor rights, and environmental protection, and to promote "partnerships" between the U.N., corporations, labor unions, and NGOs. However, it was criticized by NGOs, including those that participated in the July 26 meeting, because it did not contain any independent monitoring mechanisms to assess the conduct of corporations: the guidelines were too vague and did not adequately ensure that companies complicit in human rights violations would be barred from partnership with the U.N.; and that the weaknesses in the compact could enable companies to garner favorable publicity, or "bluewash" their image by securing the use of the U.N. logo, without having to adequately improve their human rights, labor rights, or environmental performance. In addition to highlighting these shortcomings, Human Rights Watch called on the U.N. to begin the process of developing binding standards on corporations, rather than solely relying on the voluntary Global Compact.

### European Bank for Reconstruction and Development and Turkmenistan

In a stunning rebuke of the dictatorship under Turkmenistan's president-for-life, Saparmurad Niyazov, the European Bank for Reconstruction and Development (EBRD) indefinitely suspended lending to the government on April 19 while continuing private sector lending. The EBRD justified its decision because of the government's failure to implement economic reforms and because "[t]here has been no progress towards a pluralist or democratic political system, as President Niyazov retains a firm grip on power, not properly balanced by the country's legislature or judiciary. Most disturbingly, President Niyazov was made President for Life in December 1999."

Events leading up to the EBRD decision were almost comical. Earlier in April, an EBRD delegation tried to meet with Niyazov to discuss economic and political reforms and future lending by the bank. Niyazov rebuffed their requests and then told the media that, "[t]he issue put by the European Bank is as follows: You have

to increase the price of petrol and do things as they are done in Europe, and the second issue is to establish a multiparty system in your country and that is one of our conditions. I said that they were bank clerks. I have not received them. I said that I did not want to discuss such things with them." Following this snub, Charles Frank, then acting president of the EBRD, announced that "[t]he president's refusal even to discuss the question of political reform suggests that the Government of Turkmenistan is not committed to one of the basic principles upon which the EBRD was founded," and promptly cut off public sector lending. While the decision sent a clear message that the EBRD could act strongly on the issue of multiparty democracy, it remained to be seen whether the bank would take the same approach with other client governments that were hostile to democracy, such as Azerbaijan and Kazakhstan.

## Doe v. Unocal

On August 31, U.S. District Judge Ronald Lew ruled on a summary judgement motion in the closely watched Doe v. Unocal case that was originally filed in 1997. The plaintiffs argued that Unocal, a California-based oil company, was liable under the Alien Tort Claims Act (ATCA) for human rights violations, including forced relocations, forced labor, rape, and torture "perpetrated by the Burmese military in furtherance and for the benefit of the pipeline." This arose from the company's participation in the joint-venture that constructed and operated the Yadana gas pipeline that runs from Burma to Thailand. Security for the project was provided by the Burmese military, who committed human rights abuses while fulfilling their security role. Although Judge Lew found that the "evidence does suggest that Unocal knew that forced labor was being utilized and that the joint venturers benefitted from the practice," he dismissed the suit because of insufficient evidence that Unocal had actively participated in or conspired with the Burmese military to commit human rights violations, and because Unocal's joint-venture with the Burmese government did not make it legally liable for human rights violations committed by the Burmese military. At this writing, the plaintiffs planned to appeal the decision to the Ninth Circuit Court of Appeals. The other joint-venture partners: Total of France (now TotalFina-Elf), the Myanmar Oil and Gas Enterprise, and the Petroleum Authority of Thailand, were not defendants in this case because the court ruled that it did not have jurisdiction over foreign companies.

# CHILD SOLDIERS CAMPAIGN

Seventeen-year-old Abubakar (not his real name) was one of thousands of children abducted by the Revolutionary United Front (RUF) during the recent conflict in Sierra Leone. Abubakar took part in fighting and was often forced to commit abuses. In one instance, he and others were ordered by their commander to burn down an entire town after a counterattack on the RUF by government helicopters. "It was not my wish to go fight, it was because they captured me and forced me," he told Human Rights Watch. "There was no use in arguing with them, because in the RUF if you argue with any commander they will kill you."

Like Abubakar, an estimated 300,000 girls and boys under the age of eighteen were fighting in armed conflicts in approximately thirty countries. These young combatants served in government forces, pro-government militias, and armed opposition groups. Their ranks included children as young as eight recruited into Colombia's paramilitaries, teenaged boys forcibly taken from their villages in Myanmar to serve in the national army, and young girls kidnapped by the Lord's Resistance Army in northern Uganda for use as soldiers and sex slaves.

In a breakthrough in efforts to end the use of child soldiers, six years of negotiations led to agreement on January 21 on a new optional protocol to the Convention on the Rights of the Child. The protocol established eighteen as the minimum age for direct participation in hostilities, for compulsory recruitment, and for any recruitment or use in hostilities by nongovernmental armed groups.

Agreement on the protocol was a tremendous achievement for the Coalition to Stop the Use of Child Soldiers, which had aggressively campaigned for a global ban on the use of children as soldiers. The coalition was founded by Human Rights Watch and five other international organizations in 1999 and subsequently grew to encompass national partners and campaigns in more than thirty countries.

The protocol marked a significant advance over previous international standards, which permitted children as young as fifteen to be legally recruited and sent to war. The new protocol established a clear standard that any use of children in war was unacceptable, and provided a critical new basis for exerting public and political pressure against governments and armed groups that use children in armed conflict.

The biggest weakness of the protocol was its failure to establish eighteen as the minimum age for voluntary recruitment into government armed forces. The protocol required states to raise the minimum age for voluntary recruitment from the previous minimum of fifteen, and to implement certain safeguards when recruiting under-eighteens including parental permission and proof of age. States were also required to deposit a binding declaration at the time of ratification stipulating the state's minimum age for voluntary recruitment.

The coalition, along with UN agencies and the International Committee of the Red Cross, had consistently campaigned for a prohibition of any recruitment or participation in hostilities by children under the age of eighteen, arguing that the only way to ensure that children do not participate in war is to not recruit them in the first place. But many governments based their positions during the negotiations on their existing military recruitment practices, and insisted on the right to continue recruiting under-age volunteers. The resulting provision created an unfortunate double-standard, allowing governments to recruit under-eighteens, but prohibiting nongovernmental armed forces from doing so.

The negotiations on the protocol were marked by a significant shift in the United States position. After six years of vigorous opposition to eighteen as the minimum age for participation in armed conflict, the U.S. reversed itself and agreed for the first time to end the deployment of U.S. troops who were under eighteen into combat and to support the protocol. This was the first time that the United States had ever agreed to change its practices in order to support a human rights standard.

The protocol was formally adopted by the UN General Assembly on May 25, and opened for signature in early June. By the close of the UN Millennium Summit, held in New York from September 6-9, sixty-eight countries had signed the new protocol, and three (Canada, Bangladesh, and Sri Lanka) had ratified it.

The coalition announced that it would campaign for universal ratification of the protocol and urge states to deposit binding declarations upon ratification setting a minimum age of at least eighteen for voluntary recruitment. It set an initial target of one hundred signatures by the first anniversary of the protocol's adoption on May 25, 2001, and fifty ratifications by the time of the September 2001 UN General Assembly Special Session on Children.

During the Millennium Summit, the coalition drew attention to the use of child soldiers and the new protocol by unveiling a special "children's war memorial" during a ceremony attended by more than twenty governments. The memorial was inscribed with the name, age, and country of scores of child soldiers killed, wounded, missing, or detained in armed conflicts around the world. Those attending the ceremony included the president of Mali, the prime ministers of New Zealand and Sweden, the first ladies of Ecuador and Norway, and representatives from fifteen other governments.

The coalition also held the fourth in a series of regional conferences on the use of children as soldiers, following previous conferences in 1999 for Africa, Latin America, and Europe. The Asia-Pacific conference was held from May 15 to 19 in Kathmandu, Nepal. Representatives of twenty-four governments (including Australia, Bangladesh, Cambodia, China, Japan, North Korea, South Korea, India, Indonesia, Kazakhstan, Laos, Nepal, Pakistan, the Philippines, Sri Lanka, and Thailand) and more than one hundred delegates from NGOs across the region attended the conference, together with representatives of UNICEF and other agencies.

The coalition released a new report at the conference on the use of children as soldiers in the region, estimating that at least 75,000 children under the age of eighteen were participating in conflicts in Asia and the Pacific, placing the region second only to Africa in the use of children as soldiers. The report named Burma as one of the largest users of child soldiers in the world, and Afghanistan, Cambodia, and Sri Lanka as some of the other worst affected countries.

The conference concluded with a strong declaration in support of the new Optional Protocol, calling on states to ratify it without reservations and specify at least eighteen years as the minimum age for voluntary recruitment. Delegates called on government armed forces and armed groups to immediately demobilize or release into safety child soldiers. They also urged tight controls on the availability of small arms, including the sanctioning of those supplying forces using children in this way.

Human Rights Watch, which had chaired the coalition since its inception, continued to play a leadership role in the global campaign to end the use of child soldiers. Human Rights Watch participated in briefings for the press, representatives of the Organization of American States, and members of the U.N. Security Council. It spoke at numerous events, including the Asia-Pacific regional conference in Kathmandu, and the International Conference on War-Affected Children, held in Winnipeg, Canada in September 2000. Human Rights Watch's Brussels office took the lead in the coalition's advocacy with the European Union, European Parliament, and the OSCE, and lobbied OSCE member states in favor of a strong ministerial decision on children and armed conflict.

Human Rights Watch also maintained a strong role with the U.S. Campaign to Stop the Use of Child Soldiers. It helped influence the United States' change of position regarding the Optional Protocol and the age of deployment for U.S. troops, and worked with the Clinton administration and Congress to support U.S. ratification of the protocol. Congressional resolutions were adopted by the Senate in June, and the House of Representatives in July, urging the United States' signature and swift consideration for ratification. President Clinton signed the protocol on July 5 at the U.N., and submitted it to the Senate later that month; at the time of this writing, the Senate Foreign Relations Committee had taken no action.

## HUMAN RIGHTS WATCH INTERNATIONAL FILM FESTIVAL

The Human Rights Watch International Film Festival was created in 1998 to advance public education on human rights issues and concerns using the unique medium of film. Each year, the festival exhibits the finest films and videos with human rights themes in theaters and on cable television throughout the United States and elsewhere—a reflection of both the scope of the festival and its increasing global appeal. The 2000 festival featured thirty films (twenty-two of which were premieres), from twelve countries. The festival included feature-length fiction films, documentaries, and animation. In 2000, selections from the festival were presented in four countries and within the U.S. selected films showcased in ten cities.

In selecting films for the festival, Human Rights Watch concentrates equally on artistic merit and human rights content. The festival encourages filmmakers around the world to address human rights subject matter in their work and presents films and videos from both new and established international filmmakers. Each year, the festival's programming committee screens more than 500 films and videos to create a program that represents a range of countries and issues. Once a film is nominated for a place in the program, staff of the relevant division of Human Rights Watch also view the work to confirm its accuracy in the portrayal of human rights concerns. Though the festival rules out films that contain unacceptable inaccuracies of fact, we do not bar any films on the basis of a particular point of view.

The 2000 festival was first presented over a two-week period in New York, as a collaborative venture with the Film Society of Lincoln Center, and then selections from the festival were presented at the Northwest Film Center in Portland, Oregon and several other cities throughout the U.S. The 2000 festival reached out to a broader audience by co-presenting selected films with five important New York festivals (the African Film Festival, the Margaret Mead Film Festival, and the New York Latino Film Festival, the New Festival/New York Lesbian and Gay Film Festival, the Urban World Film Festival) and several independent media organizations (the Educational Video Center, Free Speech TV, Paper Tiger TV and POV/The American Documentary). A majority of the screenings were followed by discussions with the filmmakers, media activists, and Human Rights Watch staff on the issues represented in each work.

Two documentaries featured in this year's festival had dramatic effects in their countries of origin. Following the recent theatrical release and television airing of Irit Ghal's documentary *Harmed Forces*, the Israeli Parliament re-categorized Israeli Defense Force veterans with post-traumatic stress disorder (PTSD) as "military disabled" rather than "mentally ill," which enabled these veterans to receive Israeli disability benefits and Social Security Insurance. "*Harmed Forces*" is an intimate documentary portrait of two former Israeli soldiers who still suffer from post-traumatic stress disorder following their military service in Israel's 1982 campaign in Lebanon. The Argentine documentary *Spoils of War*, which chronicles the ongoing courageous efforts of the "Grandmothers of the Plaza de Mayo" from the early 1970s until today, helped several families reunite with relatives who were "disappeared" during that country's dirty war.

The 2000 opening night celebration presented the New York premiere of the screen adaptation of Anna Devere Smith's *Twilight: Los Angeles*, her one-woman/multi-voiced portrait of the violence triggered in Los Angeles by the acquittal in 1992 of four police officers in the beating of Rodney King. Acclaimed documentary filmmaker Marc Levin directed Smith's four-de-force performance.

As part of the opening night program, the festival annually awards a prize in the name of cinematographer and director Nestor Almendros, who was also a cherished friend of the festival and Human Rights Watch. The award, which includes a cash prize of U.S. \$5,000 goes to a deserving and courageous filmmaker in recognition of his or her contributions to human rights through film. The 2000 festival awarded the Nestor Almendros Prize to Randa Chahal Sabbag, for her stunning feature debut, *A Civilized People (Civilisees)*. The film is a tragicomic story of the experiences of a diverse group of characters during the Lebanese civil war. Currently, the Lebanese government has asked Chahal Sabbag to cut forty-seven minutes of this film, claiming that these sections are offensive and inflammatory. Chahal Sabbag refuses to cut (re-edit) her film and to date the film has still not been allowed to screen in Lebanon.

In 1995, in honor of Irene Diamond, a longtime board member and supporter of Human Rights Watch, the festival launched the Irene Diamond Lifetime Achievement award, which is presented annually to a director whose life's work demonstrates an outstanding commitment to human rights and film. Previous recipients have included Costa Gavras, Ousmane Sembene, Barbara Kopple, and Alan J. Pakula. This year, the award was presented to American filmmaker Frederick Wiseman. Wiseman, one of the greatest living documentary filmmakers, has created an exceptional body of work consisting of thirty full-length films devoted primarily to exploring American institutions—from the armed services to hospitals, from welfare to the high school system, from public parks to whole cities and public housing projects.

Wiseman is an UNFLINCHINGLY HONEST filmmaker, who has repeatedly stared down painful truths that many artists either can not or will not address. Throughout his work, Wiseman has told the story of his country's idiosyncracies, flaws, strengths, and tragedies.

Highlights of the 2000 festival included two films dealing with the plight of those "disappeared" under Argentina's military dictatorship: David Blaustein's extraordinary documentary *SPOILS OF WAR*, which we described in the preceding pages, and *GARAGE OLIMPO*, the dramatic feature by formerly exiled Argentinean Marco Bechis. *GARAGE OLIMPO* tells the story of a young woman kidnapped and tortured in a clandestine Buenos Aires prison and her efforts to survive no matter what the costs. Other highlights included, *MADE IN THE YOUTH S.A.* and *KG: A CALL FOR JUSTICE*, two short films conceived and produced by youth producers in consultation with Human Rights Watch. Both short video had their world premieres at this year's festival and played to sold-out audiences. This year's closing night screening included the New York premiere of Jens Mervier's *PUBLIC ENEMY*, a fascinating look at the Black Panther movement through the recollections of four of its most outspoken members: co-founder Bobby Seale, law professor Kathleen Cleaver (the highest ranking female Panther), prisoner-turned-playwright Jamal Joseph, and musician and record producer Nile Rodgers.

Each year the festival holds a series of special film screenings for high school students and their teachers in an effort to encourage dialogue about human rights in the classroom. Daytime screenings are followed by discussions among the students, their teachers, visiting filmmakers, and Human Rights Watch staff. In 2000, the program included a special collaborative screening of short films from Africa with the New York African Film Festival.

In 1996, the festival expanded to London. The 2000 London festival produced with the Ritz Theater in Brixton showcased the United Kingdom premiere of David O. Russell's *THREE KINGS*, an ironic and powerful drama about the involvement of United States soldiers in the Gulf War.

The festival overall was extremely successful with a timely screening of *A Cry from the Grave*, about the massacre in the Bosnian town of Srebrenica in July 1995 and the major effort by the International War Crimes Tribunal to find and prosecute the perpetrators. The festival closed with a special screening of Norman Jewison's *THE HURRICANE*, starring Academy Award winner Daniel Washington as Rubin "Hurricane" Carter, a man wrongly accused and sentenced to three life terms of imprisonment.

In a further effort to expand the festival's scope, the Global Showcase, a selected package of traveling films from the festival, was created in 1994. The Global Showcase is presented annually in a growing number of sites and cities around the world. The 2000 showcase traveled internationally to Sydney and Melbourne, Australia; Lodz, Poland; Cairo, Egypt; and Beirut, Lebanon. In the United States the showcase has been presented in Houston, Texas; St. Louis, Missouri; Albuquerque, New Mexico; Boulder, Colorado; Amherst, Massachusetts; Chicago, Illinois; Memphis, Tennessee; Salt Lake City, Utah; Portland, Oregon; Seattle, Washington; and Rochester, New York. The traveling festival plans extensive expansion in Boston, Massachusetts and San Francisco, California in January of 2001.

## INTERNATIONAL CAMPAIGN TO BAN LANDMINES

The International Campaign to Ban Landmines (ICBL), launched in 1992 by Human Rights Watch and five other nongovernmental organizations, brought together over 1,400 human rights, humanitarian, children's, peace, disability, veterans, medical, humanitarian mine action, development, arms control, religious, environmental, and women's groups in over ninety countries who worked locally, nationally, regionally, and internationally to ban antipersonnel landmines. The ICBL was coordinated by an international committee of fourteen organizations, including Human Rights Watch, which remained one of the most active campaign members. The ICBL and its then coordinator Jody Williams (a member of the Advisory Committee of the Human Rights Watch Arms Division) were jointly awarded the 1997 Nobel Peace Prize.

Progress toward the complete eradication of antipersonnel mines continued at an impressive pace, and the ICBL continued its intense global activity. Perhaps most notable were the further development of the ICBL's groundbreaking Landmine Monitor system, and the ICBL's extensive involvement in the intersessional work program of the 1997 Mine Ban Treaty.

Campaign priorities were universalization of the Mine Ban Treaty—convincing recalcitrant nations to accede to the treaty—and ensuring effective implementation of the treaty. Particular targets were states of the former Soviet Union and the Middle East/North Africa, as well as the United States. Key issues of concern included: how to respond to violations of the ban treaty; antivehicle mines with antihandling devices which are prohibited by the treaty; joint military operations between States Parties and non-signatories using mines; and continued stockpiling and transit of mines by non-signatories in the territory of States Parties. Other priorities included: promoting increased funding for sustainable and appropriate mine action programs; promoting increased funding for comprehensive victim assistance programs and greater involvement of mine victims and mine-affected communities in the planning and implementation of such programs; and exploring ways to encourage non-state actors to commit to the banning of antipersonnel mines.

Four permanent working groups and one ad hoc working group of the ICBL led these efforts to address the various aspects of the humanitarian landmines crisis. They were the Treaty Working Group (chaired by Human Rights Watch), the Working Group on Victim Assistance, the Mine Action Working Group, and the Non-State Actors Working Group, as well as the ad hoc Ethics and Justice Working Group.

Regional and thematic conferences were held to continue to build public awareness and further various aspects of the ban movement. Regional conferences, either held by ICBL members or where ICBL members participated, were held in Azerbaijan, Belarus (on stockpile destruction), Croatia, Egypt, Georgia, Malaysia, and Slovenia. National seminars or workshops were held in India, Iran, Japan, Nepal, Nigeria, and the U.S. As for thematic conferences, members of the ICBL held a follow-up conference in Germany to continue to develop the Bad Honnef concept of mine action and development, while others held a conference in Switzerland to engage non-state actors in the landmine ban.

New campaigners in countries including Cameroon, Côte d'Ivoire, Chile, Iran, Nigeria, Poland, Sierra Leone, Slovenia, Syria, and Togo began activities, as did a new group, Refugees Against Landmines, among Chechen refugees in Georgia; new work was also being carried out in Nagorno-Karabakh. The second anniversary of the opening for signature of the Mine Ban Treaty galvanized campaigners into action worldwide, as on December 3, 1999, activities were held around the globe, from theater and basketball games between disabled teams in Angola, to exhibits in South Korea and special hockey matches in the U.S. Similarly, the first anniversary of the entry into force of the treaty on March 1, 2000, further spurred action worldwide. A concerted ratification campaign included a coordinated letter-writing campaign with other partners, embassy visits, and various activities and media events in thirty-three countries around the world.

Additionally, ICBL members undertook a number of advocacy and awareness-building missions, including traveling to Kosovo, Korea, the United Arab Emirates, and Belgium (for the European Council and Parliament). The ICBL sent letters to heads of state and engaged in other advocacy activities on the occasions of international events such as the Francophone summit in Moncton, New Brunswick; the UN General Assembly in New York; the Special Summit of the European Council on the establishment of an area of Freedom, Security, and Justice in Finland; the Helsinki Summit of the European Union; the Organization of American States Summit; the Organization of African Unity Summit; the Inter-Parliamentary Union and the Assembly of African Francophone Parliamentarians. Letters to heads of state were also sent on the occasions of the December 3 and March 1 anniversaries urging governments to accede to or ratify the treaty, destroy their stocks, submit their



transparency report as required under the treaty's article 7, and increase funding for mine action and victim assistance. The ICBL also issued regular action alerts.

The campaign committed to significant ICBL participation in the intersessional work program established in May 1999 at the First Meeting of States Parties. ICBL Working Groups took the lead in liaising with the five Standing Committees of Experts (SCEs). The intersessional work program was aimed at consolidating and concentrating global mine action efforts and highlighting the role of the Mine Ban Treaty as a comprehensive framework for mine action. The five SCEs served to facilitate the implementation of provisions of the Mine Ban Treaty, with extensive input, recommendations, and action points from NGOs. The five Standing Committees of Experts on Victim Assistance, Socio-economic Reintegration and Mine Awareness; Mine Clearance; Stockpile Destruction; Technologies for Mine Action; and the General Status and Operation of the Convention each met two times in the intersessional period between the first and second meetings of States Parties. The intersessional work proved to be an important mechanism to both spur and measure progress made in the full implementation of the Mine Ban Treaty. In September 2000 the Second Meeting of States Parties was held in Geneva, resulting in an extensive action program for the coming year.

Just prior to the Geneva meeting, the ICBL released the 1,100-page *Landmine Monitor Report 2000*, the second annual report to emerge from the Landmine Monitor system. The Landmine Monitor network grew to 115 researchers in ninety-five countries, and the system and the annual report were widely recognized as a crucial element in addressing the landmine crisis.

Between November 1999 and October 2000, the number of nations ratifying the Mine Ban Treaty grew from eighty-seven to 107, and a total of 139 countries had signed, ratified, or acceded to the treaty. But notable states such as the United States, Russia, and China continued to stay outside of the emerging international norm against the antipersonnel mine.

# INTERNATIONAL JUSTICE

## Introduction

The emerging system of international justice was further strengthened in 2000. Despite the British government's release of General Augusto Pinochet from custody in March, the litigation surrounding the requests for his extradition produced important additional consequences. The four states that had sought his extradition from London, Belgium, France, Spain, and Switzerland all successfully challenged, before a British court, the decision by Jack Straw, the Home Affairs Minister, not to disclose Pinochet's medical records. In an illustrative example of the synergy between justice at the international level and increased access to national courts, the Chilean Supreme Court in August lifted Pinochet's parliamentary immunity and opened the way to his trial before the courts there. This synergy took another form in West Africa. In February, Senegalese authorities arrested former Chadian leader Hissène Habré on charges of torture in Chad during the 1980s. While a court dismissed the indictment in July, the decision was appealed in Dakar. Inspired by the litigation in the Senegalese court, Chadian victims moved to bring cases against Habré's accomplices to court in Chad. In August, reflecting greater international cooperation on these justice issues, Mexican authorities, responding to a request from a Spanish judge, arrested Ricardo Cavallo, an Argentinian accused of torture during the "Dirty War."

Meanwhile, the International Criminal Tribunal for Yugoslavia (ICTY) obtained custody of senior indictees, including Momčilo Krajišnik, the wartime president of the Bosnian Serb assembly and the highest ranking politician arrested so far. With the fall of the Milosevic government in Belgrade in October, the possibility increased that Slobodan Milosevic, Ratko Mladić, Radovan Karadžić, and other senior indictees from Yugoslavia would be apprehended and held to account in The Hague. During 2000, the new government of Croatia undertook to cooperate more closely with the ICTY by transferring a Croatian indictee to the tribunal and allowing it to carry out investigations on Croatian territory of alleged crimes against Serbs in 1991. The International Criminal Tribunal for Rwanda convicted three defendants of genocide as it took measures to reform its procedures to facilitate greater efficiency. The jurisprudence and judicial practice of the ad hoc tribunals enriched the work of the Preparatory Commission for the International Criminal Court as it drafted the Rules of Procedure and Evidence and Elements of Crimes for the ICC. In response to horrific crimes, new, mixed judicial mechanisms were established. The United Nations Security Council authorized the creation of a mixed national-international tribunal to prosecute human rights criminals in war-torn Sierra Leone. In Cambodia, the United Nations continued negotiations with the Hun Sen government to ensure that the mixed national-international tribunal being established there to try Khmer Rouge leaders adhered to international standards for fair trial. Momentum for the early establishment of the International Criminal Court (ICC), a cornerstone of a strengthened system of international justice, grew dramatically. The process of ratifying the ICC Treaty highlighted another aspect of the intersection of justice on the international plane and the national level. As states began adopting the implementing legislation necessary to make cooperation with the permanent international court meaningful, they seized the opportunity to amend domestic criminal law to strengthen prosecution of genocide, crimes against humanity, and war crimes by national courts.

Human Rights Watch was encouraged by these and other developments, but recognized the serious challenges ahead. Prosecuting human rights criminals on the basis of universal jurisdiction regardless of a territorial or nationality nexus required a solid commitment of political will and the process was subject to corruptive political interference. States lacked appropriate domestic legislation to allow them to pursue these cases, while others were reluctant to invoke universal jurisdiction even for the most egregious human rights crimes. While the two existing ad hoc tribunals, with a limited geographical mandate, continued to deepen the jurisprudence of international humanitarian law and practice, their work was hampered by inconsistent support for apprehension of indictees. The balance shifted away from the impunity so often associated with these crimes, but further steps were needed to reinforce the trend toward accountability.

## Prosecutions

### Hissène Habré

In February 2000, a Senegalese court indicted Chad's exiled former dictator, Hissène Habré, on torture charges and placed him under house arrest. It was the first time that an African had been charged with atrocities against his own people by the court of another African country.

Habré ruled Chad from 1982 until he was deposed in 1990 by current President Idriss Deby and fled to Senegal. Since Habré's fall, Chadians have sought to bring him to justice. The Chadian Association of Victims of Political Repression and Crime (AVCRP) compiled information on each of 792 victims of Habré's brutality, hoping to use the cases in a prosecution of Habré. A 1992 truth commission report accused Habré's regime of 40,000 political murders and systematic torture. With many ranking officials of the Idriss Deby government, including Deby himself, involved in Habré's crimes, however, the new government did not pursue Habré's extradition from Senegal.

In 1999, with the Pinochet precedent in mind, the Chadian Association for the Promotion and Defense of Human Rights requested Human Rights Watch's assistance in bringing Habré to justice in Senegal. Researchers visited Chad twice, where they met victims and witnesses and benefited from the documentation prepared in 1991

by the Association of Victims. Meanwhile, Human Rights Watch quietly organized a coalition of Chadian, Senegalese, and international NGOs to support the complaint, as well as a group of Senegalese lawyers to represent the victims. Seven individual Chadians and one Frenchwoman, whose Chadian husband was killed by Habré's regime, acted as private plaintiffs, as did the ANCRP.

In a criminal complaint filed in Dakar Regional Court, the plaintiffs, several of whom came to Senegal for the event, officially accused Habré of torture and crimes against humanity. The torture charges were based on the Senegalese statute on torture as well as the 1984 Convention against Torture which Senegal ratified in 1997. The groups also cited Senegal's obligations under customary international law to prosecute those accused of crimes against humanity.

In the court papers presented to the investigating judge, the groups provided details of ninety-seven political killings, 142 cases of torture, and one hundred "disappearances," most carried out by Habré's dreaded DDS (Documentation and Security Directorate), as well as a 1992 report by a French medical team on torture under Habré, and the Chadian truth commission report. The organizations presented the sworn testimony of two former prisoners who were ordered by the DDS to dig mass graves to bury Habré's opponents. Two of the plaintiffs described being subjected to a torture method called the "Arbatachar," in which a prisoner's four limbs were tied together behind his back, leading to loss of circulation and paralysis.

On the eve of the filing, the NGOs and the plaintiffs met with the Senegalese minister of justice, who assured that there would be no political interference in the work of the judiciary. The case, brought as a private prosecution, moved with stunning speed. The judge first forwarded the file to the prosecutor for his non-binding advice. The prosecutor, made aware of the need to act quickly so that Habré did not flee the country and so the victims could be heard before returning to Chad, gave his favorable advice within two days. The next day the victims gave their closed-door testimony before the judge, something they had waited nine years to do. The judge then called in Habré on February 3, 2000, indicted him on charges of complicity with torture, and placed him under house arrest. He also opened an investigation against persons still to be named for "disappearances, crimes against humanity, and barbarous acts," meaning that he can later indict Habré or others on these charges.

Unfortunately, politics then entered the picture. In March 2000, Abdoulaye Wade was elected president of Senegal. Habré's attorney was one of Wade's closest aides and became a presidential adviser while continuing to defend Habré. When Habré filed a motion to dismiss the case, the state prosecutor, reversing the previous position, supported the motion. President Wade also headed a panel that removed the investigating judge who was handling the case and promoted the chief judge before which the motion to dismiss was lodged. Habré also reportedly spent lavishly to influence the outcome of the case.

On July 4, 2000, the court dismissed the charges against Habré, ruling that Senegal had not enacted legislation to implement the Convention against Torture and therefore had no jurisdiction to pursue the charges because the crimes were not committed in Senegal.

The victims appealed the dismissal to the Cour de Cassation, Senegal's highest court. In the meantime, public opinion increasingly questioned Senegal's moves. The United Nations special rapporteurs on the independence of judges and lawyers, and on torture, made a rare joint and public expression of their concern to the government of Senegal over the dismissal and the surrounding circumstances.

## Cavallo

On August 24, Mexican authorities arrested Ricardo Miguel Cavallo, accused of having been a torturer in the Navy Mechanics School during Argentina's 1976 to 1983 military government. Cavallo was allegedly implicated in hundreds of cases of kidnapping, "disappearance," and torture. An order for Cavallo's arrest, and then a formal extradition request, later came from the same Spanish judge, Baltasar Garçon, who sought to extradite Augusto Pinochet. The case was pending at the time of this writing.

The Cavallo case could potentially extend the "Pinochet precedent" to a country, Mexico, that was once considered a haven of impunity. In addition, by targeting a lower-ranking official, the arrest spoke to police officers and soldiers around the world telling them that if they committed torture today, they could be apprehended tomorrow, and not only in Europe.

## Montesinos

Human Rights Watch actively opposed impunity for Vladimiro Montesinos, the Peruvian intelligence chief and close ally of Peruvian President Alberto Fujimori, who had fled to Panama to seek political asylum. Human Rights Watch had documented Montesinos' involvement in human rights abuses in Peru. Evidence linked him to kidnappings and murders carried out by a death squad belonging to a Peruvian intelligence agency. He was also implicated in the torture of army intelligence agents and journalists who were suspected of leaking information to the press about the agency's illegal activities. Human Rights Watch staff visited Panama in October to press the government to deny Montesinos political asylum, since he was a perpetrator, not a victim, of political persecution. Human Rights Watch asked Panamanian authorities to open a judicial inquiry and prosecute Montesinos for these crimes. In late October, Montesinos left Panama and returned to Peru.

## The International Criminal Court

As the number and diversity of state signatories and parties grew during 2000, momentum for the early entry into force of the International Criminal Court Treaty increased significantly. The court, which will prosecute crimes of genocide, crimes against humanity and war crimes where national courts fail to do their job, will be a cornerstone in the emerging system of international justice. The adoption of national implementing legislation for the treaty highlighted the possibilities to strengthen national enforcement of international criminal law while enhancing protections for the rights of the accused. The Preparatory Commission for the International Criminal Court, which met three times from late 1999 until mid-2000, completed its work on the Elements of Crimes and Rules of Procedure by its June 30, 2000 deadline. Governments and nongovernmental organizations (NGOs) convened regional and sub-regional conferences to accelerate ratification and the adoption of meaningful implementing legislation. Simultaneously, NGOs engaged in intensive advocacy efforts on behalf of the court. These positive developments stood in stark contrast to the continuing efforts of the United States government to re-open and weaken the treaty by carving out an exemption from prosecution for U.S. nationals.

## Growing Momentum

States worldwide solidified their commitment to ending impunity through the International Criminal Court Treaty. Over the year nearly thirty states committed themselves to the objectives and purposes of the treaty by becoming signatories. As of this writing, 114 states had signed the treaty. But more than just the numbers increased. The state signatories became more diverse as well. Reflecting the increasingly universal support for the court, the Russian Federation, Mexico, Morocco, Sudan, Kuwait, Thailand, and Nigeria all signed the treaty in 2000.

One year ago four states had completed ratification. As of late October, twenty-one states, just over one-third the total necessary to trigger the treaty's entry into force, had completed their ratification processes. In 2000, more states which saw the court as providing important protection against egregious crimes drove the quickening pace of ratification. These states sought to become states parties as quickly as possible. The twenty-one states parties included a small number whose national legal systems first required the adoption of implementing legislation necessary to bring domestic law into conformity with the treaty. Their

ratification represented the fruition of intensive legislative work over the past eighteen months. The group of state parties included members of the sixty-strong "Like Minded Group" of states, those that had shown the greatest commitment to an independent and effective court, as well as states not previously known for their strong support of the court. The growing regional diversity of states parties reinforced the legitimacy and credibility of a universally-supported court.

During the year, government and intergovernmental organization officials convened regional and sub-regional conferences to accelerate the process of ratification. In May, the Foreign Ministry of Spain convened the Ibero-American Meeting on International Criminal Justice in Madrid. Government officials, academics, and other experts from the region shared views on ICC ratification and implementation. In mid-May, the Council of Europe convened a Consultative Meeting for Member States in Strasbourg to exchange experience on ratification and implementing legislation. The Council of Europe circulated a questionnaire with information about progress and obstacles to ratification that led to greater awareness among the council's forty-one member states. In early June, the General Assembly of the Organization of American States met in Canada and adopted a resolution that called for ICC signature and ratification. Numerous foreign ministers there expressed their support for the court and NGOs reaffirmed their commitment to working with governments to obtain the early establishment of the court. In October, Pacific Island Law Ministers met in Rarotonga in the Cook Islands to attend a seminar on implementing the Rome Statute. This session addressed the importance of the court and provided a forum for South Pacific states to discuss issues they faced in implementing the treaty.

The United Nations Millennium Summit in early September showcased the mounting support for the court. Four governments deposited their instruments of ratification during the Millennium Summit and eleven signed the treaty. Twenty heads of state and government representing nations as diverse as New Zealand and Croatia cited the importance of the ICC in their formal statements. Foreign ministers repeatedly expressed their governments' support for early entry into force of the treaty at the debate opening the U.N. General Assembly session. At the opening of the session Canadian Foreign Minister Lloyd Axworthy launched Canada's campaign on behalf of the ICC. He pledged Canadian assistance for regional conferences and Canadian government lawyers to assist states in ratification and implementing legislation. During the General Assembly's Sixth Committee debate on the ICC at the end of October, delegates described the progress towards the early establishment of the court as an irresistible trend. In addition, the numerous interventions sounded a clear rejection of U.S. efforts to obtain an exemption for U.S. nationals. In a marked change from previous years, many delegations, whether they had ratified or not, called on all states to sign and ratify as quickly as possible. These developments represented a growing commitment to end impunity for genocide, crimes against humanity, and war crimes.

## The Work of the Preparatory Commission

The achievements of the Preparatory Commission for the International Criminal Court's during 2000 provided another indication of the growing support for the court. As a concession that allowed U.S. participation in the drafting, the Final Act of the Rome Treaty mandated that the Preparatory Commission enumerate the elements of crimes for genocide, crimes against humanity, and war crimes as well as draft the rules of procedure and evidence. Negotiators completed a draft of the court's elements of crimes and rules of procedure and evidence on schedule on June 30, 2000. With the elements of crimes, the negotiators specified the intent and nature of the conduct which the ICC prosecutor will have to prove in order to gain a conviction before the court. The elements of crimes for genocide and war crimes were, for the most part, finalized at the March 2000 session of the commission. Negotiators at the June session focused on several outstanding issues pertaining to crimes against humanity. Although the completed rules of procedure and evidence for the ICC contained political compromises necessary for adoption by consensus, they maintained the important balance between the due process rights of the accused and the need to protect victims of heinous crimes from further trauma in the court. The rules retain the underlying principle that the chambers of the court maintain ultimate control over the conduct of proceedings. The Preparatory Commission's adoption of these two subsidiary instruments by consensus, unlike the treaty itself, reflected the growing acceptance of the court and contributed to the accelerating pace of ratifications.

## Constitutional Challenges and Opportunity for Law Reform

The growing number of signatures and ratifications appeared even more remarkable as the domestic hurdles to ratification became clearer. In many states ratification generated debate about the compatibility of the ICC Statute with certain constitutional norms. Poland, Estonia, Brazil, Portugal, the Czech Republic, and Costa Rica, to name only a few, debated these constitutional questions. The stakes were particularly high for states with relatively new constitutions that had not previously amended their fundamental law. The debate centered on three constitutional norms: prohibitions on the extradition of nationals, provisions on immunities, and prohibitions on life imprisonment. A small number of states, including Germany and France, chose to amend their constitutions before ratifying. Others, such as Belgium, chose to amend the constitution after ratification so that the amendment procedure would not delay ratification. In other states, including Norway, Venezuela, and Argentina, interpretation of the relevant constitutional provisions led to the conclusion that initial concerns about compatibility were unfounded and that the constitution did not require amendment.

As of this writing, both Canada and New Zealand had enacted their implementing legislation. In August, the United Kingdom released its draft implementing law for public comment prior to its introduction into Parliament. While the worldwide process of amending national criminal laws to conform with the requirements of the Rome Treaty was only in its early phase, initial experience highlights the extraordinary potential the implementing process offers to reform domestic criminal law more generally. Taking the opportunity afforded by the adoption of implementing legislation, Canada and New Zealand introduced laws to give their national courts the authority to investigate and prosecute the ICC crimes on the basis of universal jurisdiction. Italy and France, among others, were considering following suit.

The locus of ICC activity had shifted decisively to the national arena. As the possibility of transforming domestic criminal law and enhancing respect for human rights domestically became evident, the potential extended benefits of the ICC process became clearer.

## United States

The United States government continued to pose the greatest obstacle to the effective functioning of the court. During 2000, the Clinton administration intensified its efforts to obtain an exemption for U.S. nationals from prosecution by the ICC. Before and during each of the Preparatory Commission sessions since the end of 1999, the U.S. government campaigned hard to gain acceptance of its proposal for an exemption. At the March session, the U.S. delegation circulated a two-part proposal that contained a procedural rule and text for the Relationship Agreement between the ICC and the United Nations. By making the Relationship Agreement binding on the treaty, the proposed procedural rule provided a bridge to the exemption for U.S. nationals. The proposed Relationship Agreement text contained language that would exempt nationals of nonparty states unless the Security Council had taken specified measures under its powers to maintain international peace and security.

In advance of the June session, U.S. government lobbying intensified. In mid-April, U.S. Secretary of State Madeleine Albright sent a letter to her counterparts in capitals worldwide pressing them to accept both the proposed procedural rule and the exemption text for the Relationship Agreement. In May, the Portuguese Presidency, on behalf of the European Union, convened a meeting for E.U. member states to formulate a common position rejecting the March U.S. proposal. The European initiative galvanized more intense diplomatic activity by Washington. Following the E.U. coordination effort, U.S. officials visited European

capitals to enlist acquiescence to, if not active support for, U.S. demands. Nonetheless, on May 29, the Portuguese, as E.U. president, presented an informal demarche rejecting the U.S. two-part proposal.

At the June Preparatory Commission session the U.S. introduced its proposed procedural rule, but not a text for the Relationship Agreement. The proposed rule effectively amended the treaty by qualitatively broadening the type of agreements that the court could enter into beyond the limited exception already contained in the treaty. Denying that the rule was only the first step in a two-part plan, the U.S. delegation insisted the proposed rule was a "separate and distinct proposal. . . It should not be interpreted as requiring or in any way calling for the negotiation of provisions in any particular international agreement by the court or by any other international organization or state." Given the procedural nature of the rule, a sufficient number of European Union and "like minded" member states felt that it was best to "give the Americans" a concession. The commission adopted a convoluted but harmless procedural rule that essentially repeated the language of the statute of the court. Nonetheless, the United States side, contradicting previous statements about the stand-alone character of the rule, publicly touted the rule as the first step to the desired exemption.

Coinciding with the start of the June Preparatory Commission session, the Republican Party leadership of the U.S. Senate and House of Representatives introduced the American Servicemembers Protection Act. This bill would have eliminated U.S. military assistance for states, other than NATO members and the State of Israel, that ratified the ICC treaty until the U.S. Senate had given its advice and consent on the ICC Treaty. This politically partisan effort, intended in part to intimidate delegations into submitting to U.S. demands, clarified the congressional leadership's views on the court. As of this writing, the bill appeared to be dead.

## The Work of Nongovernmental Organizations

The Coalition for the International Criminal Court continued to work intensively over the year. The coalition, composed of over one thousand civil society groups, worked on several levels. ICC staff coordinated civil society involvement in the three Preparatory Commission sessions over the year and brought activists from Latin America, Asia, Africa, the Middle East, and Europe to the Preparatory Commission meetings. The coalition organized the nongovernmental organizations to cover and report on the most important substantive issues and enabled civil society to press for stronger provisions. It took a strong principled stand in encouraging state opposition to United States government efforts to carve an exemption into the treaty for U.S. nationals. Coalition staff conducted missions to Bangladesh, Brazil, South Africa, Bulgaria, Mexico, and Argentina to name only a few.

Throughout 2000, the coalition initiated conferences on the ICC to engage officials and civil society in closer cooperation. In February, the coalition together with Mexican NGOs and academics convened a conference in Mexico City to examine the establishment of the ICC and the position of the Mexican government. In April, the Asian NGO network for an ICC convened a conference in Dhaka, Bangladesh on the ICC and promoted ratification by Bangladesh. In July, No Peace Without Justice, a coalition member, convened a conference in Rome to mark the second anniversary of the treaty on July 17, 2000. Parliamentarians for Global Action convened a session for Latin American parliamentarians in Buenos Aires in October.

To highlight the importance of the early entry into force of the treaty among other constituencies, coalition staff also attended conferences focusing on other substantive issues including the Accra Workshop on War Affected Children in West Africa. The conference, which brought together officials from the sixteen members of the Economic Community of West African States (ECOWAS), included a session on the International Criminal Court and in the final declaration ECOWAS states committed themselves to "ratify the Statute of the International Criminal Court . . ."

## The Work of Human Rights Watch

Believing that the International Criminal Court will be a cornerstone of an emerging system of international justice and that the treaty's early entry into force will be an important practical and symbolic measure against impunity, during 2000, Human Rights Watch devoted considerable resources to the establishment of the court. Through visits to selected capitals and participation at numerous conferences Human Rights Watch staff attempted to better understand the various constitutional, legal, and political obstacles to ratification in key states. On this basis Human Rights Watch formulated its research and advocacy strategy to overcome the principal hurdles. Human Rights Watch assisted ratification by analyzing the questions of the compatibility between constitutional provisions and the Rome Treaty. At the 1999 November-December Preparatory Commission, Human Rights Watch circulated an informal paper on the compatibility of the treaty's provisions on immunities, extradition of nationals, and life imprisonment with constitutional norms. The paper summarized the diverse experience with these questions and highlighted the modes of interpretative analysis that made amendments moot. Simultaneously, and in close conjunction with its focus on constitutional issues, Human Rights Watch International Justice Program staff conducted missions to Bolivia, Costa Rica, Panama, Mexico, Argentina, Uruguay, Canada, Croatia, Slovakia, the Czech Republic, Estonia, Spain, Portugal, the United Kingdom, France, New Zealand, Australia, South Africa, Malawi, and Namibia. Human Rights Watch divisional staff included ICC advocacy on missions in Egypt, Thailand, Brazil, and Japan.

In the course of the year, as states addressed the challenge of implementing legislation, Human Rights Watch became increasingly involved in issues of national implementing law. Staff discussed and provided input on legislative proposals being considered in Canada, New Zealand, Argentina, and the United Kingdom.

# LESBIAN AND GAY RIGHTS

Protection from abuse remained elusive for lesbians, gay men, and bisexual and transgender people in 2000, despite the reaffirmation in the Universal Declaration of Human Rights that "all people are born free and equal in dignity and rights." In virtually every country in the world, people suffered from de jure and de facto discrimination based on their actual or perceived sexual orientation or gender identity. Sexual minorities were persecuted in a significant number of countries and in many ways, including the application of the death penalty or long prison sentences for private sexual acts between consenting adults. In some countries, sexual minorities were targeted for extrajudicial execution. In many countries, police actively participated in the persecution. Pervasive bias within the criminal justice system in many countries effectively precluded members of sexual minorities from seeking redress.

These attacks on human rights and fundamental freedoms also occurred in international fora where states were supposedly working to promote human rights. For example, in New York in June at the five year review meeting for the Fourth World Conference on Women, many delegates refused to recognize women's sexual rights and some states continued to defend violations of women's human rights in the name of religious and cultural practices. Activists stressed the connection between the need for states to recognize women's right to control their sexuality and enjoy physical autonomy if states were serious about wanting to reduce violence against women. Many delegates refused to acknowledge that discrimination against lesbian and single women created a climate in which attacks on such women were deemed justified.

Other intergovernmental bodies played a significant role in upholding the human rights of lesbian, gay, bisexual, and transgender individuals. In July, for example, the Council of Europe's Parliamentary Assembly approved Armenia and Azerbaijan's applications for membership with the understanding that each country would repeal legislation that discriminated against lesbian, gay, bisexual, and transgender persons. In a further debate the assembly voted to support recommendations that national governments recognize persecution on the grounds of sexual orientation for the purposes of asylum and grant bi-national same-sex couples the same residence rights as bi-national heterosexual couples. In September, the Parliamentary Assembly called upon its member states to include sexual orientation among the prohibited bases of discrimination, revoke sodomy laws and similar legislation criminalizing sexual relations between consenting adults of the same sex, and apply the same age of consent for all sexual relations.

Despite the Council's laudable efforts, the International Gay and Lesbian Association (IGLA) reported to the Parliamentary Assembly's Legal Affairs and Human Rights Committee in March that "discrimination against lesbian, gay and bisexual persons remains endemic and extremely serious" in Europe and that "[h]omophobic violence is common, even in countries like Sweden which are world leaders in their support for lesbian and gay rights."

## Persecution

Lesbian, gay, bisexual, and transgender individuals were vilified by officials of several states. Their claims to equal enjoyment of rights and equal protection before the law were routinely denied in many states. State-sponsored hostility and entrenched bias toward lesbian, gay, bisexual, and transgender people not only placed them at risk of violence and persecution by agents of the state, but virtually guaranteed that they would face serious obstacles if they turned to the state for protection or redress when attacked by private actors.

World Pride 2000, an international event calling attention to human rights violations of lesbian, gay, bisexual, and transgender people, held in July in Rome, came under heavy criticism from the Vatican. In the wake of the Vatican's criticism, Italy's prime minister Giuliano Amato ordered the country's minister for equal rights to cancel her ministry's official sponsorship of World Pride. The pope went on to condemn the event as "an offense to the Christian values of the city."

Leaders in Namibia, Uganda, and Zimbabwe continued to denounce lesbian, gay, bisexual, and transgender individuals during the year. Zimbabwean President Robert Mugabe continued his longstanding anti-gay campaign. At a New Year's Day celebration, he characterized same-sex marriage as "an abomination, a rottenness of culture, real decadence of culture." In Namibia, President Sam Nujoma was regularly quoted as calling lesbians and gays "unnatural" and against the will of God. State television reported in October 2000 that Home Affairs Minister Jerry Ekandjo urged new police officers to "eliminate" lesbians and gays "from the face of Namibia."

Ugandan President Yoweri Museveni appeared to back away from his September 1999 directive to Criminal Investigations Division officers to "look for homosexuals, lock them up and charge them." At a news conference in November 1999, he criticized lesbians and gays for "provoking and upsetting" society but suggested that they could live in Uganda as long they "did it quietly."

In the month after President Museveni ordered the arrest of lesbian, gay, bisexual, and transgender Ugandans, the International Gay and Lesbian Human Rights Commission (IGLHRC) received reports that several students had been expelled from schools for their involvement in same-sex relationships. The offices of *Sister Namibia*, a magazine known for its strong support of gay and lesbian rights, was set on fire on July 10 in what appeared to be a deliberate attack: the Namibian National Society for Human Rights noted, "While the motive for the attack is not yet known, the attack occurred barely a week after Namibian President Sam Nujoma launched a verbal attack on the homosexual community."

According to the Lebanese human rights organization Multi-Initiative on Rights: Search, Assist and Defend (MIRSAD), Beirut Morals Police (Police des Mœurs) officers entered the offices of Destination, an Lebanese internet service provider, in April to obtain information about the owners of a website for Lebanese gays and lesbians that was accessible to internet users in Lebanon but maintained in the United States. Later that month, officers questioned the general manager and another senior staff member at the Hobbich Police station. When MIRSAD posted an urgent action message on several websites, the military prosecutor charged MIRSAD and Destination officials with "harm[ing] the reputation of the Morals Police by distributing a printed flier," in violation of article 157 of the Military Penal Code; their trial was scheduled for September 25. If convicted, they would face three months to three years of imprisonment.

Gay men, lesbians, and transgender people have been subjected to a campaign of terror, violence, and murder in El Salvador over the last several years. Governmental indifference to these offenses was compounded by state agents' active participation in violence. A person who identified himself as a member of the Special Presidential Battalion used his weapon to threaten a transgender person who was participating in Lesbian and Gay Pride Day celebrations in the Constitution Plaza in San Salvador. Asociación "Entre Amigos" Executive Director William Hernández repeatedly received death threats. The Salvadorean police acknowledged that Hernández and "Entre Amigos" qualified for protection due to the repeated attacks and threats to which they had been subjected. Nevertheless, the chief of the National Civil Police initially refused to appoint any officers to provide protection because officers who "do not share the sexual tastes" of those they should protect would feel uncomfortable doing their work. Hernández was placed under special police protection following an international campaign.

In August, a longstanding prohibition against the use of a public park in Aguascalientes, Mexico, by "dogs and homosexuals" became the focus of public attention after a sign announcing the ban was repaired and reposted at the park entrance. Asked for his thoughts on the gay community in interviews broadcast on the Mexican network Televisa and in the national newspaper *La Jornada*, Aguascalientes Director of Regulations Jorge Alvarez Medina stated that he was against "this type of people" and declared that he "will not allow access to homosexuals" while he remained in charge of municipal regulations. In a welcome development, however, National Action Party (Partido de Acción Nacional, PAN) National President Luis Felipe Bravo Mena denied that Alvarez Medina's remarks reflected the policy of the PAN, the governing party in Aguascalientes. Declaring that "we reject and repudiate" Alvarez Medina's remarks, Bravo Mena stated, "If any doubt remains, I can say that I feel that this is absolutely reprehensible. We do not believe in any type of discrimination and reject it."

At least four transgender persons in Valencia, in the Venezuelan state of Carabobo, were reportedly detained without judicial order by Carabobo Police, according to Amnesty International. In July, police improperly detained two transgender persons for eight days; in August, officers forced two other members of Valencia's transgender community to undress in the street, beat them, and then held them for several days in August without permitting them legal, medical, or family visits.

In September, the Brazilian GLBT Pride Parade Association of São Paulo (Associação da Parada do Orgulho GLBT de São Paulo) received a letter bomb, one day after several gay and lesbian rights organizations and other human rights NGOs received letters threatening to "exterminate" gays, Jews, blacks, and persons from Brazil's northeast. There were an estimated 169 bias-motivated killings of sexual minorities in Brazil in 1999, according to a May report issued by the Grupo Gay de Bahia; the states of Pernambuco and São Paulo recorded the highest number of killings.

## The Criminalization of Private Sexual Conduct

Over eighty countries continued to criminalize sexual activity between consenting adults of the same sex, according to the IGLHRC. Elsewhere, national or local legislation discriminated against lesbian, gay, bisexual, and transgender persons by imposing different standards for the legal age of consent. In addition, lesbian,

gay, bisexual, and transgender persons were often targeted for arrest under provisions relating to “scandalous conduct,” “public decency,” loitering, and similar charges.

In Saudi Arabia, where sodomy was punishable by the death penalty, six men were executed for that crime in July. In April, nine men were sentenced to up to 2,600 lashes each for transvestism and “deviant sexual behavior”; because the sentence could not be carried out in a single session without killing the men, it was to be carried out at fifteen-day-intervals over a period of two years.

Sri Lanka’s Press Council fined a gay rights activist in June for filing a complaint against a newspaper that had published a letter urging that lesbians be turned over to convicted rapists. The council declared that being a lesbian was an “act of savism” and that the activist, rather than the newspaper, was guilty of promoting improper values.

At this writing, the Romanian Senate was considering the abolition of article 200, which criminalized all sexual relations between consenting adults of the same sex if “committed in public or if producing public scandal.” The article was interpreted to include casual gestures of intimacy such as holding hands and kissing. The measure passed the Chamber of Deputies, the Romanian Parliament’s lower house, on June 28. The measures under consideration did not address article 201, which continued to penalize “acts of sexual perversion” if “committed in public or if producing public scandal” with one to five years of imprisonment. A 1999 report jointly published by Human Rights Watch and the IGLHR documented the human rights abuses suffered by lesbian, gay, bisexual, and transgender persons in Romania as a result of both provisions.

In response to a 1993 decision of the European Court of Human Rights, Cyprus amended its criminal laws in June to equalize the male age of consent, setting it at eighteen. Before the amendment, the age of consent for men engaging in heterosexual sex had been sixteen, while the age of consent for men engaging in homosexual sex had been eighteen. The age of consent for all women continued to be sixteen. Other European countries continued to maintain unequal ages of consent. A notable example was Austria, where the age of consent was fourteen for heterosexual males and eighteen for men who had sexual relations with other men.

In the United States, fifteen states retained laws prohibiting consensual sexual relations between adults of the same sex, classifying these acts as “sodomy,” “sexual misconduct,” “unnatural intercourse,” or “crimes against nature.” A Texas court overturned the state’s sodomy law in June, while the highest court of the neighboring state of Louisiana upheld the state’s “crimes against nature” statute in July. A challenge to Massachusetts’ sodomy law was pending at this writing. Massachusetts was the only state in New England to retain legislation prohibiting sexual relations between consenting adults of the same sex.

In August, former Malaysian Deputy Prime Minister Anwar Ibrahim and his adopted brother Sukma Dermanwan were both convicted of sodomy. Anwar was sentenced to nine years in prison; Sukma received six years and four lashes with a rattan cane. The prosecution of Anwar was widely viewed inside and outside Malaysia as a case of political revenge against Anwar and his supporters, who had grown increasingly critical of Prime Minister Mahathir in the months prior to Anwar’s ouster and arrest. Anwar’s prosecution was also seen as undermining the integrity of the Malaysian judiciary, which had already been criticized widely for its lack of independence (see Malaysia chapter).

In May, the Zimbabwe Supreme Court upheld former President Robert Mugabe’s 1999 conviction for sodomy and indecent assault. Mugabe was quoted in 1999 as describing homosexuality as “deviant, abominable, and wrong according to the scriptures and according to Zimbabwean culture.”

Even in countries where the laws criminalizing private consensual conduct between adults were not enforced, the existence of these laws provided the foundation for attacks on sexual minorities. Men and women who identified as gay, lesbian, or bisexual were attacked as immoral and putative criminals. Thus, discrimination on the basis of this characterization was deemed justified.

## The Military

In September 1999, the European Court of Human Rights ruled that the United Kingdom’s ban on lesbian and gay service members violated the Convention on Human Rights and Fundamental Freedoms. In July 2000, the court awarded four gay British service members compensation for their discharge.

Lesbian, gay, bisexual, and transgender individuals were not barred from military service throughout much of the rest of Europe. In remarks published in the French gay magazine *Jeune* in May, Gen. Alain Rœvel declared of France’s policy with regard to lesbian, gay, bisexual, and transgender service members, “The army which we are building is an extension of society . . . . We need to recruit boys and girls for 400 different types of work. The fact that they may be homosexual does not concern us.” Similarly, lesbian, gay, bisexual, and transgender individuals served in Canada and Israel without official retaliation.

With most of its allies either allowing homosexuals to serve openly or having no policy on the subject they considered unrelated to job performance, the United States found itself increasingly isolated in maintaining restrictions on lesbian, gay, bisexual, and transgender servicemembers. Turkey was the only other member of the North Atlantic Treaty Organization (NATO) that continued to ban gays and lesbians from its armed forces. Six years after the U.S. military codified and implemented its “don’t ask, don’t tell” policy, its own investigations found that training on implementation of the law was lagging and that anti-gay comments and harassment were pervasive. Although the “don’t ask, don’t tell” policy was ostensibly intended to allow a greater number of gay, lesbian, or bisexual service members to remain in the military, discharges increased significantly after the policy’s adoption. From 1994 to 1999, a total of 5,412 service members were separated from the armed forces under the policy, with yearly discharge totals nearly doubling, from 617 in 1994 to 1,149 in 1999. In 1999, the number of separations dropped slightly, to 1,034; nevertheless, the discharge rate was still 73 percent higher than it was prior to the implementation of “don’t ask, don’t tell.” Women were discharged at a disproportionately high rate. In addition, the policy enabled male harassers to threaten to “out” women—and end their careers—if the women rejected their advances or threatened to report them.

Even more disturbing than the increase in the number of service members separated from the military under this policy was the continued failure of the U.S. Department of Defense to hold anyone accountable for violations of the policy. This lack of accountability spilled over to the murder case of Barry Winchell, a gay army private at Fort Campbell in 1999. A U.S. Army review, issued in July, of the circumstances surrounding the beating death of Winchell on the base, concluded that no officers would be held responsible for the killing and that there was no “climate” of homophobia on the base. This conclusion contradicted a Defense Department inspector general report issued in March which found that harassment based on perceived homosexuality was widespread in the military. It also contradicted numerous reports that Winchell was relentlessly taunted with anti-gay slurs in the months before he was murdered.

## Marriage and Discrimination Based on Family Configuration

Barriers to the legal recognition of lesbian, gay, bisexual, and transgender families continued to crumble slowly in a number of countries throughout the world. In March, the European Parliament, the legislative body of the European Union, called on its member states to “guarantee one-parent families, unmarried couples, and same-sex couples rights equal to those enjoyed by traditional couples and families.”

On September 13, the Dutch Parliament passed legislation permitting marriage between same-sex couples. The legislation, which was limited to Dutch citizens and to those with residency permits, also provided for adoption rights and access to the courts in cases of divorce. The law was expected to go into effect in early 2001, making the Netherlands the first country to allow same-sex couples to marry.

DENMARK, GREENLAND, ICELAND, NORWAY, AND SWEDEN HAD PROVISIONS FOR REGISTERED PARTNERSHIPS, WHICH DID NOT PROVIDE ALL OF THE BENEFITS OF CIVIL MARRIAGE—OFTEN ACCORDING LIMITED OR NO ADOPTION RIGHTS, IN PARTICULAR—AND WERE GENERALLY LIMITED ONLY TO CITIZENS OR TO RESIDENTS WHO HAD LIVED IN THE COUNTRY FOR SEVERAL YEARS. FRANCE'S CIVIL PACT OF SOLIDARITY (PACTE CIVILE DE SOLIDARITÉ, PACS) AND HUNGARY'S COHABITATION LAW HAD SIMILAR LIMITATIONS. IN JUNE, ICELAND EXPANDED ITS REGISTERED PARTNERSHIP LAW TO PERMIT SAME-SEX COUPLES TO ADOPT EACH OTHER'S BIOLOGICAL CHILDREN. THE LAW WAS ALSO EXTENDED TO COVER DANES, SWEDES, AND NORWEGIANS LIVING IN ICELAND; OTHER FOREIGNERS WERE PERMITTED TO ENTER INTO REGISTERED PARTNERSHIPS AFTER THEY HAD RESIDED IN ICELAND FOR TWO YEARS.

A COMPREHENSIVE SAME-SEX PARTNERSHIP BILL INTRODUCED IN GERMANY ON JULY 5 WOULD GRANT SAME-SEX COUPLES SPOUSAL RIGHTS IN TAXATION, INHERITANCE, IMMIGRATION, SOCIAL SECURITY, CHILD CUSTODY, HEALTH INSURANCE, NAME CHANGES, AND OTHER AREAS. THE PLAN WAS EXPECTED TO PASS THE BUNDESTAG, THE LOWER HOUSE OF THE GERMAN PARLIAMENT; SUPPORT IN THE BUNDESRAT, NECESSARY TO ENACT SOME ASPECTS OF THE PROPOSAL, WAS NOT ASSURED.

THE U.S. STATE OF VERMONT ENACTED LEGISLATION IN APRIL PROVIDING FOR CIVIL UNIONS BETWEEN SAME-SEX COUPLES. THE LAW WAS PASSED IN RESPONSE TO A DECEMBER 1999 DECISION OF THE VERMONT SUPREME COURT HOLDING THAT THE STATE'S CONSTITUTION REQUIRED VERMONT "TO EXTEND TO SAME-SEX COUPLES THE COMMON BENEFITS AND PROTECTIONS THAT FLOW FROM MARRIAGE UNDER VERMONT LAW." ALTHOUGH CIVIL UNIONS CARRIED VIRTUALLY ALL OF THE STATE RIGHTS AND RESPONSIBILITIES OF MARRIAGE, THEY WERE NOT RECOGNIZED BY THE FEDERAL GOVERNMENT OR ANY OTHER U.S. STATE.

BRAZIL GRANTED SAME-SEX PARTNERS THE SAME RIGHTS AS MARRIED COUPLES WITH RESPECT TO PENSIONS, SOCIAL SECURITY BENEFITS, AND TAXATION IN JUNE. THIS STEP WAS ACHIEVED BY DECREE; LEGISLATION TO PROVIDE FOR CIVIL UNIONS BETWEEN PERSONS OF THE SAME SEX REMAINED PENDING IN THE FEDERAL CHAMBER OF DEPUTIES.

IN NOVEMBER 1999, THE LATVIAN PARLIAMENT'S HUMAN RIGHTS AND PUBLIC AFFAIRS COMMISSION REJECTED PROPOSED LEGISLATION THAT WOULD PROVIDE FOR REGISTERED PARTNERSHIPS FOR SAME-SEX COUPLES. IN AUGUST, SLOVAK JUSTICE MINISTER JÁN ČARNOGURSKÝ ANNOUNCED THAT SAME-SEX PARTNERSHIPS WOULD NOT BE REGISTERED IN SLOVAKIA, REPORTEDLY STATING THAT SUCH PARTNERSHIPS WOULD "DEGRADE" HETEROSEXUAL FAMILIES.

ISRAEL'S INTERIOR MINISTRY ANNOUNCED IN JULY THAT IT ALLOWED SAME-SEX PARTNERS TO RECEIVE IMMIGRATION BENEFITS ON EQUAL TERMS WITH HETEROSEXUAL COMMON-LAW SPOUSES. UNDER THE MINISTRY'S POLICY, THE NONCITIZEN PARTNER IS GRANTED A RENEWABLE ONE-YEAR TOURIST PERMIT WITH EMPLOYMENT AUTHORIZATION AND MAY REQUEST TEMPORARY RESIDENT STATUS AFTER FOUR YEARS; EVENTUALLY, THE PARTNER MAY SEEK PERMANENT RESIDENCE AND THEN CITIZENSHIP.

WITH THE ADDITION OF ISRAEL, AT LEAST FOURTEEN COUNTRIES OFFERED IMMIGRATION BENEFITS TO SAME-SEX COUPLES. UNLIKE MOST COUNTRIES' IMMIGRATION POLICIES WITH REGARD TO MARRIED HETEROSEXUAL COUPLES, THESE POLICIES TYPICALLY REQUIRED SAME-SEX COUPLES TO DEMONSTRATE THAT THEY HAD HAD A COMMITTED RELATIONSHIP FOR ONE TO TWO YEARS OR MORE BEFORE THEY WERE ELIGIBLE FOR ANY IMMIGRATION BENEFITS. AUSTRALIA REQUIRED SAME-SEX COUPLES TO SHOW "A MUTUAL COMMITMENT TO A SHARED LIFE" FOR AT LEAST THE TWELVE MONTHS PRECEDING THE DATE OF APPLICATION. IN NEW ZEALAND, SAME-SEX COUPLES HAD TO HAVE BEEN "LIVING IN A GENUINE AND STABLE DE FACTO RELATIONSHIP" FOR TWO YEARS. THE UNITED KINGDOM REQUIRED APPLICANTS TO SHOW THAT THEY HAD HAD "A RELATIONSHIP akin to MARRIAGE" FOR TWO YEARS OR MORE. BELGIUM REQUIRED A RELATIONSHIP OF AT LEAST THREE AND A HALF YEARS' DURATION. THE OTHER COUNTRIES THAT OFFERED SAME-SEX IMMIGRATION BENEFITS WERE CANADA, DENMARK, FINLAND, FRANCE, NAMIBIA, THE NETHERLANDS, NORWAY, SOUTH AFRICA, AND SWEDEN.

## Harassment and Discrimination Against Students

LESBIAN, GAY, BISEXUAL, AND TRANSGENDER STUDENTS IN THE UNITED STATES AND ELSEWHERE WERE FREQUENTLY TARGETED FOR HARASSMENT BY THEIR PEERS. LESBIAN, GAY, AND BISEXUAL YOUTH WERE NEARLY THREE TIMES AS LIKELY AS THEIR PEERS TO HAVE BEEN INVOLVED IN AT LEAST ONE PHYSICAL FIGHT IN SCHOOL, THREE TIMES AS LIKELY TO HAVE BEEN THREATENED OR INJURED WITH A WEAPON AT SCHOOL, AND NEARLY FOUR TIMES AS LIKELY TO SKIP SCHOOL BECAUSE THEY FELT UNSAFE, ACCORDING TO THE 1999 MASSACHUSETTS YOUTH RISK BEHAVIOR SURVEY. MOREOVER, THE SURVEY FOUND THAT THOSE WHO IDENTIFIED AS LESBIAN, GAY, OR BISEXUAL WERE MORE THAN TWICE AS LIKELY TO CONSIDER SUICIDE AND MORE THAN FOUR TIMES AS LIKELY TO ATTEMPT SUICIDE THAN THEIR PEERS.

EFFORTS TO PROVIDE A SAFE, SUPPORTIVE ENVIRONMENT FOR LESBIAN, GAY, BISEXUAL, AND TRANSGENDER STUDENTS IN THE UNITED STATES WERE HAMPERED BY DISCRIMINATORY LEGISLATION IN SEVERAL STATES. IN ADDITION, MANY STUDENTS ALSO FACED HOSTILE SCHOOL ADMINISTRATIONS. IN TWO PARTICULARLY PROLONGED DISPUTES, SCHOOL DISTRICTS IN UTAH AND CALIFORNIA ATTEMPTED TO DENY STUDENTS THE RIGHT TO FORM CLUBS KNOWN AS GAY-STRAIGHT ALLIANCES, IN VIOLATION OF THE FEDERAL EQUAL ACCESS ACT. BOTH SCHOOL DISTRICTS BEGAN TO PERMIT THE STUDENT GROUPS TO MEET IN SEPTEMBER 2000, DOING SO ONLY AFTER THE STUDENTS WHO SOUGHT TO FORM THE GROUPS FILED LAWSUITS AGAINST THE DISTRICTS. (SEE CHILDREN'S RIGHTS).

# PRISONS

THE NUMBER OF PEOPLE INCARCERATED IN THE UNITED STATES REACHED TWO MILLION THIS YEAR, A STAGGERING FIGURE BOTH IN ABSOLUTE TERMS AND IN TERMS OF THE INCARCERATION RATE IT REPRESENTED. BUT THE U.S. WAS NOT ALONE IN HOLDING RECORD NUMBERS OF INMATES. PRISONER NUMBERS CONTINUED TO RISE IN COUNTRIES ALL OVER THE WORLD, RESULTING IN SEVERE OVERCROWDING OF PRISONS AND OTHER DETENTION FACILITIES. ALTHOUGH OVERALL FIGURES WERE DIFFICULT TO ESTIMATE DUE TO SOME COUNTRIES' REFUSAL TO DISCLOSE INFORMATION ABOUT THEIR PENAL FACILITIES, EVEN SUCH BASIC FACTS AS THE NUMBER OF INMATES HELD, THE WORLD INMATE POPULATION WAS ROUGHLY EIGHT TO TEN MILLION PEOPLE.

IN MANY COUNTRIES, THE HIGH LEVELS OF OFFICIAL SECRECY THAT MADE PRISONER NUMBERS IMPOSSIBLE TO DETERMINE WERE EQUALLY EFFECTIVE IN CUTTING OFF INFORMATION ABOUT EVEN THE MOST EGREGIOUS PRISON ABUSES. BY BARRING HUMAN RIGHTS GROUPS, JOURNALISTS, AND OTHER OUTSIDE OBSERVERS ACCESS TO THEIR PENAL FACILITIES, PRISON OFFICIALS SOUGHT TO SHIELD SUBSTANDARD CONDITIONS FROM CRITICAL SCRUTINY. IN EXTREME CASES, INCLUDING CHINA AND CUBA, THE INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC) WAS BARRED FROM PROVIDING BASIC HUMANITARIAN RELIEF TO PRISONERS.

WHILE CONDITIONS OF DETENTION VARIED GREATLY FROM COUNTRY TO COUNTRY AND FACILITY TO FACILITY, STANDARDS IN MOST COUNTRIES WERE SHOCKINGLY LOW. PRISONS AND JAILS IN EVEN THE RICHEST AND MOST DEVELOPED COUNTRIES WERE PLAGUED BY SEVERE OVERCROWDING, DECAYING PHYSICAL INFRASTRUCTURE, A LACK OF MEDICAL CARE, GUARD ABUSE AND CORRUPTION, AND PRISONER-ON-PRISONER VIOLENCE. WITH THE PUBLIC PRIMARILY CONCERNED ABOUT KEEPING PRISONERS LOCKED UP RATHER THAN ABOUT THE CONDITIONS IN WHICH PRISONERS WERE CONFINED, LITTLE PROGRESS WAS MADE TOWARD REMEDYING THESE ABUSES.

## Abusive Treatment of Prisoners

UNCHECKED OUTBURSTS OF VIOLENCE OCCURRED IN MANY PRISONS, VIOLATING PRISONERS' RIGHT TO LIFE. ON APRIL 27, IN WHAT WAS DESCRIBED AS THE BLOODIEST PRISON CONFLICT IN COLOMBIAN HISTORY, AT LEAST TWENTY-FIVE INMATES WERE KILLED IN BOGOTÁ'S MODELO PRISON. THE INCIDENT, WHICH PITTED RIVAL INMATE GROUPS AGAINST EACH OTHER, WAS SPARKED BY THE DISCOVERY OF A MUTILATED BODY STUFFED IN A SEWER PIPE.

WHILE THE BODY COUNT FROM THIS INCIDENT WAS EXCEPTIONAL, THE VIOLENCE ITSELF WAS NOT. AS EVIDENCED BY A SUBSEQUENT PRISON SEARCH THAT RESULTED IN THE DISCOVERY OF TWO AK-47 ASSAULT RIFLES, EIGHT GRENADES, DOZENS OF FIREARMS, AND SEVERAL THOUSAND KNIVES, MODELO PRISON WAS A MINI-ARSENAL, AND VIOLENCE WAS FREQUENT.

Indeed, some 1,200 Colombian inmates were killed over the past decade, a disproportionate number of them in Modelo Prison. "In the four years that I've been in the Modelo I've seen more blood and more death than in all my life of crime," said an inmate there. The combination of severe overcrowding—the prison housed some 4,700 inmates in space for 1,900—an extreme shortage of staff, and plentiful weapons made violence inevitable.

The Mata Grande Penitentiary in Rondonópolis, Brazil, was the scene of a similar killing spree in March. Thirteen prisoners were murdered when a group of inmates overpowered the handful of guards that manned their cellblock, gaining entry to a neighboring area that housed their enemies. The killings were apparently part of an effort to gain control of the prison drug trade. Although violence was common at the prison, the police were reported to have been slow to respond to the crisis, taking three hours to enter the facility and regain control over the inmates.

Mass killings such as these merited an occasional mention in the press, but the vast majority of inmate deaths went unnoticed. In some countries, including Brazil, Kenya, Venezuela, and Panama, prison homicides were so frequent as to seem routine. Inmates were usually killed by other inmates rather than by guards, but inmate-on-inmate violence was usually the predictable result of official negligence. By neglecting to supervise and control the inmates within their facilities, by failing to respond to incidents of violence, by corruptly allowing the entry of weapons into the prisons, and by generally abetting the tyranny of the strongest prisoners over the weakest, prison authorities were directly responsible for the violence of their charges.

Prisoner death rates were often far higher than corresponding rates among the populations outside prisons. While violence was a factor in some penal facilities, disease—often the predictable result of overcrowding, malnutrition, unhygienic conditions, and lack of medical care—remained the most common cause of death in prison. Food shortages in some prisons, combined with extreme overcrowding, created ideal conditions for the spread of communicable diseases.

Tuberculosis (TB) continued to ravage prison populations around the world. The spread of TB was especially worrisome in Russia, in light of the country's enormous inmate population—over one million prisoners as of September 2000—and the increasing prevalence of multi-drug resistant (MDR) strains of the disease. Approximately one of out every ten inmates was infected with tuberculosis, with more than 20 percent of sick inmates being affected by MDR strains, constituting a serious threat to public health. Nor was the tuberculosis epidemic confined to Russia; rather, it swept through prisons all over the former Soviet Union. High rates of TB were also reported in the prisons of Brazil and India, two countries with substantial inmate populations.

The HIV/AIDS epidemic ravaged prison populations, with penal facilities around the world reporting grossly disproportionate rates of HIV infection and of confirmed AIDS cases. In a positive development, Botswana's government introduced a bill in July to allow inmates in the late stages of AIDS and other terminal illnesses to return home to their families. But inmates around the world frequently died of AIDS while incarcerated, often deprived of even basic medical care.

Physical abuse of prisoners by guards remained another chronic problem. Some countries continued to permit corporal punishment and the routine use of leg irons, fetters, shackles, and chains. The heavy bar fetters used in Pakistani prisons, for example, turned simple movements such as walking into painful ordeals. In many prison systems, unwarranted beatings were so common as to be an integral part of prison life.

Women prisoners were particularly vulnerable to custodial sexual abuse. The problem was widespread in the United States, where male guards outnumbered women guards in many women's prisons. In some countries, Haiti being a conspicuous example, female prisoners were even held together with male inmates, a situation that exposed them to rampant sexual abuse and violence.

In contravention of international standards, juvenile inmates were often held together with adults. Many of Pakistan's jails and police lockups mixed juvenile and adult prisoners, as did certain detention facilities in Nicaragua, Kenya, South Africa and Zambia. Children in such circumstances frequently fell victim to physical abuse, including rape, by adult inmates.

Extortion by prison staff, and its less aggressive corollary, guard corruption, was common in prisons around the world. Given the substantial power that guards exercised over inmates, these problems were predictable, but the low salaries that guards were generally paid severely aggravated them. In exchange for contraband or special treatment, inmates supplemented guards' salaries with bribes. Powerful inmates in some facilities in Colombia, India, and Mexico, among others, enjoyed cellular phones, rich diets, and comfortable lodgings, while their less fortunate brethren lived in squalor. In Argentina, as part of an effort to combat rampant guard corruption, the government launched a purge of its prison service, dismissing numerous high-ranking officials in April. The mass firing was sparked by revelations that guards had released inmates on robbing excursions and had even sent one inmate out to kill the judge investigating these schemes.

Overcrowding—prevalent in almost every country for which information was available—was at the root of many of the worst abuses. The problem was often most severe in smaller pretrial detention facilities, where, in many countries, inmates were packed together with no space to stretch or move around. In some Brazilian police lockups, where a large proportion of the country's approximately 190,000 detainees were held, overcrowding was so acute, and floor space was at such a premium, that inmates had to tie themselves to the cell bars to sleep. In Brazil, as in many other countries, inmates often suffered long stays in these dreadful conditions.

Another common problem was governments' continued reliance on old, antiquated, and physically decaying prison facilities. Nineteenth-century prisons needing constant upkeep remained in use in a number of countries, including the United States, Mexico, Russia, Italy, and the United Kingdom, although even many modern facilities were in severe disrepair due to lack of maintenance. Notably, some prisons lacked a functional system of plumbing, leaving prisoners to "slop out" their cells, that is, to defecate in buckets that they periodically emptied.

A different set of concerns was raised by the spread of ultra-modern "super-maximum" security prisons. Originally prevalent in the United States, where politicians and state corrections authorities promoted them as part of a politically popular quest for more "austere" prison conditions, the supermax model was increasingly followed in other countries. Prisoners confined in such facilities spent an average of twenty-three hours a day in their cells, enduring extreme social isolation, enforced idleness, and extraordinarily limited recreational and educational opportunities. While prison authorities defended the use of super-maximum security facilities by asserting that they held only the most dangerous, disruptive, or escape-prone inmates, few safeguards existed to prevent other prisoners from being arbitrarily or discriminatorily transferred to such facilities.

The small group isolation regime instituted at Turkey's Kartal Special-Type Prison was one example of this trend. Beginning in 1999, the Turkish authorities began holding prisoners charged under the country's Anti-Terror Law in a new cell-based system, by which inmates remained locked in shared cells for lengthy periods of time, deprived of other human contact and lacking opportunities for exercise, work, education, or other activities. In these conditions, one detainee wrote, "Your senses of taste, smell, hearing, feeling, and sight fade. You cannot laugh at anything and you cry at the smallest thing." Penal experts, including the European Committee for the Prevention of Torture, have warned that such conditions may endanger prisoners' physical and mental health.

Fiscal constraints and competing budget priorities were to blame for prison deficiencies in some countries, but, as the supermax example suggests, harsh prison conditions were sometimes purposefully imposed. In Peru, notably, a punitive motive was evident in the decision to hold top-security prisoners in high-altitude Challapalca and Yanamayo prisons, whose remote locations and miserable conditions led the Inter-American Commission on Human Rights to declare that they were "unfit" to serve as places of detention.

Conditions in many prisons were, in short, so deficient as to constitute cruel, inhuman, or degrading treatment, violating article 7 of the International Covenant on Civil and Political Rights. Their specific failings could also be enumerated under the more detailed provisions of the U.N. Standard Minimum Rules for the Treatment of Prisoners. A widely known set of prison standards, the Standard Minimum Rules describe "the minimum conditions which are accepted as suitable by the



United Nations.” Although the Standard Minimum Rules were formally integrated into the prison laws and regulations of many countries, few if any prison systems observed all of their prescriptions in practice.

With few means to draw public attention to violations of their rights, prisoners around the world frequently resorted to hunger strikes, self-mutilation, rioting, and other forms of protest. The most dramatic such incident took place in Kazakhstan in July, when forty-four prisoners at Arkalyk Prison reportedly attempted mass suicide in protest of conditions. The inmates used razors and broken glass to slash their necks, stomachs, and wrists. Other outbreaks of prison unrest were reported in Argentina, Brazil, Chile, Colombia, the Czech Republic, England, Greece, Israel, Italy, Mexico, Peru, Saudi Arabia, Sri Lanka, Trinidad and Tobago, Turkey, and Venezuela.

### Unsentenced Prisoners

Even those unsympathetic to convicted criminals and entirely skeptical of the idea of rehabilitation had reason to be concerned about the inhuman treatment of prisoners. Although comprehensive figures were impossible to obtain, the available statistics showed that a large proportion of the world's prisoners had not been convicted of any crime, but were instead being preventively detained at some stage of the trial process. In countries as varied as Bangladesh, Burundi, Chad, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, India, Mali, Nigeria, Pakistan, Peru, Rwanda, Uganda, and Venezuela, unsentenced prisoners made up the majority of the prison population. Indeed, some 90 percent of Honduran, Paraguayan, and Uruguayan inmates were unsentenced. Of the more than 125,000 prisoners jailed on charges of having participated in the 1994 genocide in Rwanda, only some 3,000 have been brought to trial.

Worse, such detainees were in many instances held for years before being acquitted of the crime with which they were charged. Prisoners also continued to be held after the expiration of their sentences in some countries.

### Defending Prisoners' Human Rights

Struggling against the government's natural tendency toward secrecy and silence on prison abuses, the efforts of numerous local human rights groups around the world—who sought to obtain access to prisons, monitored prison conditions, and publicized the abuses they found—were critical. The Moscow Center for Prison Reform, for example, has done particularly important work in drawing attention to the dreadful conditions of Russia's prisons and jails, and the TB crisis afflicting the inmate population.

In some countries, government human rights ombudspersons, parliamentary commissions, and other official monitors also helped call attention to abuses. In the United Kingdom, notably, the chief inspector of prisons continued his vigorous investigation and forthright criticism of conditions in the country's penal facilities.

In France, two special parliamentary commissions issued scathing official reports in July that called for major reforms in that country's prison system. The reports noted, among other serious failings, that unsentenced prisoners made up 40 percent of the French prison population, one of the highest such rates among industrialized countries.

At the regional level as well, prison monitoring mechanisms were active. The European Committee for the Prevention of Torture (CPT) continued its important work, inspecting penal institutions in eight countries in the first nine months of 2000: Turkey, Poland, Ukraine, Cyprus, France, Italy, Lithuania, and Russia, undertaking three visits to the latter country. As of October 2000, forty-one countries were party to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the treaty authorizing the CPT's monitoring.

In Africa, the special rapporteur on prisons and conditions of detention, an adjunct to the African Commission on Human and Peoples' Rights, completed his fourth year, inspecting prisons in the Gambia.

### U.N. Monitoring Efforts

The vast scale and chronic nature of human rights violations in the world's prisons have long been of concern to the United Nations, as demonstrated by the 1955 promulgation of the U.N. Standard Minimum Rules for the Treatment of Prisoners. Indeed, the international community's failure to adopt these standards in practice, even while it has embraced them in theory, has inspired the United Nations' most recent prisons effort.

For nearly a decade, a U.N. working group has been hammering out a draft treaty that would establish a U.N. subcommittee authorized to make regular and ad hoc visits to places of detention in states party to the treaty, including prisons, jails, and police lockups. As described in the draft treaty—conceived as an optional protocol to the Convention against Torture—the primary goal of the subcommittee would be to prevent torture and other ill-treatment. Based on the information obtained during its periodic and ad hoc visits, the subcommittee would make detailed recommendations to state authorities regarding necessary improvements to their detention facilities, and the authorities would be expected to implement these recommendations.

The proposed monitoring mechanism held great promise, yet it also had serious potential flaws. Notable among them was the possibility that the subcommittee could be entirely barred from reporting publicly on abuses it discovers, pursuant to a strict rule of confidentiality that some countries have advocated. Although the draft treaty favored cooperation between governments and the subcommittee as a means of instituting remedial measures, it must, if it is to create an effective mechanism, leave open the possibility of public reporting, at least in situations where governments stubbornly refuse to cooperate with the subcommittee or to implement its recommendations.

The working group's most recent two-week session, in October 1999, ended without any progress being made toward the completion of a draft treaty. The failure of the 1999 session led the head of the working group to convene intersessional consultations to assist the drafting process. Three days of informal consultations in October highlighted the wide gap between countries on such fundamental issues as which places should be subject to visits, whether prior consent must be obtained, whether reservations to the optional protocol should be allowed, and the impact of national legislation on the nature and scope of visits.

Other U.N. bodies pressed countries to improve their prison conditions. In August and September, U.N. Special Rapporteur on Torture Sir Nigel Rodley spent three weeks visiting police stations, prisons and other detention facilities in Brazil. At the end of his mission to the country, he expressed deep concern over Brazil's treatment of prisoners, stating that they were routinely subject to subhuman conditions and severe physical abuse.

### Relevant Human Rights Watch Reports:

*No Minor Matter: Children in Maryland's Jails, 11/99*

*Out of Sight: Super-Maximum Security Confinement in the United States, 2/00*

*Small Group Isolation in Turkish Prisons: An Avoidable Disaster, 5/00*

# RACIAL DISCRIMINATION AND RELATED INTOLERANCE

*WE ARE SERVED REFRESHMENT ONLY IN SEPARATE CUPS AT ROADSIDE TEA STALLS, TURNED AWAY FROM PUBLIC SWIMMING POOLS, STOPPED ON HIGHWAYS AS PRESUMPTIVE CRIMINALS, TRAFFICKED AS PROSTITUTES, DENIED OUR MOTHER'S NATIONALITY, CLASSED WILLY-NILLY AS "MENTALLY DISABLED" IN SCHOOLS, AND ABDUCTED INTO SLAVERY.*

*WE ARE DENIED HOUSING OR BURNED OUT OF OUR HOMES, REFUSED FRESH WATER FROM VILLAGE WELLS, BARRED FROM EMPLOYMENT OR FORCED TO PERFORM DEGRADING LABOR, AND DRIVEN OUT OF OUR COMMUNITIES OR EVEN OUR COUNTRIES BY TERROR.*

*WE FACE BEATINGS, SEXUAL ASSAULT, WRONGFUL ARREST, OR MURDER ON A DAILY BASIS. IN LIEU OF THE BIRTHRIGHT OF EQUALITY WE ARE MARKED FROM BIRTH WITH THE BRAND OF DISCRIMINATORY TREATMENT.*

THESE WORDS ARE THE DISTILLATION OF TESTIMONY RECEIVED BY HUMAN RIGHTS WATCH THAT REFLECT THE REALITY OF RACISM AS A GLOBAL ILL. THIS IS THE EXPERIENCE OF COUNTLESS MILLIONS WHO ARE VICTIMS OF RACIAL DISCRIMINATION, XENOPHOBIA, AND RELATED INTOLERANCE ON A DAILY BASIS. THEY INCLUDE MINORITIES AROUND THE WORLD—AND SOME MAJORITY POPULATIONS TOO, EVEN IN THE POST-APARTHEID ERA. THEY HAVE IN COMMON THEIR HUMANITY AND THE DENIAL OF FULL EQUALITY BY REASON OF THEIR BIRTH. THEY ARE THE VICTIMS OF THE POLITICS OF EXCLUSION, STIGMATIZATION, AND SCAPEGOATING—OR OF TARGETED NEGLECT AND SOCIAL INVISIBILITY.

THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (CERD) DEFINES "RACIAL DISCRIMINATION" BROADLY AND CONCRETELY. ADOPTED IN 1965, ITS DEFINITION OF RACIAL DISCRIMINATION INCLUDES "ANY DISTINCTION, EXCLUSION, RESTRICTION OR PREFERENCE BASED ON RACE, COLOUR, DESCENT OR NATIONAL OR ETHNIC ORIGIN WHICH HAS THE PURPOSE OR EFFECT OF NULLIFYING OR IMPAIRING THE RECOGNITION, ENJOYMENT OR EXERCISE, ON AN EQUAL FOOTING, OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN THE POLITICAL, ECONOMIC, SOCIAL, CULTURAL OR ANY OTHER FIELD OF PUBLIC LIFE."

THE REALITY OF RACISM DOES NOT TURN ONLY ON THE DEFINITION OF THE GROUPS THAT ARE OPPRESSED, OR ON THE MUCH DISPUTED CONCEPT OF RACE ITSELF, BUT MAY BE DRIVEN LARGELY BY THE PERCEPTIONS OF THE OPPRESSOR. RACISM BLIGHTS THE LIVES OF GROUPS DEFINED PRIMARILY BY ETHNICITY, CASTE, OR AN IDENTITY SHAPED BY RELIGION. UNLIKE CLASS OR OTHER INDICATORS OF SOCIAL STATUS, THESE ARE ATTRIBUTES BY WHICH PEOPLE ARE INSTANTLY IDENTIFIED AND WHICH CAN NOT READILY BE SHED. EVEN IF THE VERY IDEA OF RACE IS DISCOUNTED, RACISM IS A VERY REAL AND DEADLY PHENOMENON.

THE CONVENTION ON RACIAL DISCRIMINATION REQUIRES STATES TO GUARANTEE TO ALL INDIVIDUALS THE ENJOYMENT OF RIGHTS WITHOUT SUCH DISCRIMINATION—AND TO ENSURE THAT PUBLIC POLICIES ARE DISCRIMINATORY NEITHER IN PURPOSE NOR IN EFFECT. IN MANY COUNTRIES, THE DISCRIMINATORY EFFECT OF PUBLIC POLICY, REGARDLESS OF ITS INTENT, SERVES TO LOCK PEOPLE AWAY FROM THE EXERCISE OF CIVIL AND POLITICAL RIGHTS—AND BY DOING SO BARS THEIR WAY TO THE ENJOYMENT OF ECONOMIC, SOCIAL, AND CULTURAL RIGHTS.

INTERNATIONAL ACTION TO COMBAT RACISM HAS LONG BEEN ON THE AGENDA OF THE UNITED NATIONS AND REGIONAL INTERGOVERNMENTAL BODIES, AS WELL AS THE OBJECT OF CAMPAIGNING BY A VAST CONSTELLATION OF NONGOVERNMENTAL ORGANIZATIONS. THE APARTHEID REGIME IN SOUTH AFRICA WAS A FOCUS OF MUCH OF THIS INTERNATIONAL EFFORT, PARTICULARLY AFTER THE DISMANTLING OF LEGAL SEGREGATION IN THE UNITED STATES AND THE GRADUAL EFFORTS TO REMEDY ITS CONSEQUENCES. THE END OF APARTHEID IN 1994 WAS A LANDMARK IN THIS STRUGGLE, BUT THE CHALLENGE REMAINED. JUST ONE MONTH BEFORE NELSON MANDELA'S MAY 9, 1994, ELECTION TO THE SOUTH AFRICAN PRESIDENCY, HUTU EXTREMISTS LAUNCHED A CAMPAIGN OF GENOCIDE AGAINST THE TUTSI MINORITY IN RWANDA.

RACISM AND INTOLERANCE IN AFRICA'S GREAT LAKES REGION AND ELSEWHERE PERSISTED IN MANY FORMS EVEN WHERE THE BASIS OF "OTHERNESS" ITSELF WAS CLOUDED. THE HUTU-TUTSI DIVIDE IN RWANDA AND NEIGHBORING STATES WAS ITSELF FOUNDED ON A BLURRING OVER TIME OF SOCIAL STRATA INTO SOMETHING APPROXIMATING ETHNICITY. THE SO-CALLED "ETHNIC CLEANSING" OF THE FORMER YUGOSLAVIA, IN TURN, WAS DRIVEN BY A RACISM DEFINED BY ETHNICITY, RELIGION, LANGUAGE, AND NATIONAL ORIGIN. IN THE YEAR 2000, MILLIONS FACED VIOLENCE, INTERNAL DISPLACEMENT, THE ARBITRARY LOSS OF THEIR NATIONALITY, OR EXPULSION FROM THEIR COUNTRIES BY REASON OF THEIR DESCENT. MILLIONS MORE FACED PERVERSIVE RACISM THAT WAS LESS APPARENT TO THE CASUAL OBSERVER—BUT WAS IN ITS EFFECT OFTEN NO LESS PERNICIOUS.

HUMAN RIGHTS WATCH IN 2000 BROUGHT A NEW FOCUS TO THE ISSUE OF RACIAL DISCRIMINATION AS IT AFFECTS MIGRANTS AND REFUGEES AND POPULATIONS IDENTIFIED BY CASTE. THE ORGANIZATION'S WORK CONCENTRATED ON THE DISCRIMINATORY IMPACT OF STATE POLICY AND PRACTICE IN TWO AREAS. THESE WERE DISCRIMINATION IN THE DETERMINATION OF NATIONALITY AND CITIZENSHIP RIGHTS, AND DISCRIMINATION IN CRIMINAL JUSTICE AND IN THE PUBLIC ADMINISTRATION OF STATE INSTITUTIONS, SERVICES, AND RESOURCES. THESE ISSUES ARE DISCUSSED FURTHER BELOW.

## The World Conference Against Racism

THE THIRD WORLD CONFERENCE AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE WILL BE HELD IN SOUTH AFRICA FROM AUGUST 31 TO SEPTEMBER 7, 2001. THE CONFERENCE WILL BE THE FIRST FORUM OF ITS KIND SINCE THE END OF APARTHEID IN SOUTH AFRICA (PREVIOUS WORLD CONFERENCES WERE HELD IN 1978 AND 1993). AS SUCH, IT CAN BUILD UPON THE LESSONS LEARNED IN ABOLISHING THE APARTHEID SYSTEM, WHILE ADDRESSING THE RACIST EFFECT OF OTHER POLICIES AND PRACTICES THAT CONTINUE TO AFFLICT WHOLE POPULATIONS. ITS CONVENING REFLECTS BOTH THE ACHIEVEMENTS OF THE INTERNATIONAL COMMUNITY AND THE ONGOING CHALLENGES IT FACED IN COMBATTING RACISM. IT SHOULD CELEBRATE THE END OF APARTHEID—BUT THERE WILL BE LITTLE ELSE TO CELEBRATE UNLESS THE CONFERENCE ITSELF CATALYZES REAL INTROSPECTION BY PARTICIPATING GOVERNMENTS AND REAL MECHANISMS FOR CHANGE.

WITH THE END OF APARTHEID, THERE WAS SOME CONCERN THAT IN THIS THIRD CONFERENCE THE CONTINUING CHALLENGE OF RACISM WOULD BE PORTRAYED BY GOVERNMENTS AS LARGELY A MATTER OF EDUCATION, CONTROL, AND PUNISHMENT OF ORDINARY PEOPLE—TO CONFRONT RACISM WHICH WAS IN SOME WAY INHERENT, SPONTANEOUS, AND NATURAL. THERE SEEMED A REAL RISK THAT THE INTERNATIONAL COMMUNITY WOULD FOCUS FIRST ON TREATING RACISM AS A SOCIAL DISEASE, ITS VECTORS OF TRANSMISSION THE ORDINARY CITIZEN,

private groups, and unscrupulous Internet service providers. In initial planning sessions, the role of governments and government officials at all levels, from education ministries to community police, in imposing and enforcing policies with racist effect went largely unvoiced. Rather, governments vied to hold themselves up as exemplars in identifying "best practices" in eliminating overt racism from public policy and private practice and in their pedagogic efforts to preach tolerance. The identification and remedying of the racist effect of government policies and practices where racist intent was not clearly present were largely off the agenda.

The preparations for the World Conference were undertaken by governments and civil society alike. Early consultations generated new nongovernmental alliances, bringing together legal reform groups, advocates for migrants and refugees, women's rights activists, faith-based organizations, civil rights activists and human rights groups, veteran campaigners of the anti-apartheid movement, a wide spectrum of minority rights groups, and other grass-roots activists. These nongovernmental organizations have already organized scores of consultative meetings in many countries, while participating in the preparatory meetings, expert seminars, and regional conferences of the United Nations' formal program. The consultative meetings and the expert seminars have already made a significant contribution to the substance of the World Conference and should go some way toward encouraging government representatives to take seriously their responsibilities to combat racism.

The Preparatory Committee for the World Conference identified five broad themes for the provisional agenda of the conference at its first session in May 2000. These were the sources, causes, forms, and contemporary manifestations of racism; the victims; measures of prevention, education and protection; the provision of effective remedies; and strategies to achieve full and effective equality. In some of these areas considerable dissent was registered by powerful governments. Two governments of countries in which caste was the focus of discriminatory treatment—India and Japan—called for the exclusion of descent-based caste discrimination from the deliberations. Despite India's massive lobbying effort toward exclusion of victims of caste discrimination, however, there was an apparent consensus that the conference would be inclusive in its identification of the victims of racism and related intolerance.

The real break in consensus emerged on the matter of remedies. A draft slate of themes prepared by the African Group of delegates had been broadly acceptable, apart from its fourth thematic point, the question of remedies. Dissent turned primarily on the reference to compensation, with former European colonial powers and the United States adamantly opposed to language that implied their acknowledgment of material obligations to remedy past abuses. This was an echo of debates within the United States on the issue of reparations to address the heritage of slavery and segregation, a context that had led the drafters to choose the less politically charged term "compensatory measures." The dissenters may also have reacted negatively to the recommendation of a U.N. expert seminar on the remedies available to victims, held in preparation for the World Conference in February, on the centrality of "reparations": "Victims of racial discrimination are entitled to reparation in its different forms, such as restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Monetary and non-monetary forms of reparation are equally important in rendering justice to victims of racial discrimination. Non-monetary forms of reparation include measures such as verification of the facts and their public disclosure; official declarations or judicial decisions that restore dignity and rebuild reputation; acknowledgment of the facts and acceptance of responsibility; and the commemoration and the payment of tribute to the victims."

A late-night compromise placed the word "compensatory" in brackets: "The provision of effective remedies, recourse, redress, [compensatory] and other measures at the national, regional and international level," annotated by a series of explanatory statements from delegates. The Western Group reserved the right to "revisit this point." The African delegates declared their intent to support the inclusion of reference to compensatory measures as founded in general principles of international human rights law establishing the right to restitution, compensation, and rehabilitation for victims of grave violations of human rights.

The agenda of the World Conference will be discussed further at a special inter-sessional meeting to be held in January 2001 and finalized at the second session of the Preparatory Committee to be held in Geneva in May–June 2001. Regional conferences are to be held in Santiago, Chile (the Americas meeting, in December 2000), in Tehran, Iran (the Asia meeting, to include part of the Middle East, in February 2001), in Dakar, Senegal (the Africa meeting, in January 2001). The European regional meeting was held in Strasbourg, France, in October. Expert seminars were held on the protection of minorities and other vulnerable groups (Warsaw, Poland, in July); on migrants and trafficking in persons, with particular reference to women and children (Bangkok, Thailand, in September), and on preventing ethnic and racial conflicts (Addis-Ababa, Ethiopia, in October). In November a seminar on race and gender is to be held in Zagreb, Croatia.

## Nationals Without Nationality

In many parts of the world people were denied citizenship and corresponding civil rights in their own countries, or stripped of citizenship, solely because of their race or national descent. In some cases this applied to populations that had been present in a country for generations, often predating their country's independence. In others, children born in their mother's country were denied that nationality because women could not transmit their nationality, rendering the children potentially stateless on gender grounds, or forced to take the nationality of a non-national father.

Denial or removal of the rights of citizenship could be a means comprehensively to deny a population a broad range of human rights. The issue was most dramatic as it concerned children's rights to a nationality and to the full exercise of human rights. Children denied citizenship in their own country were often denied a right to education, to social services, to many areas of employment as they reached adulthood, or even to documents establishing their identity. In some cases, governments informally recognized members of particular national minorities as distinct from foreigners—as in the case of Syria's large Kurdish minority, hundreds of thousands of members of Thailand's hill tribes, or Kuwait's Bidun—while according them a restrictive status short of full recognition as nationals: as if citizens without citizenship. Democratic participation in the regulation of their own community's affairs was impossible for this disenfranchised population. International conventions on statelessness were inadequate to address this denial of citizenship rights on national or racial grounds.

Arbitrary deprivation of citizenship and disputed nationality was both a cause and consequence of forcible displacement of certain populations, and proved to be a significant obstacle in seeking solutions to long-standing refugee situations. In South Asia, for example, more than 100,000 Bhutanese refugees remained in exile, the majority of them in southeast Nepal, after most of them were arbitrarily stripped of their nationality and expelled from Bhutan in the early 1990s. Ten years later, the Bhutanese government continued to block refugee return, claiming that the majority of them were not bona fide Bhutanese citizens and hence enjoyed no right to return.

Naturalization policies, by which non-nationals received citizenship, were often wholly or largely founded on discriminatory grounds. Denial was often the norm even for people with deep roots in a country who retained no connections with any other. In many regions, changing patterns of migration and catastrophic movements of refugees fleeing war or ethnic persecution had long moved large populations in an ebb and flow across national boundaries. Over decades these population movements resulted in large populations putting down new roots in countries to which they were relative newcomers, but who had no other country to which to return. The children of these upheavals were the most vulnerable to discriminatory nationality policies and practices.

In the Middle East, statelessness most frequently stemmed from the deprivation of nationality, often as a result of conflict over the composition of a state and its borders. A situation of citizens without citizenship also derived from the failure to establish nationality at crucial junctures during the process of state formation, or the redefinition of the terms of nationality that sometimes accompanied or followed international armed conflict. The denial of citizenship was exacerbated by the persistence of nationality laws that typically made it difficult for foreigners to gain nationality, even when an individual was born in a country

OR RESIDENT THERE FOR MANY YEARS; PREVENTED WOMEN NATIONALS FROM PASSING THEIR NATIONALITY TO THEIR CHILDREN; AND PROHIBITED DUAL NATIONALITY. TAKEN TOGETHER, THESE FACTORS PRODUCED LARGE POPULATIONS WHOSE STATELESSNESS WAS INHERITED, AND OFTEN RESTRICTED THEIR OPPORTUNITY TO VOTE, WORK, REGISTER MARRIAGE, BIRTHS, AND DEATHS, OWN OR INHERIT PROPERTY, RECEIVE GOVERNMENT HEALTH AND EDUCATIONAL BENEFITS, OR TRAVEL.

THE PROBLEM OF STATELESSNESS FOR PALESTINIAN REFUGEES IN HOST COUNTRIES IN THE REGION, SYRIAN-BORN KURDS, AND BIDUN IN KUWAIT AND BAHRAIN WAS LARGELY UNADDRESSED OR ADDRESSED IN UNSATISFACTORY WAYS. IN A REPORT PUBLISHED IN OCTOBER 2000, HUMAN RIGHTS WATCH CRITICIZED KUWAIT'S TREATMENT OF ITS 120,000 BIDUN RESIDENTS, MANY OF WHOM HAVE LIVED IN KUWAIT FOR DECADES OR GENERATIONS AND WHO SHOULD BE ELIGIBLE FOR NATURALIZATION BUT HAVE NOT BEEN GRANTED IT. SINCE THE MID-1980S, THEY HAVE FACED WIDESPREAD AND SYSTEMATIC DISCRIMINATION, INCLUDING VIOLATIONS OF THEIR RIGHT TO ENTER AND LEAVE KUWAIT, TO MARRY AND FOUND A FAMILY, AND TO WORK. THEIR CHILDREN'S RIGHT TO EDUCATION, TO BE REGISTERED IMMEDIATELY AFTER BIRTH, AND TO ACQUIRE A NATIONALITY ARE ALSO VIOLATED. THE GOVERNMENT OF IRAQ CONTINUED TO FORCE KURDS AND OTHER MINORITIES OUT OF THE KIRKUK REGION AND INTO THE THREE NORTHERN AUTONOMOUS GOVERNORATES.

PARTICULAR CALAMITIES OCCURRED WHEN GOVERNMENTS STRIPPED WHOLE ETHNIC OR RACIAL GROUPS OF THEIR RECOGNIZED NATIONALITY, MOST COMMONLY IN SITUATIONS OF UPHEAVAL OR WHEN NEW STATES EMERGED. ETHIOPIA SUMMARILY DENATIONALIZED AND EXPELLED SOME SEVENTY THOUSAND ETHIOPIAN CITIZENS OF ERITREAN ORIGIN FROM THEIR COUNTRY BY EARLY 2000, AFTER WAR BROKE OUT WITH ERITREA. GOVERNMENTS—AND OPPOSITION GROUPS—ALSO SEIZED UPON THE DENIAL OF CITIZENSHIP TO PARTICULAR GROUPS TO FURTHER POLITICAL AIMS IN THE ABSENCE OF CRISIS, AND IN DOING SO SOWNED NEW CRISES. IN THE IVORY COAST, ETHNIC POLITICS BECAME A CENTER-PIECE OF POLITICAL DISCOURSE, THE QUESTIONING BY HIGH OFFICIALS OF WHO WAS A “TRUE IVORIAN” LEADING TO INTERCOMMUNAL VIOLENCE. IN CAMBODIA, MEMBERS OF THE ETHNIC VIETNAMESE MINORITY FACED A NEW WAVE OF REPRESSION IN NOVEMBER 1999, WHEN AUTHORITIES CHARGED THAT SOME 600 ETHNIC VIETNAMESE RESIDENTS OF A FLOATING VILLAGE WERE ILLEGAL IMMIGRANTS. THE VILLAGERS WERE LONG-TIME CAMBODIAN CITIZENS, ACCORDING TO STATEMENTS TO HUMAN RIGHTS WORKERS, AND THEY SAID THAT LOCAL AUTHORITIES CONFISCATED THEIR IDENTITY DOCUMENTS BEFORE THEY WERE FORCED TO FLEE TO A LOCATION NEAR THE VIETNAMESE BORDER. DISCRIMINATORY NATIONALITY AND CITIZENSHIP POLICIES AND PRACTICES IN THESE CIRCUMSTANCES WERE FREQUENTLY ACCOMPANIED BY RACIST VIOLENCE. (SEE CAMBODIA.)

THERE WAS SOME GOOD NEWS. ON AUGUST 29, THE THAI CABINET GRANTED CITIZENSHIP TO THE DESCENDANTS OF THREE GROUPS OF DISPLACED PERSONS: BURMESE WHO ENTERED THE COUNTRY PRIOR TO MARCH 1976, NEPALESE MIGRANTS, AND CHINESE MIGRANTS WHO HAD MIGRATED TO THAILAND SINCE THE 1960S. MEMBERS OF OTHER GROUPS, INCLUDING THAILAND'S ETHNIC MINORITY HILLTRIBES HOWEVER, REMAINED WITHOUT A NATIONALITY OR FULL CITIZENSHIP RIGHTS. AROUND 300,000 SUCH PEOPLE REGISTERED WITH THE GOVERNMENT WERE PERMITTED TO RESIDE AND WORK IN THE COUNTRY BUT FACED RESTRICTIONS ON THEIR MOVEMENT, COULD NOT PARTICIPATE IN ELECTIONS, AND COULD NOT OWN LAND. HUNDREDS OF THOUSANDS OF OTHER HILLTRIBE VILLAGERS REMAINED UNREGISTERED AND WERE OFFICIALLY CONSIDERED AS ILLEGAL IMMIGRANTS. IN A POTENTIALLY IMPORTANT REFORM, THE THAI GOVERNMENT IN MAY 2000 DELEGATED DECISION-MAKING ON THE CITIZENSHIP OF HILLTRIBE CHILDREN BORN IN THAILAND TO DISTRICT CHIEFS. (SEE THAILAND.)

## Migrants and Refugees

THE PREPARATIONS FOR THE WORLD CONFERENCE COME IN A CLIMATE OF INCREASING XENOPHOBIA AND RACISM IN MANY WORLD REGIONS FROM WHICH GOVERNMENTS HAVE NOT STOOD ALOOF. AS ECONOMIC GLOBALIZATION, REGIONAL ECONOMIC CRISES, AND POLITICAL UPHEAVAL HAVE STIMULATED MOVEMENT OF PEOPLE ACROSS NATIONAL BORDERS, MIGRANTS AND REFUGEES IN PARTICULAR HAVE BEEN ASSAILED BY NEW MEASURES OF DISCRIMINATION ON AN ENORMOUS SCALE. MIGRATION AND REFUGEE POLICIES ARE INCREASINGLY DRIVEN BY XENOPHOBIC AND RACIST ATTITUDES. THE OPEN EXPRESSION OF RACIST VIEWS BY POLITICIANS AND THROUGH THE MEDIA INCREASINGLY THREATENS THE PROTECTION OF REFUGEES AND MIGRANTS WORLDWIDE, WITH MANY GOVERNMENTS INDICATING A GREATER INTEREST IN ERECTING BARRIERS AND KEEPING PEOPLE OUT THAN IN PROVIDING PROTECTION.

IN WESTERN EUROPE, THE WEAKENING OF THE REFUGEE PROTECTION REGIME HAS BEEN ACCOMPANIED BY BOTH SUBTLE AND BLATANT FORMS OF RACIST AND XENOPHOBIC RHETORIC. ASYLUM SEEKERS AND MIGRANTS—AND BY EXTENSION MEMBERS OF MINORITIES IN GENERAL—HAVE BEEN BRANDED AS CRIMINALS AND JOB USURPERS. THIS SCAPEGOATING PROVIDED TOOLS FOR POLITICAL MOBILIZATION BY NATIONALIST PARTIES AND EVEN BY SOME IN THE MAINSTREAM. THE PHYSICAL AND PSYCHOLOGICAL ABUSE OF MIGRANT WORKERS IS FUELED BY THIS RACIST RHETORIC—AND BY IMPUNITY FOR SUCH ABUSE. WOMEN MIGRANT DOMESTIC WORKERS WHO ARE SEXUALLY ASSAULTED ARE DISCOURAGED FROM SEEKING LEGAL REDRESS FOR SEXUAL VIOLENCE FOR FEAR OF IMMEDIATE DETENTION AND SUMMARY DEPORTATION. RACIST ABUSE BY PRIVATE CITIZENS, AS THE POLICE STAND BY, IS PARALLELED BY A DISTURBING TREND TOWARD RACIST VIOLENCE BY THE POLICE. SOME OF THE COUNTRIES OF AFRICA, ASIA, AND THE MIDDLE EAST THAT HAVE TRADITIONALLY HOSTED THE VAST MAJORITY OF THE WORLD'S REFUGEES CITED WESTERN EUROPEAN PRECEDENTS IN JUSTIFYING THEIR ADOPTION OF SIMILAR RESTRICTIONS, WHILE MOSTLY CONTINUING TO PROVIDE GENEROUS REFUGE TO THE BULK OF THE WORLD'S REFUGEES.

SEVERAL U.N. BODIES CRITICIZED AUSTRALIA'S TREATMENT OF REFUGEES—AND OF ITS ABORIGINAL MINORITY—IN 2000, PROMPTING A HARSH REJOINDER FROM THAT COUNTRY'S GOVERNMENT. IN THE PACIFIC, ETHNIC TENSIONS ROOTED IN LONGSTANDING SOCIAL AND ECONOMIC GRIEVANCES AND A PERCEPTION ON THE PART OF INDIGENOUS ELITES OF DISPOSSESSION BY MIGRANTS OR THEIR DESCENDANTS, LED TO A COUP IN FIJI IN MAY AND AN ATTEMPTED COUP IN THE SOLOMON ISLANDS IN JUNE.

TRENDS IN HUMAN POPULATION MOVEMENTS AND TOWARD AN INCREASINGLY INTERNATIONAL LABOR FORCE MAKE IT PARTICULARLY URGENT TO ADDRESS RACISM AS A FACTOR IN THE GENERATION OF AND RESPONSE TO MIGRATION AND REFUGEE FLOWS, AND IN ITS RELATION TO INTERNATIONAL AND DOMESTIC CONFLICT. WOMEN MIGRANTS AND GIRLS SUFFERED IN PARTICULAR, THROUGH TRAFFICKING AND FORCED PROSTITUTION, FROM THEIR LACK OF PROTECTION IN THE WORK PLACE, AND IN CONSTRAINTS ON FAMILY LIFE IMPOSED BY MIGRATION AND THE SPECTER OF STATELESSNESS. XENOPHOBIA, OFTEN WHIPPED UP BY POLITICAL OR RELIGIOUS LEADERS, SERVED TO STIMULATE DISCRIMINATORY TREATMENT INVOLVING EVER GREATER VIOLENCE.

FOREIGN WORKERS WERE VIOLENTLY ATTACKED IN LIBYA, WHERE HUNDREDS OF THOUSANDS OF AFRICANS REPORTEDLY MIGRATED OVER THE PAST SEVERAL YEARS IN SEARCH OF WORK. SOME FIFTY CHADIAN AND SUDANESE MIGRANTS WERE REPORTED KILLED IN CLASHES BETWEEN AFRICANS AND LIBYANS NEAR TRIPOLI IN SEPTEMBER. THOUSANDS OF OTHER MIGRANT WORKERS REPORTEDLY FLED THE COUNTRY AS A CONSEQUENCE OF THE ATTACKS.

THE MOVEMENT OF REFUGEES, MIGRANTS, AND VICTIMS OF TRAFFICKING WAS A MAJOR ISSUE IN ASIA, WITH PROTECTION INEVITABLY REQUIRING INTERGOVERNMENTAL COOPERATION. TO COMBAT TRAFFICKING OF THAI WOMEN TO JAPAN, FOR EXAMPLE, BOTH THE THAI AND JAPANESE GOVERNMENTS NEEDED TO REFORM LEGISLATION AND CRACK DOWN ON CORRUPTION OF POLICE AND IMMIGRATION OFFICIALS. TO PROTECT FOREIGN MIGRANT WORKERS AGAINST ABUSE IN MALAYSIA OR KOREA, COUNTRIES EXPORTING LABOR NEEDED TO PROSECUTE ILLEGAL LABOR RECRUITERS WHILE THE RECEIVING COUNTRIES NEEDED TO STEP UP INVESTIGATIONS AND PROSECUTIONS OF ABUSIVE EMPLOYERS.

## Racist Impact: Criminal Justice and Public Administration

A KEY TO THE FIGHT AGAINST DISCRIMINATION WAS TO MONITOR PUBLIC POLICY WHICH, THROUGH STATE ACTION OR INACTION, DISCRIMINATED IN EFFECT. TO THIS END HUMAN RIGHTS WATCH URGED STATES TO INTRODUCE TRANSPARENCY IN GOVERNMENTAL PRACTICES AND MONITOR THE POTENTIALLY DISCRIMINATORY EFFECT OF POLICIES AND PRACTICES ON PEOPLE WITHIN THEIR JURISDICTION. IN ADDITION TO OBSTACLES TO POLITICAL PARTICIPATION BY CITIZENS, THE AREA OF CRIMINAL JUSTICE HAD A PARTICULAR POTENTIAL FOR DISCRIMINATORY EFFECT, AND AT THE NATIONAL OR LOCAL LEVEL INVOLVED PRACTICES—LIKE RACIAL PROFILING, IN WHICH ONE'S RACE WAS THE DETERMINING FACTOR IN FALLING UNDER SUSPICION—WITH RACIST INTENT. BROADER AREAS OF PUBLIC ADMINISTRATION, NOTABLY THE REGULATION OF PUBLIC HEALTH, HOUSING, EMPLOYMENT, AND EDUCATION, ALSO REQUIRED SCRUTINY, AS ALTERNATIVELY CONSTITUTING GATEWAYS OR INSUPERABLE OBSTACLES TO THE ENJOYMENT OF FUNDAMENTAL RIGHTS. THE POTENTIAL FOR PUBLIC POLICIES OR PRACTICES TO HAVE UNEQUAL AND NEGATIVE CONSEQUENCES FOR PARTICULAR GROUPS REQUIRED PARTICULAR SCRUTINY.

THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION, IN ITS GENERAL RECOMMENDATION ON ARTICLE 1, PARAGRAPH 1 OF CERD, CONCLUDED THAT THE CONVENTION OBLIGES STATES “TO NULLIFY ANY LAW OR PRACTICE WHICH HAS THE EFFECT OF CREATING OR PERPETUATING RACIAL DISCRIMINATION.” (EMPHASIS ADDED.) AS A CONSEQUENCE, IT

declared that in considering whether differentiation of treatment constituted discrimination, "it will look to see whether that action has an unjustifiable disparate impact upon a group distinguished by race, color, descent, or national or ethnic origin." (Emphasis added.) Such policies or practices could be expressly racist, or, while appearing race neutral, reflect a malign neglect, a refusal to take needed actions to secure equal treatment of all racial and ethnic groups. Minorities in Turkey, for example, were statistically invisible as a matter of public policy: the very existence of a Kurdish minority was denied by the state and reporting on the deprivation of this minority's rights is criminally sanctioned.

In many societies, racism was most evident in the area of criminal justice: in the administration of social services, education, and public housing; and even in restrictions of freedom of movement and the right to live in a particular area of one's own country. In the states of the former USSR, control of movement and residence continued to be exercised at the national, provincial, or municipal level. In Russia, the enforcement of these restrictions often assumed ethnic or racial dimensions, while implementation of residency controls through the *propiska* system of permits served as a pretext for the police harassment, arbitrary arrest, and extortion of people distinguished by their racial characteristics. Moscow police in September 1999 were given carte blanche in the wake of two bombing incidents there to carry out mass arrests of ethnic Chechens living in the city, taking more than twenty thousand Chechens to police stations. Administrative measures kept Chechen children out of school, while adults had trouble finding work, registering marriages, or receiving passports. (See Russia.)

In the United States, racial discrimination in the criminal justice system was increasingly the object of concern—problems the United States went some way to address in submitting its initial report to the United Nations Committee on the Elimination of Racial Discrimination in September (as required as a party to CERD). The report, although five years late, frankly acknowledged dramatically disproportionate incarceration rates for minorities in the criminal justice system and cited studies indicating that members of minority groups, especially blacks and Hispanics, "may be disproportionately subject to adverse treatment throughout the criminal justice process." It further acknowledged concerns that "incidents of police brutality seem to target disproportionately individuals belonging to racial or ethnic minorities." The report, however, did not question whether ostensibly race-neutral criminal laws or law enforcement practices causing the incarceration disparities violated CERD, nor did it acknowledge the federal government's obligation, under CERD, to ensure that state criminal justice systems (which account for 90 percent of the incarcerated population) are free of racial discrimination.

Criminal justice policies in the United States permanently stripped many of its nationals of fundamental civil rights in a manner disproportionately affecting minorities. A growing number of citizens were unable to vote because of laws that disenfranchise people convicted of felonies who are in prison, on probation, or on parole—and even, in one quarter of the states, who have finished serving their sentences. An estimated 3.9 million U.S. citizens were disenfranchised, including over one million who had fully completed their sentences. Black Americans were particularly hard hit by disenfranchisement laws: 13 percent of black men—1.4 million—were disenfranchised. In two states, almost one in three black men was unable to vote because of a felony conviction. (See United States.)

Discrimination in criminal justice and public policy was perhaps most pervasive and deep rooted where discrimination was founded on caste, or, as in the United States, where the heritage of slavery and legislated segregation remained potent factors. This sometimes embraced hidden forms of racism that had extraordinary rights-defeating consequences. In India, the emancipation by law of members of castes once known as "untouchables"—and now known as Dalits—failed to eliminate the norms and structures of India's hidden apartheid. De facto segregation continued to be enforced by government authority ranging from the police and lower courts to state and municipal officials. There are more than 160 million Dalits in India and tens of millions of others with similar caste distinctions in other South Asian countries.

The U.N. Committee on the Elimination of Discrimination against Women raised concerns about the caste system during its February review of India's initial report under the Convention on the Elimination of All Forms of Discrimination against Women. The committee expressed concern over extreme forms of physical and sexual violence against women belonging to particular castes or ethnic or religious groups in India. The U.N. Committee on the Rights of the Child, in turn, concluded in January that the caste system was an obstacle to children's human rights. In Japan, the minority caste known as Burakumin also faced discriminatory treatment, despite the Burakumin's de jure equality. The Committee on the Elimination of Racial Discrimination ruled authoritatively in 1996 that the situation of India's scheduled castes, which were based on descent, fell within the scope of the Convention. (See India.)

The de facto segregation of the Roma minority in many nations of Eastern Europe became increasingly visible as European political institutions raised ongoing discriminatory treatment there as a major obstacle to European integration. Harassment and violent attacks against Roma were reported in Bulgaria, Croatia, the Czech Republic, Hungary, Romania, Serbia, and Slovakia, and expulsion from homes and communities was widely reported. Roma children often lacked access to schools in Croatia, and in the Czech Republic they were disproportionately shunted into classes for the mentally disabled. In Serbia, Croatia, Hungary—and in the European Union in Greece—municipal authorities forced Roma out of their homes. In Bulgaria, residents in a neighborhood of Burgas signed a petition on November 4, 1999, calling for the expulsion of Roma and the demolition of Roma houses; villagers in Mechka made Roma scapegoats for a crime committed in April, refusing to allow Roma in public places and threatening them with expulsion from the town. In Serbia, Roma in Sabac were turned away from a public swimming pool. In Slovakia, the head of the National Labor Office in November 1999 defended the office's policy of marking files of persons regarded as Roma with the letter "R" which he said reflected the "complicated social adaptability" of the group. The denial of nationality to Roma was also an issue in recent years in the Czech and Slovak Republics, but had been addressed by legislative reform.

## The Work of Human Rights Watch

The focus of Human Rights Watch in the lead up to the 2001 conference was upon four neglected areas in which the racist effect of government policies and practices violated the rights of huge sectors of humanity. They included an emphasis on issues concerning two groups which required particular protection—migrants and refugees, who in their tens of millions were increasingly vulnerable as a consequence of globalization and political upheaval; and the possibly hundreds of millions of individuals who were oppressed by reason of caste. In both cases, a particular emphasis was made on the double discrimination faced by women who were victimized both by reason of their origins and their gender. The focus was also on policies and practices regarding nationality and racial discrimination in criminal justice and public administration.

Human Rights Watch took part in regular briefings of national and international bodies regarding its findings and recommendations regarding situations of racial discrimination. In August, in response to a NGO briefing organized by the International Dalit Solidarity Network—of which Human Rights Watch is a member—the U.N. Sub-Commission on the Promotion and Protection of Human Rights passed without a vote a resolution on "discrimination on the basis of work and descent." The resolution was aimed at addressing the plight of Dalits.

Human Rights Watch delegates participated in May in the first session of the Preparatory Committee for the World Conference, in Geneva, and took part in the European conference in Strasbourg in October, the first of the five regional conferences to be held. Human Rights Watch had also participated in a series of United States regional meetings of nongovernmental organizations to plan activities around the World Conference. Human Rights Watch presented a paper to the European conference jointly with the European Council on Refugees and Exiles (ECRE) concerning the human rights of refugees and migrants, in a critique of the draft General Conclusions of the European Conference Against Racism.

Human Rights Watch explored practical measures behind which to mobilize international action to address these issues during and beyond the World Conference, including:

A call to end the deprivation of citizenship on racial and related grounds, including their intersection with gender. International agreements on statelessness should be ratified as a matter of priority; but these standards alone are inadequate to eliminate this widespread and devastating form of discrimination;

A call to develop an international program of action to make caste- or other descent-based segregation, violence, and abuse as intolerable as apartheid;

A call to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families as a measure of protection against discriminatory treatment; to apply international refugee law to refugees without discrimination; and to improve international monitoring by which to detect and remedy discriminatory treatment of migrants and refugees.

A call for states to systematically collect and report information on law enforcement and the administration of justice, including juvenile justice, as it concerns different population groups, with a view to identifying and remedying any discriminatory purpose or effect;

A call for states to monitor the administration of public affairs in such areas as education, health care, housing, and the enforcement of labor rights, in order to identify and remedy any discriminatory purpose or effect in public policy and programs.

## Relevant Human Rights Watch Reports:

*Bosnia and Herzegovina: Unfinished Business: Return of Displaced Persons and Other Human Rights Issues in Bijeljina*, 5/00

*Burma/Bangladesh: Burmese Refugees in Bangladesh: Still No Durable Solution*, 5/00

*Burundi: Neglecting Justice in Making Peace*, 4/00

*Burundi: Emptying the Hills: Regroupment Camps in Burundi*, 7/00

*China: Tibet Since 1950: Silence Prison or Exile*, 5/00

*Democratic Republic of the Congo: Eastern Congo Ravaged: Killing Civilians and Silencing Protest*, 5/00

*Federal Republic of Yugoslavia/Kosovo: Rape as a Weapon of "Ethnic Cleansing"*, 5/00

*Japan: Owed Justice: Thai Women Trafficked into Debt Bondage in Japan*, 9/00

*Kuwait: Promises Betrayed: Denial of Rights of Bidun, Women, and Freedom of Expression*, 10/00

*Malaysia/Burma: Living in Limbo: Burmese Rohingyas in Malaysia*, 9/00

*Russia/Chechnya: "No Happiness Remains": Civilian Killings, Pillage, and Rape in Alkhan-Yurt, Chechnya*, 3/00

*Russia/Chechnya: February 5: A Day of Slaughter in Novye Aldi*, 6/00

*Rwanda: The Search for Security and Human Rights Abuses*, 4/00

*Turkey: Human Rights and the European Union Accession Partnership*, 9/00

*United States: Fingers to the Bone: United States Failure to Protect Child Farmworkers*, 6/00

*United States: No Minor Matter: Children in Maryland's Jails*, 11/99

*United States: Punishment and Prejudice: Racial Disparities in the War on Drugs*, 5/00

# REFUGEES, ASYLUM SEEKERS, AND INTERNALLY DISPLACED PERSONS

## 50 Years On: What Future for International Refugee Protection?

How countries treat those who have been forced to flee persecution and human rights abuse elsewhere is a litmus test of their commitment to defending human rights and upholding humanitarian values. Yet, fifty years after its inception, the states that first established a formal refugee protection system appeared to be abandoning this principle, and the future of the international refugee regime was under serious threat.

The year 2000/2001 marked the fiftieth anniversary of the establishment of an international refugee protection regime, set up primarily by European states to respond to the needs of some 30 million people displaced during the Second World War. In December 1950, the Office of the United Nations High Commissioner for Refugees (UNHCR) was established and in July 1951 an international instrument to protect the rights of refugees—the 1951 Convention relating to the Status of Refugees (1951 Convention)—came into effect.

At the core of the international refugee regime is the fundamental right of any individual to seek and enjoy asylum from persecution in other countries. Enshrined in article 14 (1) of the 1948 Universal Declaration of Human Rights, the principle of asylum recognizes that when all other forms of human rights protection have failed, individuals must be able to leave their country freely and seek refuge elsewhere. The availability of asylum can literally be a matter of life or death for those at risk of persecution or abuse.

## A Changing Climate for Refugees

Until the 1990s most refugee movements were a consequence of Cold War politics, and refugees often had a strategic geopolitical value in the arena of superpower rivalry. Their existence was used either to discredit countries of origin, or to bolster the image of receiving countries and strengthen alliances with superpower partners, as in the case of Nicaraguan refugees in Honduras, Afghans in Pakistan, and Cambodians in Thailand.

Several factors coincided at the beginning of the 1990s to change the political environment for refugees. First, the end of the Cold War era caused refugees to lose much of their geopolitical and military value. Host countries preferred to establish good political and economic relations with their neighbors and refugees were viewed as a potential irritant. Many refugee hosting countries, affected by regional economic crises, claimed that fewer resources were available to host large, long-term refugee populations or fund lengthy and expensive asylum determination procedures. Refugees were made scapegoats for many countries' domestic problem and blamed for threatening national or regional security, draining resources, degrading the environment, and rising crime. Politicians shamelessly employed xenophobic rhetoric to win electoral support and, with the popular press, peddled images of "floods" of refugees and immigrants pouring into their countries. In the industrialized states, particularly, many governments became obsessed with erecting barriers to keep people out, rather than providing protection.

While this was occurring, the convergence of political and economic instability throughout much of the world with the increasing global accessibility of international communications and travel meant that larger numbers of people were on the move—some to escape the misery of economic privations, others to escape persecution, conflict, and gross human rights abuse. As legal channels of migration were curbed, people turned increasingly to alternative methods to reach their country of destination, including the services of opportunistic, exploitative and often dangerous human trafficking and smuggling rings that were able to circumvent routine migration controls. By the end of the 1990s, governments, particularly in industrialized states, viewed the trafficking and smuggling of persons as one of the most serious aspects of transnational organized crime and joined forces in a concerted drive to end the practice. Unfortunately, protecting the human rights of trafficked and smuggled persons was not the primary motive behind these efforts. Instead, combating human trafficking and smuggling became these governments' primary response to the asylum and migration issue. Much less attention was paid to why asylum seekers and migrants made use of such methods to reach their country of destination or to the root causes of such outflows, and even less to the need to preserve the right of all persons, regardless of their means of travel, to seek and enjoy asylum from persecution.

## **Industrialized States: The Beginning and the End of Refugee Protection?**

### **Western Europe**

Nowhere was the retraction in protection more pronounced than in the industrialized countries of Western Europe, North America, and Australia—the very countries responsible for establishing the international refugee regime. Western European countries made particularly vigorous and visible efforts to control inflows of asylum seekers and perceived abuse of the asylum system. The pursuit of a zero immigration policy throughout Western Europe since the 1970s, and the closure of almost all alternative legal channels of immigration, coupled with the global trends described above, led to a marked increase in the number of people applying for asylum in Western European countries between 1995 (157,290 applicants) and 1992 (673,947 applicants). Governments perceived that the asylum system was being abused by individuals who were leaving their countries for economic reasons rather than in pursuit of international protection. Racist violence rose in many countries, fueled by the anti-immigration rhetoric of politicians and the media, creating a hostile environment for refugees and migrants throughout the region.

### **Harmonization of European Asylum Policy**

During the 1990s, European Union (E.U.) countries sought to harmonize their immigration and asylum policies. This process started in the early 1990s with various non-binding resolutions adopted by member states of the then European Community on different aspects of asylum policy. Two important treaties, the Schengen Agreement on common border controls, and the Dublin Convention establishing arrangements for identifying state responsibility for assessing asylum applications came into effect in 1997 and 1994, respectively.

The 1997 Treaty of Amsterdam, effective from May 1999, further advanced harmonization, as states determined common criteria for dealing with asylum applicants, reception of asylum seekers, family reunification, and deportation policies. A disturbing protocol to the treaty restricted the right of E.U. citizens to seek asylum in another E.U. state.

In an effort to proceed from the agenda established in the Amsterdam Treaty, in October 1999 a "Special Meeting of the European Council on the Establishment of an Area of Freedom, Security and Justice" was held in Tampere, Finland. The Presidency Conclusions of the Tampere European Council were generally viewed as a positive development by advocacy groups as they included a reaffirmation of the right to seek asylum, and a commitment to work towards the establishment of a common European asylum system based on the full and inclusive application of the 1951 Convention and to harmonize European asylum policies with "guarantees to those who seek protection in or access to the European Union." Less positive, however, was the continuing emphasis on common policies to contain and control asylum and migration movements.

In December 1999, the E.U. High Level Working Group on Asylum and Migration was set up to produce action plans on the root causes of migration in six major refugee and migrant producing countries. The action plans focused on integrated strategies to control migration outflows both from the regions of origin and into E.U. countries.

In July 2000, the French government, then holding the E.U. presidency, issued an "action plan to improve the control of immigration." Similar to other such E.U. initiatives, the French proposed an information exchange, early warning, and response system to coordinate E.U. member states' response to "waves" of immigration, characterized as a "fire-brigade policing" approach. In addition, they proposed establishing a network of E.U. immigration liaison officers in principal migration source countries to help control migration flows.

### **Access to Asylum Barred**

Central to the right to seek asylum is the principle of freedom of movement and the right of an individual to leave any country, including their own. Yet European asylum policy systematically obstructed these rights during the 1990s. Most explicit was the introduction of visa requirements for nationals of common refugee producing countries, including those with well-documented human rights problems, such as China, Burma, Sudan, the Democratic Republic of Congo, Sierra Leone, Turkmenistan, and Rwanda. Beginning with a September 1995 Regulation, the E.U. maintained a common list of countries whose nationals were required to obtain visas before entering the territory of any E.U. state. The October 1999 Presidency Conclusions of the Tampere European Council, and a draft 2000 European Commission (E.C.) Regulation on a common visa regime, also contributed to a standardization of visa imposition across the European Union. As no would-be refugee was likely to be able to obtain a visa to come to a Western European country, this effectively forced asylum seekers either to travel on false or forged documents, or with no documentation.

At the same time, E.U. countries introduced legislation that penalized asylum seekers who traveled on forged or false documents and the companies that transported them. Carriers' liability legislation, resulting in heavy fines for airlines and shipping companies that transported undocumented or incorrectly documented migrants, became a requirement under the Schengen Agreement on border controls. Private travel companies were effectively made responsible for front-line immigration controls and they began to take proactive measures to avoid the fines, including rigorous pre-departure immigration checks by airline staff.

The E.U. adopted a new policy on border control in October 1996, establishing "airline liaison officers." By July 2000, the U.K., Danish, German, and Dutch governments were all using immigration officers in their embassies and consulates in main refugee-generating countries to assist airline staff in checking the authenticity of travel documents. In a July 2000 report, UNHCR criticized efforts to intercept potential asylum seekers at the point of departure without a substantive review of their asylum claim as an obstruction of the right to seek asylum which could amount to constructive refoulement if individuals were thereby prevented from leaving countries where their lives and freedom were threatened.

Those asylum seekers who did manage to evade pre-departure border controls and reach their country of destination faced punitive measures on arrival. Increasingly, asylum seekers who arrived in E.U. countries with false, forged, or no documents were immediately detained—ostensibly for short periods to allow the authorities to verify their identity, but in practice often for weeks or months. Illegal entry also impacted negatively on refugee status determination procedures. Asylum seekers who entered illegally were often given fast-track assessments, or considered as "manifestly unfounded" cases, and their means of entry contributed to negative assessments of credibility.

Article 31 of the 1951 Convention explicitly exempted refugees who come directly from the territory where they fear persecution from punishment for illegal entry, provided that they present themselves without delay to the authorities and show good cause for their illegal entry or presence. Long before the virtual *cordon sanitaire* was created around Western Europe, the drafters of the 1951 Convention recognized that many refugees must leave their countries under extreme circumstances and have little opportunity to obtain legal travel documents or permission to enter their country of asylum.

## Containment in the Region

E.U. and other states also sought increasingly to contain refugee movements within their region of origin. This began in January 1999 with the E.U.'s "Action Plan on the Influx of Migrants from Iraq and the Neighboring Region," a panicked response to fears of a possible "mass influx" of Turkish and Iraqi Kurds into Western Europe. The proposal set the tone for action plans on Somalia, Afghanistan, Morocco, Iraq, and Sri Lanka prepared by the E.U. High Level Working Group on Asylum and Migration. These dealt cursorily with preventive measures such as conflict resolution, development, and poverty reduction in refugees' countries of origin, but focused primarily on exporting migration controls, such as airport liaison officers, anti-immigration information campaigns, and readmission arrangements to the source countries. While welcoming the comprehensive approach to migration that addressed root causes as well as migration policies, advocacy groups criticized the action plans for failing effectively to address human rights violations in countries of origin and the need for refugee protection for those who fled such violations. Like the first Iraq action plan, the overriding aim of the High Level Working Group action plans appeared to be containing migration in the region and preventing flows of asylum seekers and migrants to E.U. countries.

## 1951 Refugee Convention Under Threat

Western European governments sought to dilute their obligations under the 1951 Convention and its 1967 Protocol, despite reaffirming the centrality of these treaties in both the 1997 Amsterdam Treaty and the 1999 Presidency Conclusions of the Tampere European Council. In particular, they applied the refugee definition in an overly restrictive way, not intended by the drafters of the Convention, thereby excluding many people at risk of persecution from international refugee protection. Those excluded included people who fled persecution by non-state agents, such as the Taliban in Afghanistan, or situations of generalized violence and civil conflict, as in Colombia. Governments also insisted that asylum seekers demonstrate actual persecution, not just a credible fear of future persecution. Advocacy groups, such as the non-governmental European Council on Refugees and Exiles, argued that these narrow interpretations were inconsistent with international refugee law.

E.U. states also introduced various alternative, or complementary, protection regimes as substitutes for 1951 Convention protection. Under most of these regimes, states granted asylum seekers temporary leave to remain on humanitarian grounds, but did not extend to them the full rights and protection of 1951 Convention refugee status. These alternative regimes were often highly discretionary with no consistency between E.U. states regarding the length of stay allowed or the rights afforded to the individual. Moreover, temporary protection—which was initially intended to deal with mass influx emergencies where states were unable to conduct individual refugee status determination—was increasingly applied as a subsidiary form of refugee protection.

Taken together, the overly restrictive application of the 1951 Convention and the increasing use of alternative, subsidiary forms of protection resulted in states narrowing their obligations under the 1951 Convention, the denial of meaningful protection for those in need, and serious erosion of the international refugee protection regime. Added to this, between 1999 and 2000 various E.U. governments proposed drastic revisions to the 1951 Convention in order to make it more "relevant" to contemporary migration challenges. The Austrian government, while holding the E.U. presidency, first proposed this in a July 1999 strategy paper that depicted the 1951 Convention as a product of the Cold War period that had never been intended to deal with contemporary large-scale refugee movements caused by civil war, inter-ethnic violence, and persecution by non-state agents. The Austrians proposed a comprehensive, integrated approach to migration that addressed trade and development, as well as migration policy. This proposal, particularly its reference to the need to amend the 1951 Convention, was considered too radical by most E.U. states at the time.

British Home Secretary Jack Straw reopened the issue in June 2000, at a conference organized by the Portuguese E.U. presidency on a common European asylum system, launching a vigorous attack on the relevance and efficacy of the 1951 Convention. He claimed that the European asylum system was massively abused by economic migrants who had no credible asylum claim and who were brought to Europe by highly organized criminal trafficking or smuggling syndicates. He characterized the 1951 Convention as inadequate and never intended to deal with contemporary "massive intercontinental migratory movement."

He proposed a new approach to refugee protection whereby E.U. states would designate those countries and ethnic groups most at risk of persecution, agree on quotas of asylum seekers from these countries, and determine asylum claims within regions of origin. He also proposed a list of "safe countries" which would include "all E.U. states, the U.S., Canada, Australia and many others" (our emphasis) from which applications for asylum would not be considered. A third group would include "the accession states and others" where there would be a general presumption of safety and asylum claims would be considered under an accelerated process.

The British proposal was a worrying return to the notion of "safe countries of origin" and highlighted yet again the lack of commitment amongst European governments to upholding the right of all individuals to leave their countries and seek asylum.

## Australia: Xenophobia and Threats to Asylum

Australia also increasingly pursued a punitive asylum policy and showed little regard for either abiding or being judged by international human rights standards. Despite only receiving a tiny proportion of the world's refugees—9,450 asylum applicants in 1999, compared with 95,110 applicants in Germany—Australia reacted with disproportionate zeal to a perceived threat of being overwhelmed by "floods" of foreigners brought in through illegal people trafficking and smuggling.



Australia pursued a draconian policy of mandatory detention for all asylum seekers and other non-citizens who arrived through "illegal" channels with forged, illegal, or no documents, and who declared themselves as asylum seekers on arrival. In July 2000, the U.N. Human Rights Committee criticized Australia for its mandatory detention policies and for not informing, nor allowing, NGOs access to inform detainees of their right to seek legal advice. Asylum seekers were kept in remote detention centers thousands of miles away from major population centers.

In October 1999, Australia made amendments to its 1958 Migration Act that, according to UNHCR, seriously undermined refugee protection. Refugees arriving in an unauthorized manner were refused family reunification rights for a minimum of thirty months after they received refugee status and were not provided with travel documents in violation of Article 31 of the 1951 Convention; Article 28 of the 1951 Convention, which provides for travel documents for refugees that permit re-entry; and fundamental principles of family unity upheld in the 1951 Convention, in UNHCR Executive Committee Conclusions, and in other international human rights instruments.

On August 29, 2000, the Australian government stated that it would restrict future cooperation with U.N. bodies and in particular reject treaty bodies' requests to delay the deportation of unsuccessful asylum seekers. This followed two high profile interventions by the U.N. Committee against Torture seeking a delay in the return of asylum seekers until it had considered their claims that they would face torture in the countries they had fled. The government also announced that it would undertake a comprehensive review of the interpretation and implementation of the 1951 Convention and consider the need for remedial legislation.

## The Global Picture

The anti-refugee policies and xenophobic attitudes of industrialized states had significant global export value. Traditionally generous hosting countries in Africa, Asia, and the Middle East referred to the example set in the West when defending their own increasingly restrictive policies and practices. Nevertheless, the world's poorer nations continued to host the vast majority of the world's refugees and in times of crisis endeavored to keep their doors open to those fleeing civil conflict and gross human rights abuse.

## Africa

Traditionally one of the most generous refugee hosting regions in the world, recent years saw a significant shift in African refugee policies. The plethora of violent internal and regional conflicts that plagued so many African countries over the past decade meant that at the turn of the century few countries were immune from refugee crises. Yet the presence of militia groups within refugee settlements and the fear that mass refugee movements would result in instability and conflicts spilling over national borders made host countries increasingly wary and contributed to more restrictive refugee policies and, in some cases, lack of safe asylum. The Great Lakes refugee crisis—sparked by the Rwandan genocide in 1994 and subsequent and continuing mass movements of refugees across as many as nine countries, and the conspicuous and destabilizing presence of military and political elements in refugee camps—heralded the end of the legacy of generous asylum and open-door policies for refugees in Central and East Africa.

## West Africa

By mid-2000, a similar scenario was unfolding in West Africa, where a deteriorating security situation threatened the safety of hundreds of thousands of refugees. Host to the second largest refugee population in Africa, Guinea earned a reputation as a generous country of refuge. By September 2000, there were nearly half a million refugees—330,00 Sierra Leoneans and 126,000 Liberians—inside Guinea.

This pattern of generous hospitality was seriously threatened by the deteriorating security situation in the region in 2000. A rapid influx of refugees into Guinea from Sierra Leone from May onwards and fears of infiltration by Sierra Leonean rebels, prompted the Guinean government to close its borders with Sierra Leone in early August, although "vulnerable" groups were subsequently allowed entry following interventions by UNHCR. Tensions rose between Guinea, Sierra Leone, and Liberia from late July onwards, as each country accused the other of supporting rebel activity. A series of cross-border attacks from both Liberia and Sierra Leone between August and October claimed the lives of hundreds of Guinean civilians and injured many others. Most of these attacks occurred close to the Sierra Leonean and Liberian borders in exactly the same areas where the refugee camps were located.

The attacks resulted in serious reprisals against Sierra Leonean and Liberian refugees in Guinea, both in the border camps and in the cities. On September 9, Guinean President Lansana Conté made an inflammatory broadcast in which he blamed refugees for harboring rebels and urged the Guinean population to round-up all foreigners. For several days, armed groups of civilian militias, police, and soldiers broke into the homes of Sierra Leonean and Liberian refugees in Conakry, beat, raped, and arrested them, and looted their belongings. Over five thousand people were detained and hundreds more sought refuge in the Sierra Leonean and Liberian embassies. Hundreds of refugees fled Guinea, many of them by boat back to Sierra Leone. Despite pleas for calm and assurances by government officials that Guinea would remain a safe country of asylum for refugees, President Conté made further anti-refugee statements in a speech marking the anniversary of Guinea's independence on October 2.

The situation for refugees in camps along the Liberian and Sierra Leonean borders was also critical. Several camps in the Forécariah region on the border with Sierra Leone were attacked by Sierra Leonean rebels and by Guinean civilians, forcing thousands of refugees to flee back into rebel-controlled areas of Sierra Leone. At the same time, Guinea's borders with Sierra Leone and Liberia remained closed to refugees fleeing conflict and human rights violations, and refugees in Guinea were faced with the unenviable choice of remaining unprotected in Guinea, or returning to Liberia and Sierra Leone.

## Guinea in Perspective

### Security versus Asylum: The Case of Thailand

The situation in Guinea exemplified two worrying trends. The first was governments' readiness to indiscriminately blame and take actions against foreigners and refugees when faced with national security threats. In Thailand, for example, the government reacted harshly when Burmese gunmen seized the Burmese embassy in Bangkok in October 1999 and took five hundred people hostage in the Ratchaburi provincial hospital in January 2000. Following these events, the authorities announced that all refugees should move to camps along the border and Maneeloy Student Center, a camp for dissident Burmese refugees, would be closed. Thai authorities deported five Burmese, four of whom had applied for refugee status with UNHCR, to the border town of Myawaddy where they were arrested by the Burmese authorities. Provincial admission boards were set up to determine asylum claims, and refugee protection was restricted only to those fleeing fighting in Burma. All other Burmese were declared to be illegal immigrants and risked forcible repatriation to Burma. In June, the Thai authorities expelled 116 refugees from Don Yang refugee camp in Kanchanaburi Province, and in August, Thai officials returned around one hundred ethnic minority Karen from Nu Pho Camp in Rak Province.

## Disparity in International Response: The Kosovo Factor

The second trend highlighted by the Guinea crisis was the gross disparity in the international response to refugee crises. Despite the similarities with the situation in Macedonia during the Kosovo emergency in 1999, the difference in the international response to the two situations was striking. Unlike Macedonia, where the international community poured in resources and reacted quickly to evacuate refugees and thus relieve the pressure on Macedonia and help to keep the borders open, the international response to the crisis in Guinea was negligible. The crisis hardly touched the world media headlines, international funding was seriously lacking, and there was certainly no airlifting of refugees to safety in Western countries.

### **Attacks on Humanitarian Workers Threaten Refugee Protection**

A major threat to refugee protection throughout 2000 was the alarming spate of attacks on humanitarian workers. The brutal murders of three UNHCR staff members in Atambua, West Timor, on September 6, and the murder of the head of the UNHCR office and abduction of another staff member in Macenta, Guinea, on September 17, highlighted the extreme dangers for humanitarian workers worldwide. The murders provoked a global protest and prompted UNHCR to withdraw all staff from West Timor, as well as from the border areas of Guinea. At the same time, they left refugees in these areas almost completely unprotected and unassisted with no outside witnesses to abuses.

#### **West Timor**

Despite the return of over 170,000 refugees to East Timor since mass forced expulsions in 1999, as many as 125,000 refugees remained in camps in West Timor where many of them had been held hostage by the same militia leaders responsible for the violence that had erupted in East Timor following the pro-independence referendum vote in September 1999. Human Rights Watch charged continuously throughout 1999 and 2000 that the Indonesian authorities and army had failed to disarm the militia or prevent attacks on refugees in the camps and on humanitarian workers assisting them. In September 2000, UNHCR reported a total of 120 incidents of attacks, harassment, and intimidation of humanitarian workers and refugees since it established a presence in West Timor a year earlier. In August 2000, UNHCR was forced to close down its operations in the camps when three of its staff members were attacked and seriously injured while delivering assistance to Naen camp, outside Kefamenaun town. The murder of the three staff in Atambua occurred within a week of UNHCR resuming its operations.

Following the withdrawal of nearly all international staff from West Timor, the camps were largely cut off from any international assistance or protection and there was little information about conditions inside. Most critically, Human Rights Watch and local NGOs expressed serious concerns that the registration of the refugees by the Indonesian authorities without minimal safeguards to ensure freedom of choice and in the absence of international monitoring could result in the forcible relocation of refugees to other parts of Indonesia against their will. The U.N., on the other hand, insisted that they would not return staff to West Timor until credible security guarantees were in place. These included the arrest and trial of the perpetrators of the UNHCR murders and other attacks on humanitarian workers; the complete disarming and disbanding of the militias; and the restoration of law, order and security in the camps in West Timor. More than a month after the killings, although the Indonesian authorities had arrested six suspects, there was no evidence that the militias had been brought under control or that law and order had been restored to the camps.

The situations in Guinea and West Timor posed a grave dilemma for the international community. On the one hand, it was clearly unacceptable for humanitarian workers to be the targets of deliberate and vicious attacks. On the other, the withdrawal of all international staff considerably increased the vulnerability of displaced people and their exposure to attacks, forced return, and other abuses. Until governments are able to ensure the security of humanitarian workers, the protection of some of the world's most vulnerable populations will be seriously at risk.

### **Protecting Refugee Women and Children**

Throughout the year, refugee women were victims of sexual and domestic violence. In Guinea, for example, women were targeted in the retaliatory attacks on refugees in the wake of President Conte's inflammatory anti-refugee declarations. Human Rights Watch reported on the rape of Sierra Leonean and Liberian refugee women by groups of armed civilian militia, police, and soldiers in the September attacks in Conakry. Women, some of them as young as fourteen, were raped—in many cases gang raped—sexually assaulted, and humiliated, often in the presence of family members. Many of the women had fled Sierra Leone to escape gross human rights violations, including rape and other sexual assault. Human Rights Watch charged that UNHCR and the international community were slow to publicly condemn these brutal attacks against refugee women and called on the Guinean government and UNHCR to immediately investigate the incidents of rape and bring the perpetrators to justice. In 2000, Human Rights Watch issued a report on the high levels of sexual and domestic violence against Burundian refugee women in camps in Tanzania. The situation in Guinea and Tanzania highlighted the persistent dangers for refugee women and lack of effective protection against or rapid response to sexual violence in emergency situations and to domestic violence in refugee settlements.

### **Protracted Refugee Crises: The Right to Return**

Throughout the world, millions of refugees remained in exile unable to return to their homes either because of continuing political instability and insecurity, or because of deliberate obstructions by states unwilling to take them back. In South Asia, despite high level visits by U.N. High Commissioner for Refugees Sadako Ogata to Nepal and Bhutan in April and May 2000, and U.S. Assistant Secretary of State for Refugees, Julia Taft, to Nepal in October 1999, and to Bhutan in January 2000, more than 100,000 Bhutanese refugees were denied their legitimate right to return to Bhutan and remained in camps in southeast Nepal. The refugees, many of whom were arbitrarily stripped of their Bhutanese nationality despite having lived in Bhutan for several generations, were expelled from the country in the early 1990s during a government crack-down on Bhutanese of ethnic-Nepali origin living in southern Bhutan. Since then, the Bhutanese government has systematically blocked the refugees' return, claiming that the majority are not Bhutanese citizens, and has shunned international offers to assist in resolving the situation.

Elsewhere, in Bosnia and Herzegovina, over one million people remained displaced, the majority of them internally, and unable to return to minority areas due to bureaucratic obstructions and lack of available housing. There was, however, some progress in 2000, and by June UNHCR had registered 19,751 returns, many of them spontaneous, as compared to 7,709 during the comparable period in 1999.

Palestinian refugees remained the largest and most protracted refugee situation in the world. In 1997, UNHCR estimated that there were 6.4 million Palestinian refugees worldwide, about half of whom were believed to be stateless. In March 2000, 3.7 million Palestinian refugees were registered with the United Nations Relief and Works Agency (UNRWA) in Jordan, Syria, Lebanon, and the Israeli-occupied West Bank and Gaza. The Israeli government has made the return of Palestinian refugees both legally and practically impossible since their exodus following the 1948-49 Arab-Israeli war, and the 1967 war, thus denying Palestinian refugees their legitimate right to return to their own country. Although the resolution of the refugee crisis was a key issue on the agenda of the final status negotiations between Israel and the Palestinian Liberation Organization (PLO), little progress was made in 2000. Human Rights Watch supported a rights-based approach to the resolution of the refugee problem that upheld the right of Palestinian refugees to return to their own country, as well as opportunities for local integration in

host countries or third country resettlement. Individuals should be able to choose freely and in an informed manner their preferred option. In the event that individuals are unable to return to their original homes or place of residence, they should be able to return to the vicinity and compensation should be provided according to international standards.

## **The Challenge of the New Millennium: Protecting the Internally Displaced**

### **Debate over Institutional Responsibility**

The flight of internally displaced persons dominated humanitarian debate throughout 2000. The year began with an impassioned statement by U.S. Ambassador to the U.N. Richard Holbrooke during a Security Council session on humanitarian assistance to displaced persons in Africa in January. Having recently returned from a trip to Angola, Holbrooke expressed dismay at the lack of an effective international response to the problem of internal displacement. He challenged the very distinction between a refugee and an internally displaced person (IDP) and made a controversial call for a single agency to take responsibility for providing protection to IDPs, citing UNHCR as the most appropriate choice.

Holbrooke's statements triggered a frenzied response within the U.N. system. While there was a general consensus that the existing system of responding to internal displacement crises was inadequate, there was widespread opposition to giving UNHCR lead agency responsibility for IDPs. To a certain extent, the debate turned into an ugly turf battle between rival U.N. agencies unwilling to yield more power and responsibility to UNHCR. But there were also more substantive reasons for the reservations to Holbrooke's proposals.

Refugee experts pointed out the dangers of collapsing the terms refugee and internally displaced person in legal and protection terms. Refugees, by definition, are unable, or unwilling, to avail themselves of the protection of their own country and have crossed an international border in search of protection. Governments have an obligation under international law to provide refugees with protection and UNHCR's mandate is to ensure that governments abide by these obligations. Internally displaced persons, on the other hand, remain, if only technically, under the protection of their own governments and do not automatically trigger an international response. Refugee advocates feared that UNHCR's involvement in providing in-country protection to internally displaced persons could provide an excuse for asylum countries to return refugees to their countries of origin. Indeed, Western European and other industrialized states were already denying asylum to refugees for whom they believed "internal flight alternatives" or "in-country" protection existed in their country of origin.

In a July 2000 address in New York, U.N. High Commissioner for Refugees Sadako Ogata also expressed reservations about eroding the distinction between refugees and IDPs, because of the specific nature of protection required by each group. Ogata also criticized the international community for focusing too much on the question of the institutional response to internal displacement, and too little on the underlying political, economic and social root causes.

Despite Holbrooke's resolute support for a lead-agency model, the U.N. sided with a collaborative approach. A senior inter-agency network was established to review the U.N.'s response to situations of internal displacement, under the auspices of the Office for the Coordination of Humanitarian Affairs (OCHA), and a special focal point on internal displacement was created in the U.N. Secretariat.

### **Human Rights Watch: Focus on Protecting Internally Displaced Persons**

While Human Rights Watch did not take a position on specific inter-agency responsibility for internally displaced persons, the organization continued to advocate for more consistent and effective protection for IDPs and for more active adherence by governments with the Guiding Principles on Internal Displacement and other human rights and humanitarian standards pertaining to the internally displaced. Human Rights Watch monitored and reported on a wide range of situations of internal displacement worldwide. These included longstanding situations of internal displacement, such as in Sri Lanka, Turkey and Colombia, as well as new displacement crises.

The escalation of the border conflict between Ethiopia and Eritrea during May 2000 provoked massive displacements of both Eritreans and Ethiopians. Nearly 1.5 million Eritreans were uprooted by the conflict, including 90,000 who sought refuge in Sudan—more than a quarter of whom had returned to Eritrea by October 2000. In Angola, a new wave of internal displacement was sparked by the intense fighting following the governmental campaign launched in October 1999 to flush out UNITA from their traditional strongholds in the central highlands. More than 200,000 persons were displaced during the first half of 2000, and at the end of June, the total number of IDPs was estimated at 2.5 million. In Colombia, some 134,000 persons were displaced during the first part of 2000, most by paramilitaries as well as guerrillas and the armed forces, adding to the estimated total of 1.8 million IDPs and 80,000–105,000 refugees from Colombia in Venezuela, Ecuador, and Panama at the end of 1999.

The eastern part of the Democratic Republic of Congo (DRC) experienced a rapid deterioration in the humanitarian situation from the start of the year, with fighting in the South and North Kivu areas resulting in major population displacements. By July 2000, a total of 1.6 million people were displaced in the DRC. In the Moluccan islands region of Indonesia, clashes between members of Muslim and Christian communities since early 1999 left three thousand or more people dead and displaced hundreds of thousands. In Russia, hundreds of thousands of Chechens remained displaced in the neighboring republic of Ingushetia following the conflict in Chechnya in 1999.

Human Rights Watch identified a wide variety of serious protection problems facing internally displaced persons worldwide.

### **Access to Safety Denied**

Russian authorities continued to deny displaced Chechens access to safety in Ingushetia and elsewhere in the Russian Federation. On a number of occasions between October and December 1999, Russian forces fired on convoys of fleeing Chechen civilians resulting in scores of deaths and injuries. In October 1999, for example, at least eleven people were killed when a Russian tank fired on a bus carrying displaced persons near the Russian-controlled town of Chervlyonnaya. On October 29, a large civilian convoy, including Red Cross vehicles, was attacked outside Shami-Yurt. Serious abuses, including widespread extortion, theft, arbitrary arrests, beatings, and in some cases rape, were common at the Russian check points. Young males were particularly targeted, discouraging many from trying to leave. Russian officials also repeatedly closed the borders between Chechnya and Ingushetia, Dagestan, Stavropol, and North Ossetia. In November 1999, for example, 40,000 civilians were stranded for days in heavy fighting when the Russian authorities closed the Ingush-Chechen border. In January 2000, the authorities announced that males between the ages of ten and sixty would not be allowed to leave Chechnya, although this policy was later retracted under international pressure.

In Sri Lanka, between May and July 2000, both the armed separatist Liberation Tigers of Tamil Eelam (LTTE) and the government imposed severe restrictions on IDPs trying to move out of areas under their control. This often meant that civilians were trapped in conflict zones and unable to flee.

### **Forced Round-ups and Relocation Programs**

In other situations, government or rebel forces deliberately rounded-up civilians and held them in camp-like settlements. In Burundi, for example, 350,000 people had been forced into "regroupment" camps around the capital, Bujumbura, by January 2000 as part of the government's counter-insurgency program.

Soldiers used force and threats to move civilians into the camps, killing and injuring dozens. Despite concerted pressure from the international community, including Nelson Mandela, it was not until June that the authorities began to systematically disband the camps. By October most of the camps around Bujumbura were closed, but officials continued using "temporary" regroupment to make it easier for soldiers to "cleanse" areas of rebels.

### **Restrictions on Freedom of Movement**

Human Rights Watch reported on numerous situations where freedom of movement was obstructed and the movement of displaced persons manipulated by both government and rebel forces. In Aceh, Indonesian soldiers reportedly emptied IDP camps by force and prevented others from leaving their homes. Acehese rebels, on the other hand, reportedly encouraged displacement, preventing displaced persons from staying with relatives and forcing them into large, more visible centralized camps. In Congo Brazzaville, rebel militia groups held displaced persons hostage in camps for much of 1999 and prevented them from returning to their homes. Government authorities also restricted the return of IDPs. In May 1999, the government facilitated a mass return of IDPs from their hiding places in the forests of southern Congo back to the capital with promises to guarantee their safety. Instead, soldiers at roadblocks raped and assaulted hundreds of women and girls, and extrajudicially executed scores of young men who were randomly accused of being rebels.

### **Lack of Access to Humanitarian Assistance**

A serious problem facing internally displaced persons everywhere was lack of access to humanitarian assistance. Infant and maternal mortality and morbidity rates amongst IDPs were, as a result, some of the highest in the world. There were three main reasons for lack of humanitarian access:

First, in places such as Chechnya, the Democratic Republic of Congo (DRC), Burundi, Congo Brazzaville, Sri Lanka, Indonesia's Moluccan islands, and Angola, the extremely dangerous security conditions, lack of security guarantees, landmines, and inaccessibility of camps prevented humanitarian workers from having access to thousands of internally displaced persons. In the DRC, for example, the U.N. estimated that only one million of the 1.6 million IDPs had access to any humanitarian assistance due to the precarious security conditions in South Kivu. As a result, infant mortality rates amongst the displaced were the highest in the region and the maternal mortality rate was the highest in the world:

Second, were deliberate obstructions to the delivery of humanitarian assistance by government authorities or rebel forces, as in Burundi, Congo Brazzaville, the DRC, Sri Lanka, Aceh, Indonesia's Moluccan islands, and Chechnya. In Aceh, for example, Indonesian authorities in some cases tried to obstruct local NGOs and student groups in their efforts to assist IDPs through physical attacks, detention, torture, and harsh treatment of volunteers, destruction of volunteer posts, and seizure of medical supplies. In Burundi, soldiers occasionally blocked international agencies trying to bring assistance to the camps, and even when access was resumed many of the camps were inaccessible to relief agencies:

Third, humanitarian assistance was limited by inadequate international response and lack of coordination. In Angola, for example, a U.N. interagency mission in March 2000 concluded that there were serious gaps in the planning, delivery, and monitoring of humanitarian assistance. And in October 1999, the relief agency, Médecins Sans Frontières (Doctors Without Borders), decried the "unbearable silence of the international community" toward the "forgotten war" in Congo Brazzaville.

### **Forcible Return of Displaced Persons**

Finally, Human Rights Watch reported on the forcible return of displaced persons to areas where their safety could not be guaranteed, in blatant violation of international humanitarian law and the Guiding Principles on Internal Displacement. In December 1999, for example, the Russian military compiled a list of twenty-four towns and village under Russian control designated as "safe areas" for IDP return. In a letter to the then prime minister Vladimir Putin, Human Rights Watch declared that while the armed conflict continued in Chechnya it was not safe for displaced persons to return. Documented cases of summary executions of civilians by Russian soldiers, as well as arbitrary arrests, looting, rape, beatings, and extortion in Russian-controlled villages were further evidence of this. Despite these protests, the Russian authorities took measures to forcibly return displaced persons. These included physically returning railway carriages housing displaced persons in Ingushetia to war zones in Chechnya, refusing to register displaced persons for assistance, and denial of food and shelter.

## **The Way Forward**

As the world marked the fiftieth anniversary of an international regime to protect the rights of refugees, the largest group of forcibly displaced persons worldwide—the internally displaced—remained largely excluded from any consistent form of international protection and their rights were persistently violated. Protecting the rights of internally displaced persons, while at the same time preserving and strengthening the right to asylum for refugees, were the two critical challenges facing the international community at the end of 2000.

### **Relevant Human Rights Watch Reports:**

Bosnia and Herzegovina: *Unfinished Business: The Return of Refugees and Displaced Persons to Bijeljina*, 5/00  
Burmese Refugees in Bangladesh: *Still No Durable Solution*, 5/00  
Burundi: *Emptying the Hills: Regroupment in Burundi*, 6/00  
Chechnya: *"Welcome to Hell,"* 10/00  
Civilian Deaths in the NATO Air Campaign, 2/00  
Eastern Congo Ravaged: *Killing Civilians and Silencing Protest*, 5/00  
Federal Republic of Yugoslavia and Kosovo: *Rape as a Weapon of "Ethnic Cleansing,"* 3/00  
Japan: *Owed Justice: Thai Women Trafficked into Debt Bondage in Japan*, 9/00  
Kuwait: *Promises Betrayed: Denial of Rights of Bidun, Women, and Freedom of Expression*, 10/00  
Malaysia: *Living in Limbo: Burmese Rohingyas in Malaysia*, 9/00  
Rwanda: *The Search for Security and Human Rights Abuses*, 4/00  
Tanzania: *Seeking Protection: Addressing Sexual and Domestic Violence in Tanzania's Refugee Camps*, 9/00  
Turkey: *Human Rights and the European Union Accession Partnership*, 9/00  
West Timor: *Forced Expulsions to West Timor and the Refugee Crisis*, 12/99

