UNITED STATES

Human Rights Developments

During the year, human rights violations relating to immigration practices, police abuse, custodial treatment and conditions, the death penalty, and issues of discrimination continued in the United States. The effects of new laws restricting the rights of asylum seekers arriving in the country, prisoners seeking to challenge unconstitutional treatment or conditions, and defendants in capital cases became apparent. Meanwhile, a torture allegation made by a Haitian immigrant against New York City police officers in August alarmed city residents, with even the most stalwart supporters of the police acknowledging abuse and accountability problems within the force. And, for the first time since four Vietnam anti-war protesters were shot and killed at Kent State University in 1970, a U.S. citizen was shot dead on U.S. soil by on-duty military personnel—this time by Marines on anti-drug patrol near the U.S.-Mexico border.

Immigration Policy and Practice

Implementation of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 began in April, causing widespread confusion. The law's new expedited removal provisions hindered the ability of asylum seekers to exercise their internationally protected right to seek and enjoy asylum and undermined the prohibition on the expulsion or return (*refoulement*) of refugees as set out in international human rights treaties and U.S. law. Individuals arriving at a port of entry during 1997 with fraudulent documents, or none, were questioned by immigration inspectors to ascertain whether they should be allowed to make cases of credible fear of return to their countries. The asylum seeker was not allowed access to legal counsel at the time of this determination, which took place on the spot after typically long international flights and, in some cases, immediately following traumatic experiences. Despite requests from several nongovernmental organizations and the United Nations High Commissioner for Refugees, the U.S. Immigration and Naturalization Service (INS) did not allow access or independent monitoring during this critical decision-making process.

If asylum seekers were allowed to make a credible-fear claim, they were required to prepare their cases in a very short time (sometimes days) while in detention, without essential documentation or guarantees of legal advice. During the credible-fear interview, asylum seekers have a right to counsel, but in many instances these representatives were not allowed to participate. Human Rights Watch learned of individuals with credible claims who had been returned to their countries of origin following these determinations. If an individual was successful in the credible-fear hearing, he or she would usually be detained for an undetermined time pending an asylum hearing.

During the year, Congress considered legislation to focus on the plight of religiously persecuted groups around the world, and the bills included provisions to allow those persecuted on religious grounds to bypass the new expedited removal proceedings, thus apparently acknowledging the lack of appropriate protections for those seeking asylum under the new law. Critics of the legislation also opposed its preferential treatment for one group of asylum seekers over all others.

The 1996 immigration law also promoted the use of detention of immigrants and refugees as a central aspect of U.S. policy. The bill provided for the detention of most individuals arriving at ports of entry without proper documentation, and created new categories of immigrants with criminal backgrounds whose detention was mandatory. The increased numbers of detainees strained existing detention facilities, leading the INS to house almost half of all its detainees in local jails.

The increasing reliance on privately run contract facilities or local jails to hold individuals in INS custody raised serious questions about INS oversight and standards required of the facilities. Human Rights Watch visited jails holding INS detainees, and among their complaints were poor physical conditions, inadequate access to legal assistance, inadequate information from the INS regarding their status, mixing with criminal populations in the

jails, poor health care, physical mistreatment, and isolation from families as they were often detained in remote areas thousands of miles from where they were originally apprehended.

Treatment of minors in INS custody raised human rights concerns, as the rights of hundreds of detained children in California and Arizona were violated. Human Rights Watch found that INS treatment of minor children detained with no responsible adult present ignored both international law and INS regulations and policy by its failure to inform detained children of their legal rights, interference with children's attempts to obtain legal representation, and long-term detention of children in high-security facilities with prison-like conditions.

Human rights violations, such as unjustified shootings, sexual assaults, and beatings, continued to be committed by the U.S. Border Patrol and other immigration officials along the U.S.-Mexico border. A Citizens' Advisory Panel was appointed by the Justice Department to recommend long-overdue reforms and monitor implementation, yet after more than two years of existence, the panel failed to submit a report to the U.S. attorney general with its recommendations, although in October the INS claimed that a report would be issued shortly. It was not clear whether the panel, or a similar yet differently staffed advisory committee, would continue to meet to hold more hearings or make recommendations for reform on this issue. The panel's inability to complete its task confirmed the view of many human rights groups that external, independent citizen review of complaints against INS personnel was the only way to gauge the extent of abusive conduct and to ensure accountability when violations occur.

In the meantime, the number of Border Patrol agents increased dramatically during 1997, from approximately 3,400 agents in fiscal year 1993 to a force of 6,000; the force was projected to grow to 10,000 agents by the year 2001. This was cause for some concern, as hiring surges in the past had resulted in the rushed recruitment of individuals unsuitable for any law enforcement work, and in long delays in checking recruits' qualifications and background; under such circumstances, ill-qualified or violent recruits remain undiscovered until beyond the probationary period and become almost impossible to dismiss later. Furthermore, as thousands of new agents were quickly put in place, INS officials acknowledged that agents being promoted to supervisor positions were not receiving adequate training.

As a result of policy-reform suggestions from Human Rights Watch and others, the Justice Department stated that it was considering hiring an undisclosed number of new Office of the Inspector General investigators (who are responsible for investigating some abuse allegations) whose staff had not increased as the Border Patrol grew exponentially for years. And in response to Human Rights Watch's request for information on disciplinary actions taken against Border Patrol agents, the Justice Department disclosed that thirty INS employees, including Border Patrol agents stationed along the southwest border, had been disciplined during a twenty-eight month period, with punishments ranging from counseling to termination. While the disclosure of even this limited amount of disciplinary information was unprecedented, it remained impossible to assess whether disciplinary actions were taken in deserving cases.

On May 20, eighteen-year-old high school student Esequiel Hernández was shot dead by U.S. Marines patrolling the border near Redford, Texas as he tended his family's goats. Texas Rangers investigating the shooting complained that the Marines failed to provide investigators with even basic information about what had taken place, and noted that the physical evidence did not support the Marines' accounts. The shooting sparked community criticism of military deployment in populated areas and led to a temporary suspension of anti-drug border operations by the Marines, working in conjunction with the Border Patrol along the U.S.-Mexico border. In August, a grand jury (which reportedly included a Border Patrol supervisor on duty the night of the incident, the wife of a Border Patrol agent, and a retired Border Patrol agent) chose not to indict the Marine who shot Hernández; in August, a similar consent decree was reached with the Steubenville, Ohio Police Force

Police Abuse

Incidents of police abuse continued unabated during the year; the torture allegations by Haitian immigrant Abner

Louima against officers of the New York City Police Department renewed calls for effective oversight of that police force. Observers questioned whether the signals sent by high-level police and city officials regarding "zero tolerance" for criminals had encouraged officers to engage in brutal treatment. Among the troubling facts surrounding the case were: the habitual "code of silence" among police officers who refused to cooperate with investigators even after the police commissioner and the city's mayor publicly urged them to do so; the force's internal affairs unit's improper handling of the timely complaint filed by a nurse at the hospital where Louima was taken; and the apparent nonchalance displayed by the involved officers on the night of the incident, indicating that they felt they had little to fear for even this egregious act.

The problems identified in New York following the Louima case were evident throughout the country. Weak civilian review, flawed internal investigations, and rare criminal prosecutions by local and federal prosecutors combined to create an atmosphere in which brutal officers had little reason to fear punishment of any type. One positive development during the year was the use of new federal civil "pattern or practice" power to compel particularly troubled police departments to make reforms. In Pittsburgh, Pennsylvania, the Justice Department was so concerned by a "pattern or practice" of brutality and poor response to such incidents that it entered into a consent decree with the city and its police force in February, and required major reforms in the way misconduct allegations were handled. Among the other police forces under investigation using the Justice Department's new civil powers were Los Angeles, New Orleans, New York, and Philadelphia.

Custodial Conditions

The United States continued to incarcerate a greater proportion of its people than almost any other country in the world, with one of every 163 U.S. residents behind bars. At the end of 1996, the number of prisoners and jail inmates reached a new high of approximately 1.7 million, representing a doubling of the incarcerated population since 1985. Notably, racial disparities in the rate of incarceration continued to worsen. African-Americans, who made up 51 percent of the national prison population, were incarcerated at a rate 7.5 times that of whites. Women prisoners—including many mothers of small children—constituted a small minority of the inmate population, but their numbers continued to grow quickly: by the end of 1996 there were at least 75,000 women confined in U.S. federal and state prisons. According to a U.S. Department of Justice analysis, if current rates of incarceration continued, one in twenty Americans would go to prison at some point in his or her life.

Overcrowding in U.S. prisons contributed substantially to violence and abuse among inmates, and between guards and inmates, as well as to the inadequate provision of medical and mental health care services in many prison systems. According to a Justice Department report released in June, state prison populations significantly exceeded state prison capacities. California, with the most crowded prison system, was operating at over twice its capacity. Because of the space shortage, over 31,000 prisoners had to be placed in local jails lacking appropriate facilities, services and programs.

The burgeoning prison population reflected less on the crime rates than on changes in incarceration and sentencing practices: more nonviolent offenders were being incarcerated and the actual time served by prisoners was increasing because of "truth in sentencing" laws and diminished parole release rates. According to official figures released in 1997, drug offenders accounted for 23 percent of the state prison population and 60 percent of the federal prison population. Many of them faced remarkably harsh sentences. In New York, for example, nonviolent drug offenders convicted of the possession or sale of relatively small amounts of drugs faced the same felony sentences as murderers and rapists. (*see* Drugs and Human Rights discussion in Special Issues section).

Despite the increasing numbers of people in prison, "rehabilitative," educational, and vocational programs got scant support. Some politicians and prison officials even decided that confinement in prison was not punishment enough, and began, as of 1995, reintroducing prison chain gangs—euphemistically referred to by corrections officials as "secured work groups." The first state to institute roadside work crews of prisoners was Alabama, followed by Arizona, Florida, Iowa, Indiana, Illinois, Wisconsin, Montana, and Oklahoma. After an Alabama prisoner,

released from his shackles, attacked another chain-gang member with his bush axe and was subsequently shot dead, states modified their systems from group shackling to individual leg shackles. Two states, Arizona and Indiana, had women chain gangs. Officials stated that their goal in using chain gangs was to humiliate prisoners so as to deter them and onlookers from committing crimes in the future. During the year, many institutions considered using—and in some cases, started to use—stun belts instead of chains, allowing correctional officers to shock prisoners from a distance of 300 feet, for up to ten minutes; once shocked, a prisoner loses bladder and bowel control.

Prison systems continued to construct super-maximum security facilities in which prisoners deemed particularly disruptive or dangerous were confined for years in small, often windowless cells for twenty-three hours a day, subjected to extremely restrictive controls and denied educational, vocational and social programs that would promote their successful reintegration into the general prison population. Of particular concern were super-maximum security facilities where there was often a lack of programming and services for inmates; the psychological impact of prolonged solitary confinement; and the absence of adequate mental health screening, monitoring and treatment. Excessive isolation, controls and restrictions without adequate penological justification and insufficient mental health care are inhumane. While such conditions pose mental health risks for inmates generally, they may constitute such cruel treatment as to be considered torture under international human rights standards for the many mentally ill inmates or those with pre-existing psychiatric disorders.

Correctional officials too often responded with inhuman and dangerous disciplinary measures to the unruly behavior of the increasing number of mentally ill individuals confined in U.S. prisons. At Utah State Prison, a mentally ill young man died in April after prison officials strapped him to a restraint chair for sixteen hours. Blood clots formed in his legs during the prolonged continuous restraint, then triggered a fatal pulmonary embolism. After having first claimed the chair was rarely used, state corrections officials admitted that 150 inmates had been restrained in the chair a total of 200 times during the previous two years. Some inmates were strapped in the chair for up to five days. One mentally ill inmate was strapped to a steel plank for twelve weeks; he was let up twice a day. In April, a Utah professional review panel determined that the doctors who ordered such treatment had violated basic standards of care.

In their quest to develop quick and effective methods to control resisting prisoners and suspects, law enforcement and correctional officials have developed technologies that can prove fatal. In June, a prisoner died of shock from an allergic reaction to pepper spray after California correctional officers used the chemical irritant to permit them to forcibly extract him from his cell in San Quentin Prison. Two months later, a young man died in police custody in Colorado after being pepper-sprayed and then handcuffed with his legs and hands behind his back, a practice which has been shown to cause positional asphyxia by restricting breathing after a suspect is sprayed. More than thirty-two people died in California alone from 1993 to 1997 after being sprayed with the chili pepper extract.

Conditions in some states' juvenile detention facilities were appalling. Human Rights Watch findings on treatment of juveniles in Louisiana and Georgia spurred Justice Department investigations: in Louisiana, the Justice Department found "life-threatening" abuses and documented extreme brutality by guards, as well as a failure to protect children from sexual and physical abuse. A Justice Department investigation in Georgia is ongoing at this writing. Eight Colorado institutions, investigated by Human Rights Watch, were overcrowded (some at 2.5 times capacity) and unsafe, with excessive use of restraints and punitive segregation; there were complaints of chronic hunger; and incidents of physical abuse by staff.

Meanwhile, legislation was debated in Congress that would allow juveniles to be held in adult facilities, ignoring international standards prohibiting this practice. The proposed law would make youths vulnerable to violence by adult prisoners and would isolate them from necessary educational and other programs.

Widespread sexual abuse of women prisoners, exposed by Human Rights Watch in 1996 and documented by local advocates in many states, continued as corrections officials did little to curtail the abuse. In one positive

development, the Justice Department acted on its threat to sue the states of Michigan and Arizona in 1997 for violating women's constitutional rights by allowing prison staff to sexually abuse female prisoners with impunity. And legislation to require improved accountability for abusive correctional officers was introduced in Congress in October. The bill would require that states receiving federal funding criminalize sexual contact between correctional officers and prisoners; it would also require that the Justice Department set up a tracking system to prevent officers found criminally or civilly liable in sexual misconduct incidents from being re-hired, and to assist prisoners in filing complaints about sexual misconduct by guards.

Death Penalty

Ignoring the international trend away from capital punishment, U.S. states carried out executions at a record pace in 1997, with fifty-four men executed as of the end of September. Executions in Texas made up half of the total. In March, Pedro Medina was executed in Florida using an electric chair which malfunctioned, setting his head ablaze. Florida courts held that executions should continue, despite the repeated malfunctions. During the year, two Mexican nationals were put to death in Texas and Virginia, and in both cases notification to the Mexican government was delayed in contravention of the Vienna Convention, which requires that defendants' governments be notified promptly.

At this writing, several states are moving toward reintroduction of capital punishment. Iowa, Massachusetts, and the District of Columbia—which are all traditionally anti-death penalty—typified this trend. In Iowa, the state legislature delayed a vote on the issue until early 1998. In Massachusetts, a last-minute vote switch by a House member blocked passage of legislation to reinstate the death penalty in November 1997. And in the District of Columbia, a U.S. Senator introduced a bill to allow capital punishment in the federal capital. In most cases, the proposals to reinstate the death penalty were in reaction to particularly brutal murders.

The United States is one of only six countries in the world that execute people for convictions based on acts committed before the age of eighteen: the other five are Iran, Nigeria, Pakistan, Saudi Arabia, and Yemen. At present, fifty-eight people are on death row for such acts.

Defending individuals in capital cases became more difficult during the year, as the effects of habeas corpus changes and cutbacks in funding for legal service centers left defender organizations and attorneys scrambling to assist those facing execution. In February, the American Bar Association (ABA) called for a moratorium on executions until policies and procedures could be established to ensure fairness and due process and to minimize the risk of executing innocent persons. The ABA called the current administration of the death penalty a "haphazard maze of unfair practices with no internal consistency." And in July, a report by the Death Penalty Information Center showed that since 1973, sixty-nine prisoners had been released from death row on grounds of innocence, and warned that the new obstacles in defending capital defendants would make mistakes more likely.

Free Expression

In June, the U.S. Supreme Court strongly affirmed the right to free speech on the Internet. In *Reno v. ACLU*, the court ruled that the federal Communications Decency Act placed unconstitutional restrictions on protected speech. This landmark ruling affirmed the earlier decision of a trial court. The Supreme Court found that the "the vast democratic fora of the Internet" merit full First Amendment protection — the same degree of protection afforded the print medium, not simply the more limited protection given to broadcasting.

Race

President Clinton engaged in welcome, high-profile efforts to improve race relations, including a call for national debate on race relations (the Initiative on Race and Reconciliation) through town hall meetings. At the same time, however, the U.S. failed to submit a long-overdue compliance report on an international anti-racism treaty and did not support a proposed World Conference on Racism at the United Nations, calling instead for a

special session of the General Assembly to examine the issue. Critics contended that the U.S. position diminished the importance of the problem of racism.

Critics of anti-crime policies point out that blacks and Hispanics were arrested, convicted, and received higher sentences than whites for the same crimes. Perhaps the major cause of this disparity continued to be the country's "war on drugs." For many African-Americans, the symbol of disparate treatment at the hands of the criminal justice system was the much harsher sentencing for crack than for powder cocaine offenses under federal law. Compliance with the International Convention on the Elimination of All Forms of Discrimination (CERD) requires revision of the drug sentencing laws to ensure that blacks—convicted more frequently of crack offenses—and whites—convicted primarily of powder cocaine offenses—receive equivalent sentences for equivalent crimes.

Compliance with International Standards

The low priority given to international human rights treaty compliance and human rights monitoring mechanisms by the U.S. became increasingly apparent during the year. Since 1994, the U.S. has been party to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and CERD. Both treaties require reports to the United Nations, describing the nation's treaty compliance. The U.S. compliance reports on both treaties were due in November 1995, but as of October 1997, neither had been submitted. Submission of such reports should be timely, and the reports should cite specific practices or incidents relevant to the treaty's provisions, rather than mere recitation of U.S. law that ought to, but does not always, protect U.S. inhabitants from treatment prohibited under international standards.

Other important human rights treaties, including the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Convention on the Rights of the Child, remained unratified. (Only two countries in the world have not ratified the Convention on the Rights of the Child: Somalia, which has no internationally recognized government, and the United States.) The administration took no action toward signing or ratifying core International Labour Organisation conventions intended to protect basic labor rights, while the administration and members of Congress pursued fast-track authorization for trade agreements that would remove labor rights standards from bilateral treaty negotiations.

The U.S. Commonwealth of the Northern Mariana Islands (CNMI) received heightened scrutiny by Congress, the administration, and human rights monitors due to continuing reports of abuse of thousands of migrant laborers. The laborers, primarily from China, the Philippines, and Bangladesh, are essentially treated as indentured workers by garment manufacturers. The CNMI authorities are exempt from normal federal immigration, trade, and worker protection statutes. According to a July 1997 inter-agency report by the Clinton administration to Congress, "allegations persist regarding the CNMI's inability to protect workers against crimes such as illegal recruitment, battery, rape, child labor, and forced prostitution....Some workers labor under 'shadow' or secondary contracts signed in their home country that subvert their rights under the U.S. Constitution, such as their right to engage in political and religious activities while on U.S. soil." Legislation was introduced in both houses of Congress to address these concerns, including a Senate bill backed by the Clinton administration, but not acted upon as of November. Human Rights Watch joined other nongovernmental organizations in calling for federal action.

The Role of the International Community

The United States agreed to a mission by the United Nations' special rapporteur on extrajudicial, summary, or arbitrary executions, yet provided little assistance in facilitating the inquiry. The rapporteur examined the application of the death penalty and deaths in police custody; he traveled to five states, interviewing officials, prisoners on death row, and human rights advocates. Senator Jesse Helms, chair of the U.S. Senate's Committee on

Foreign Relations, protested the visit in a letter to the U.S. ambassador to the United Nations, calling the special rapporteur's visit an "absurd U.N. charade." Nevertheless, the mission served several functions, by reminding federal and local officials of their obligations under international human rights treaties, by acquainting local human rights activists with the United Nations' procedures, and by publicizing international concern over U.S. practices relating to the death penalty and police killings. A report on the mission is due to be submitted to the United Nations Commission on Human Rights during its March/April 1998 session.

Relevant Human Rights Watch reports:

Cold Storage: Super-Maximum Security Confinement in Indiana, 10/97
High Country Lock-Up: Children in Confinement in Colorado, 9/97
Slipping Through the Cracks: Unaccompanied Children Detained by the U.S. Immigration and Naturalization Service, 4/97
Cruel and Unusual: Disproportionate Sentences for New York Drug Offenders, 3/97
All Too Familiar: Sexual Abuse of Women in U.S. State Prisons, 12/96

THE ARMS PROJECT

In 1997, only eight years after the collapse of the Berlin Wall, the political map of state relations, conflict management and arms control had changed radically. During the Cold War, most conflicts were fueled by superpower rivalry and massive state-to-state military assistance. The U.S. and U.S.S.R. intervened directly in wars or fought them by proxy, but nearly all armed conflicts, whatever their origins in local or regional disputes, had a decidedly East-West cast. As manager of global affairs, the United Nations was paralyzed by political gridlock. During periods of detente, attempts were made to check arms proliferation, which was understood to mean only the proliferation of weapons of mass destruction.

This Cold War order of stability through mutually assured destruction (as long as the other guy didn't pull the nuclear trigger, everything was okay) was largely replaced—from a global perspective—with a disorder of manageable instability (all kinds of triggers are being pulled, but wars are contained) in the first half of the 1990s. A single superpower remained, but its reach was limited, and global power became more decentralized. Conflicts lost their ideological hue: they tended to reflect the real interests of the local, and sometimes regional, actors involved (even if ethnicity and religion were used to mask contests over power and resources). Privatization became one of the mantras of this new order: focused initially on rendering state enterprises more efficient and profitable, the drive to privatize industry began to affect even the realm of national security and military assistance (goods and services). Other key factors affecting this new order were initiatives to promote conflict prevention/resolution, peace building, civil society, democracy, development, and human rights.

Although the United Nations has continued to be hamstrung by bureaucratic inertia in the post-Cold War years, the political deadlock at the top has been broken, and as a result the world organization has begun to take a more activist role, if not always successfully so. Nongovernmental organizations like Human Rights Watch have found that it has become possible to generate political will and mobilize state actors in support of limited reform agendas. In the areas of conflict management, human rights protection and democracy promotion, for example, we have witnessed activities ranging from efforts toward establishing an international criminal court to election monitoring, peacekeeping operations and humanitarian interventions in situations of genocide or other forms of mass slaughter. In the field of arms control, we have seen efforts to eliminate weapons of mass destruction through international treaties and to contain the proliferation of conventional weapons through codes of conduct, weapons registers and new initiatives like the Wassenaar Arrangement on Export Controls for

Conventional Arms and Dual-Use Goods and Technologies, the Organization of American States (O.A.S.) draft treaty designed to control illicit arms trafficking in the Americas, and the European Union Program for Preventing and Combating Illicit Trafficking in Conventional Arms, which has similar objectives in Africa.

Comprehensive Landmines Ban

The most important development in 1997 in the field of arms control was the adoption of a comprehensive treaty banning antipersonnel landmines in Oslo in September. This profoundly humanitarian treaty, which was scheduled to be signed by more than one hundred governments in early December, promised to put a stop to the terrible havoc this indiscriminate weapon has caused in civilian communities around the world. Some 26,000 civilians are estimated to be killed or maimed by landmines each year, and in 1997 the toll continued to climb—in Afghanistan, Angola, Bosnia, Cambodia, Iraq, Mozambique, Somalia and other areas that have seen violent conflict.

The signing of the landmines ban treaty was a historic event. It marked the first time that states outlawed an entire weapon system that has been in widespread use. The treaty prohibits, in all circumstances, the use, production, stockpiling, and transfer of all antipersonnel mines (a minimal number may be kept solely for demining and other training purposes), and requires that all stockpiled mines be destroyed within four years and all emplaced mines within ten years of the treaty's entry into force. It also calls on governments to provide for the care and rehabilitation of mine victims. It is a truly comprehensive treaty that clearly creates a new international norm.

Perhaps as important as the treaty itself has been the process bringing it about, often called the "Ottawa Process." This can be seen as a new, post-Cold War model of innovative diplomacy, driven not by the "big" powers but by middle and smaller states, including those from the developing world. Governments set several highly significant precedents. First, they abandoned the notoriously laborious and consensus-bound approach of the United Nations in favor of an independent fast-track approach. The traditional U.N. approach had encouraged the exercise of veto power by the most abusive nations, permitting the lowest common denominator (in the case of landmines, the no-ban policies of China, Russia, India, and Pakistan) to reign supreme. When it became clear in 1996 that the U.N.-sponsored review of the Convention on Conventional Weapons (CCW) would not soon lead to a meaningful ban on landmines, a core group of nations—most notably Austria, Belgium, Canada, Mexico, Norway, and South Africa—decided to draft a treaty and negotiate it outside the U.N. framework. The principal idea behind this approach was that rather than seeking to bring everyone on board from the beginning, thereby allowing recalcitrant states to hijack the entire process, core states would establish an unequivocal norm and then haul in the stragglers as international moral momentum built.

The second convention-shattering precedent was the extraordinary role played by nongovernmental organizations (NGOs), without whom this treaty would not have come into existence. The ban effort was driven by a large coalition known as the International Campaign to Ban Landmines (ICBL). In 1997 it had a membership of more than 1,000 NGOs in more than fifty countries and included groups in the areas of human rights, arms control, development, humanitarian assistance, the environment, peace and conflict prevention, veterans' affairs, women's rights, and children's rights, as well as religious and medical groups, and organizations specializing in mine clearance and mine-victim assistance. While putting pressure on states to join the effort to ban landmines, this coalition enjoyed unprecedented access to the circles of power, coordinating closely with the key governments, and playing a critical role in drafting the final treaty. In another first for both arms-control and humanitarian treaties, the ICBL had official observer status during the Oslo negotiations, with access to all deliberations and the right to make interventions. This newly forged ad hoc relationship between states and NGOs augured well for future negotiations on other treaties. On October 10, the ICBL was awarded the 1997 Nobel Peace Prize.

The treaty conference in Oslo in September was preceded by a series of events that were important building blocks. These included government-sponsored treaty preparatory conferences in Vienna in February, Bonn in April, Johannesburg in May, and Belgium in June, NGO conferences in Maputo in February, Tokyo in March, and

Stockholm in May, and International Committee of the Red Cross (ICRC) conferences in Harare in April and Manila in July. In each case, NGOs played a prominent role in the government conferences, and vice versa. The success of the ban movement was due to this close partnership between governments, NGOs and the ICRC, and the ground-breaking treaty is accurately described as a collaborative effort that had the potential to save millions of lives and change the face of international diplomacy as well.

Chemical and Biological Weapons

The year 1997 was significant for another reason as well. On April 29, the 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and Their Destruction (the CWC) entered into force after the sixty-fifth signatory nation deposited its instrument of ratification. As of October 31, 103 states had either ratified or acceded to the CWC, including the Russian Federation, which had already declared it had a stockpile of 40,000 tons of chemical agent. Another sixty-five signatory states had yet to ratify. The CWC represented an improvement over the 1925 Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases and of Bacteriological Methods of Warfare (the Geneva Protocol) as it explicitly prohibited the development, production and stockpiling of chemical weapons, in addition to their use, and created an intrusive verification regime to ensure compliance. The verification provisions include detailed declaration requirements, routine inspections of declared facilities, and short-notice challenge inspections of undeclared, suspected facilities.

Once the CWC came into effect, the monitoring organization established under its terms, the Organization for the Prohibition of Chemical Weapons (OPCW), was activated. The OPCW, charged with ensuring State Party compliance with the treaty, began its important work of conducting inspections of declared facilities of States Parties. Member states were required to submit, within thirty days of entry into force of the convention, initial declarations about their possession of chemical weapons and past or existing chemical weapons production facilities. As of October 1997, about a third had not yet done so. Meanwhile, the OPCW reported in September that it had already carried out seventy inspections around the world in the first four months of its existence.

In an effort to meet requests by NGOs and the media, the OPCW's director-general requested the permission of member states to release information of a general nature about the States Parties' declarations and OPCW inspections. Of those states that submitted initial declarations, five did not consent to the release of this limited information. Three states declared that they possessed functional chemical weapons, and seven states declared that they had either existing or former chemical weapons production facilities; of these seven states, five—China, France, Japan, the United Kingdom, and the United States—consented to the release of this information. In a move that was praised widely in the media, India also disclosed to the OPCW that it had been involved in the development of chemical weapons—something it had denied repeatedly over the years—but unfortunately declined to allow the OPCW to make this information formally public.

There were also further developments with respect to the 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction in 1997. That treaty explicitly banned the production and use of biological weapons but lacked a mechanism to monitor States Parties' compliance with the convention. Official admission by two States Parties, the Russian Federation and Iraq in, respectively, 1992 and 1995, that they had breached the convention by developing, producing and stockpiling biological weapons induced the international community to begin negotiations to strengthen the Convention. Although progress was limited in 1997, these negotiations took at least one big step forward when the Ad Hoc Group charged with this task issued a rolling text in June that was to form the basis of a future verification protocol.

Conventional Weapons

According to figures released by the U.S. Congressional Research Service in 1997, the value of worldwide arms transfer agreements increased in 1996 for the first time since 1992. The United States continued to be the world

leader in arms sales. In 1996, the value of arms transfer agreements worldwide was U.S.$31.8 billion. The U.S. share was 35 percent ($11.3 billion). The United Kingdom was second with 15 percent ($4.8 billion) and the Russian Federation third with 14 percent ($4.6 billion). Of these agreements, $19.4 billion were sales to the developing world. Here, too, the U.S. was the leader, with agreements valued at $7.3 billion (38 percent). The Russian Federation ranked second (20 percent with $3.9 billion) and the U.K. third (9 percent with $1.8 billion).

The U.S. also ranked first in arms deliveries made in 1996, with 46 percent of the market ($13.8 billion, of which $9.5 billion went to the developing world). The U.K. again came in second, with 20 percent ($5.9 billion, of which $5.4 billion went to the developing world). France and the Russian Federation were third globally with 10 percent ($2.9 billion) each, though France shipped more arms to the developing world ($2.4 billion).

These formal transfers of arms by governments directly or by commercial companies with government approval, were supplemented by the extensive illegal trade in arms, i.e., smuggled weapons. To contain both flows again posed a major challenge to the international community and NGOs in 1997.

Arms continued to be provided by states to forces that were involved in abuses of international human rights or humanitarian law. Whether primarily pursuing geostrategic interests or propelled by the profit motive, these states fueled the abuses that were committed through the weapons and other forms of military assistance they provided. Among the notable recipients of arms which were involved in abuses of human rights or the laws of war in 1997 were the governments of Angola, Burundi, Colombia, Indonesia, Israel, Rwanda, Sudan, Turkey and Zaire, and a number of rebel movements, including the CNDD in Burundi, the ex-FAR and the ADFL in Rwanda and Congo/Zaire, Hezbollah in Lebanon, the PKK in Turkey, the SPLA in Sudan, the Tamil Tigers in Sri Lanka, and UNITA in Angola. (According to the Stockholm International Peace Research Institute, there were twenty-seven major armed conflicts in the world in 1996, only one of which—India-Pakistan—was of an international nature.) The principal suppliers were the U.S., the Russian Federation, the U.K., France and China—not coincidentally the five permanent members of the Security Council—but also regional powers like Brazil, Egypt, Iran, Israel and South Africa.

Nongovernmental organizations continued to put pressure on multilateral organizations to establish mechanisms that would limit the flow of arms to the countries that are most repressive and the most abusive of human rights. One such proposed mechanism was a code of conduct, with efforts focused at the level of the United Nations, the European Union and individual governments. In May, twelve Nobel Laureates gathered to endorse the International Code of Conduct on Arms Transfers, which had gained the support of a large international network of NGOs. Moreover, seven European Union member states agreed to an E.U. Code of Conduct which included a set of eight Common Criteria for Arms Exports that E.U. governments must take into consideration in deciding to issue licenses for the export of arms and ammunition. One of these criteria was "the respect of human rights in the country of final destination," while others related to the overall protection of human rights. These criteria are not binding; a Council Working Group ("COARM") began the work of examining how E.U. Member States should implement them.

On June 10, the U.S. House of Representatives approved an amendment to the State Department Authorization bill entitled the "Arms Transfers Code of Conduct." The amendment required the president to identify those countries that are either undemocratic, abusers of human rights, involved in acts of armed aggression, or that are not members of the U.N. Register on Conventional Arms. If passed, Congress would then have the option to enact legislation disapproving certain countries for U.S. weapons transfers. In October, the fate of the U.S. Code remained unclear as it became caught up in partisan wrangling in Congress over passage of the Authorization Act.

In July, the newly elected Labour government of Prime Minister Tony Blair announced new criteria that, he said, the U.K. would start applying to all licenses for arms exports. He specified that "Labour will not permit the sale of arms to regimes that might use them for internal repression or international aggression." Lamentably, the government failed to withdraw any of the more than 21,000 existing defense licenses, including one for the sale of sixteen Hawk jets and armored vehicles to Indonesia, but it did block the new but small sale to Indonesia of six armored Land Rovers and a shipment of sniper rifles, at a total value of $1.6 million, in

September. In August, the French prime minister, Lionel Jospin, also freshly elected, declared French support for Blair's initiative, and said that he would study turning it into a European or world code of conduct. Then in October, the Belgian foreign minister expressed his government's support for the initiative. The movement toward a European code of conduct appeared to be undermined that same month, though, when the government of Tony Blair announced that it had approved eleven new contracts for equipment under the so-called military list, worth millions of dollars, to Indonesia.

Another mechanism to control the flow of arms was the (voluntary) United Nations Register on Conventional Arms, which in 1997 was in its fifth year. The register uses transparency as a method of arms control by encouraging states to be open about their arms sales and purchases. On August 29, the U.N. published the register for calendar year 1996, which showed that eighty-five states had provided information on their exports and imports during that year. This was a slight decrease from the 1996 register when ninety-one governments made submissions. In the new report, all the major exporters of defense equipment provided information, and more states supplied detailed descriptions of their exports and imports. Noticeably absent from the register were two major recipients of U.S. military assistance, Egypt and Turkey. Efforts to improve the register this year were unsuccessful. When the Group of Government Experts on the U.N. Register of Conventional Arms met in August to discuss measures to expand and strengthen the register, it failed to agree on proposals to include new categories of weapons, to change the definitions of existing categories, to require states to indicate the specific types of weapons transferred, or to require countries to provide information on procurement through national production and weapons holdings.

The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, established in 1996, had thirty-three members and a small secretariat in Vienna in 1997. The principal goal of the Arrangement was to promote transparency with respect to transfers of conventional arms and dual-use goods and technologies for military uses, and to prevent the accumulation of arms and military capabilities in areas of instability. In 1997, the secretariat was developing guidelines and procedures for member states, a number of which had not previously been involved in an export control regime. Member states had begun reporting on their exports of munitions and dual-use goods and technologies, and the first semi-annual meeting was held in June.

A final mechanism designed to prevent weapons from creating humanitarian havoc, the 1980 Convention on Conventional Weapons (the CCW), has been in force for a number of years but was awaiting state ratifications following the changes made to the treaty by the Review Conference that ended its work in May 1996. The Conference amended Protocol II on landmines and added Protocol IV on blinding laser weapons. As of October 15, 1997, ten states had ratified the amended Protocol II while thirteen had ratified the new Protocol IV. Both protocols require twenty ratifying states before entry into force.

New efforts were made in 1997 to stem the flow of smuggled weapons. In 1997, out of concern about the increase in the illicit manufacturing and trade of small arms in the western hemisphere, the Permanent Mechanism of Political Consultation and Consensus (aka the Rio Group) introduced a draft Inter-American Convention Against the Illicit Production of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials to the O.A.S. The draft convention recognized that the rise in arms manufacturing and trafficking was fueling problems, including political violence, drug trafficking, organized crime and other related offenses, that were increasingly coming to be seen as threats to national and international security, as well as posing a danger to the social and economic development of the people in the region and their right to live in peace. In order to achieve its goals at both the regional and international levels, the draft convention set out specific guidelines and obligations for each State Party. These included, but were not limited to: the adoption of legislative measures; the creation of registers of manufacturers, traders, importers and exporters of the said materials; the adoption of a standardized import/export system; and the guaranteed access to relevant information by the participating States Parties. In addition, a consultative committee, consisting of representatives from each State Party, was to be set up to monitor progress on the international level, foster international cooperation in the region, and promote

the exchange of information, the standardization of laws, the development of communication, an increase in training and technical assistance related to the issues, and the unification of administrative procedures to ensure that uniform standards would be upheld. A final draft treaty was negotiated in October, and a special session of the O.A.S. general assembly was scheduled for mid-November during which the treaty was expected to be approved and opened for signature. The treaty appeared to enjoy widespread support.

During the Dutch Presidency of the E.U. in the first half of 1997, the E.U. adopted the "E.U. Program for Preventing and Combating Illicit Trafficking in Conventional Arms," an initiative that had developed out of discussions begun in the above-mentioned Council Working Group (COARM). This program envisaged a number of measures to strengthen cooperation among European customs and law enforcement agencies at the national and international levels, and was expected to focus initially on the light weapons trade in Africa.

Arms Transfers to Abusive End-Users

In 1997, the flow of arms—primarily small arms, light weapons, explosives, and ammunition—continued to fuel abuses of international human rights and humanitarian law around the globe, especially in Africa, but received little attention compared to weapons of mass destruction. In one positive development, in August, a U.N. Panel of Governmental Experts on Small Arms produced a consensus report on the worldwide problem of small-arms proliferation despite serious disagreements among panel members on a number of issues. Important recommendations that survived the various versions of the report included a call for a global conference on illicit arms transfers and a recommendation to destroy surplus weapons and weapons that remain after a conflict's end. On the other hand, success in increasing transparency in the light weapons trade, a highly controversial topic of debate, remained lamentably elusive. The report also reflected the bias of its authors in focusing on the activities of nonstate actors while playing down the role of governments in supplying weapons and committing abuses of human rights. The U.N. displayed a further sensitivity to the importance of the trade in conventional weapons in October, when the U.N. secretary-general, Kofi Annan, told the Conference on Disarmament that the absence of norms governing conventional weapons was of particular concern to him, and that in his view little had been done to curb their rapidly escalating proliferation, a situation that had created "perverse chains of events."

One of the most powerful tools the international community had to control the flow of arms to abusive end-users—international arms embargoes—remained largely ineffective in 1997. The reason was the absence of the embargoes' active implementation and enforcement, with the exception of punitive sanction regimes imposed on Iraq and Libya. Reporting on the implementation of all other embargoes remained minimal, and no actions were taken against violators. In Africa, arms embargoes were observed solely in the breach, circumvented by arms traffickers operating on the territories of nations that kept their eyes shut or even facilitated arms flows in an effort to assist allies and defeat enemies.

The Great Lakes Region

The only ray of hope in 1996, already dimming in 1997, was the work of the U.N. Commission of Inquiry in the Great Lakes region, also known as UNICOI, which had been established in 1995 in the wake of a Human Rights Watch report on arms supplies to the perpetrators of the Rwandan genocide and was charged with investigating violations of the international arms embargo on Rwanda. UNICOI carried out its investigation during a period of twelve months, issuing two preliminary reports. Unfortunately, its third and final report, submitted to the U.N. secretary-general at the end of October 1996, though promptly leaked to the press, was never made public, and the U.N. Security Council failed to give the commission a new mandate. As a result, the important investigative work UNICOI had been able to carry out was abruptly halted at year's end, and the recommendations it made were ignored. These recommendations included: the creation of an office, at the time of the imposition of an international arms

embargo, that would monitor, implement and enforce the operation of the embargo on the territory of each neighboring state, collect evidence of violations, and make regular reports to the Security Council; the creation of voluntary regional registers or data banks of movements and acquisitions of small arms, ammunition and materiél; the encouragement for regional governments to ratify the Convention on Conventional Weapons; the establishment, on an ad hoc basis, of commissions of inquiry to investigate reported violations of arms embargoes; and the request that states producing arms and materiél take any measure necessary under their domestic law to implement the provisions of international arms embargoes, and in particular to prosecute their nationals who are found to be in violation of such provisions, even if they conduct their illegal activities in third countries.

The U.N.'s motives in failing to release and act upon UNICOI's report remained obscure, but the commission's very existence had a number of salutary consequences: it provided the means to investigate and verify some specific allegations of serious violations of an international arms embargo; it allowed for the consideration of new, more effective ways of dealing with the problem of weapons proliferation in Africa, if not by the Security Council, then by other U.N. bodies and NGOs; and it put those involved in arms trafficking on notice that they could no longer operate with complete impunity, that they were being watched. It is possible even that the commission's work during its brief tenure had a deterrent effect on those most closely involved in the lethal trade.

Absent a serious effort to strengthen the effectiveness of arms embargoes, the imposition of such embargoes by the United Nations, the European Union and, in the case of Burundi, regional coalitions of states remained wholly symbolic. In October, the U.N. Security Council imposed an arms embargo on Sierra Leone, authorizing the Economic Community of West African States (ECOWAS) to ensure strict implementation of the arms embargo but failing to establish specific mechanisms designed to assist ECOWAS in doing so. Also in October, the Security Council put fresh sanctions on the National Union for the Total Independence of Angola (União Nacional para a Independência Total de Angola, UNITA), on top of an earlier arms embargo, in an attempt to force the rebel movement to join Angola's peace process by prohibiting, inter alia, foreign air traffic—including planes carrying supplies of arms—into UNITA-controlled territory.

The situation in Burundi continued to be cause of grave concern in 1997, and evidence emerged that external actors were instrumental in fueling the highly abusive civil war through their direct transfers of arms to parties to the conflict or their failure to prevent such transfers by private arms dealers. A number of countries, including China, France, North Korea,the Russian Federation, Rwanda, Tanzania, Uganda, the United States, and Zaire/Congo, directly provided military support to abusive forces engaged in the fighting, although France and the United States stated that their assistance had ceased in mid-1996. Other states, most notably Angola, Kenya, Rwanda, Tanzania, Uganda, and Zaire/Congo permitted the transshipment of weapons through their territories. Tanzania and Zaire/Congo allowed insurgents to establish bases on their territory, while Kenya served as a headquarters for the various Hutu rebel organizations. Most commonly, private arms merchants took advantage of loose restrictions on arms transfers, poor controls at border points, and/or corrupt officials in South Africa and Europe to ship arms from former East Bloc countries to the Great Lakes region. Belgium and South Africa were particularly viable transshipment countries and bases of activity for arms traders, who have operated with impunity. Using these weapons, the Burundian armed forces and allied Tutsi civilian militias and gangs, and Hutu guerrilla groups have killed tens of thousands of unarmed civilians, often solely because of their ethnicity, and forced hundreds of thousands from their homes during the war. The sanctions, including an arms embargo, that neighboring states imposed on the government of Burundi—but not on opposition forces—in 1996 remained in force in 1997, even if they did not appear to be actively enforced.

In 1997, some of the governments implicated in the illicit trade of arms took small steps to rein in the activities of arms traffickers and mercenaries, who continued to cater to violent conflicts around the world, seemingly unhampered by the few national and international restrictions that do exist on such activities. The Belgian government, for example, announced that it had opened an investigation into the use by arms traffickers of Ostend Airport, a prime transshipment point for arms from the former Warsaw Pact countries to African

conflict zones, especially the Great Lakes region. In another example, the U.K. government undertook an investigation of a company registered on the Isle of Man that was implicated in repeated violations of the international arms embargo on Rwanda, after reporters found a series of arms sales contracts in a cache of documents left behind by retreating Rwandan Hutu rebel forces in eastern Zaire/Congo in November 1996. The documents showed that the company had supplied more than $5.5 million worth of weapons and ammunition to the perpetrators of the 1994 genocide in Rwanda. It soon became clear that the company had been able to do so after the U.K. government had failed to request the Isle of Man, a crown dependency, to incorporate the international arms embargo on Rwanda into its domestic law, as the U.K. itself had done in 1994. The government subsequently claimed that this failure was "just an oversight" and that the matter would be rectified. Human Rights Watch called upon the United Kingdom to identify and prosecute violators of international arms embargoes, and to execute stricter oversights over companies registered there and in its offshore dependencies.

The Role of South Africa

Whereas the post-apartheid government of President Nelson Mandela has tried to leash South Africa's aggressive arms-export industry since it came to power in 1994, elements of the old regime continued to ferry weapons illegally to conflicts in Africa in 1997, and arms industry pressures on the government led to a series of controversial official sales as well. The National Conventional Arms Control Committee (NCACC), headed by the minister of water affairs and forestry, Kader Asmal, in July approved the sale of what it termed "nonlethal" military equipment to the government of Rwanda. The sale had been suspended for almost a year because of concerns in South Africa over the unstable situation in the Great Lakes region. Asmal justified the weapons sale to Rwanda by stating, in October 1996, that "a void [was] more dangerous"; that "the U.N. [had] lifted the arms embargo" on the Rwandan government; that the Rwandan government "is a legitimate government"; that the weapons constituted "self-defense equipment"; and that the value of the sale, 60 million South African Rand (about U.S.$14 million), was "very small compared to what South Africa [under apartheid] used to send to [the previous government of] Rwanda." Human Rights Watch pressed the government of South Africa to reconsider the decision to give the green light to the sale, which came at the time when the Rwandan government publicly admitted the role of its military forces in the campaign to oust Zaire's president, Mobutu Sese Seko, from power earlier in 1997, and evidence emerged of the involvement of these forces in mass killings of Hutu civilians.

In October, the government's primary arms broker, Denel, announced that it was negotiating with the government of Algeria the sale of Rooivalk attack helicopters and Seeker unmanned reconnaissance aircraft. The situation in Algeria had just marked a sharp deterioration, with unidentified armed groups carrying out brutal massacres of civilians on the outskirts of the capital. Earlier, though, in August, the South African government vetoed the sale of twelve Rooivalk attack helicopters to Turkey on the grounds, in part, of Turkey's poor human rights record. At the end of August, South Africa's minister of defense, Joe Modise, announced that his government was seeking to sell excess anti-aircraft weapons, infantry vehicles, helicopters, and other war materiél. This announcement came in the wake of media reports that South African weapons had turned up on both sides of the war in Sudan, and raised concerns that excess weapons sold to unscrupulous buyers might also find their way to conflict zones—in Sudan and elsewhere. Human Rights Watch pressed the government of South Africa for guarantees that the excess weapons would not be used in the conflict in Sudan.

In late July, the government announced its new policy on transparency regarding the export of South African arms. Around the same time, it became known that the government had suppressed information about a proposed sale of military hardware to Saudi Arabia. Unable to prevent publication of the recipient country's name, despite having threatened South African newspapers with legal action, the government proceeded to negotiate the $1.5 billion oil-for-arms deal with the Saudi Kingdom, while claiming that transparency in its view did not include naming recipient countries if the latter preferred to remain anonymous.

Finally, the government in 1997 also took one further step in reining in the activities of South African

nationals who, marketing themselves as private security consultants, have operated as mercenaries in several African countries. In July, the government submitted legislation to Parliament that would force South African mercenaries to obtain a license to provide military-related services abroad, and that provided for penalties of a one million Rand fine (about $213,000) or ten years in jail, or both. In October, the draft legislation was still being debated.

Sudan

The war in southern Sudan was in its fourteenth year in 1997. More than a million people have died and millions more have been forcibly displaced, many seeking refuge in neighboring countries, since 1983. In 1997, the war continued to spread to other regions of the country, and threatened to spill across Sudan's borders, as government military support of opposition groups in Eritrea, Ethiopia and Uganda was matched by these governments' military aid of Sudanese rebel groups. A steady flow of sophisticated arms into the region over the past decade and continuing in 1997 has fueled the escalation of the fighting and multiplied its lethal impact on the civilian population.

In 1997, the government of Sudan continued to enhance its conventional arms capability through the acquisition of large quantities of light and medium arms and ammunition, medium and heavy armor and artillery, and air power. Its suppliers in 1997 included China, some of the former East Bloc states, and Iran and Iraq, although Sudan also continued to use weapons dating from previous decades. These weapons appeared to be of Western manufacture, and were likely to have been provided to Sudan when it was ruled by a government friendly to the West. The main rebel groups, the Sudan Alliance Forces (SAF) and the Sudanese People's Liberation Army (SPLA), had a substantial fleet of tanks and armored vehicles in 1997, many captured from government forces but some also provided by neighboring states. The announcement by the government in June that it would sign the treaty to ban antipersonnel landmines in Ottawa in December came as evidence emerged of the government's use of antipersonnel landmines in the war, and the supply of mines to allied opposition forces in neighboring countries.

Turkey

The war in Turkey's southeast between government forces and fighters of the Kurdish Workers Party (known as the PKK) also continued in 1997, with Turkish security forces making repeated forays into northern Iraq, ostensibly in pursuit of PKK units. To support their war effort, both sides have made arms acquisitions. The PKK, at times supported by Syria, Iran and Kurdish parties in northern Iraq, has bought weapons on the open market, financed primarily by supporters in western Europe. As for the government, an estimated 80 percent of Turkey's military arsenal consisted of U.S.-made or -designed hardware. In early 1997, the Turkish government announced its intention to make further military hardware purchases abroad, including attack and transport helicopters, battle tanks, armored vehicles and assault rifles, as well as fighter jet upgrades. The U.S., France, Germany, Britain, Israel, and Italy jostled to win multi-million dollar contracts, with no human rights conditions attached, for their industries to upgrade, design, co-produce, and sell military equipment to Turkey.

U.S. arms sales to Turkey continued to be controversial in the wake of the scuttling of a sale of Super Cobra attack helicopters in late 1996, on the grounds of Turkey's human rights record. Despite the apparent reluctance by the U.S. government to rubber-stamp arms sales to Turkey, it made no serious attempt to monitor the use of its weapons by Turkey nor to attach human rights conditions to any arms transfer in 1997. The State Department had provided Congress with an end-use monitoring report in 1995 that was unsatisfactory in a number of respects, and Congress had subsequently requested an updated report by July 1997. The second report better reflected the human rights impact of the use of U.S. weapons by Turkish security forces, but continued to ignore the role of these forces in the forcible displacement of the population of Kurdish villages, and tried to shift the blame for the most egregious abuses to gendarmerie and police "special operations teams" which, the report implied, are not directly under the command of the U.S.-supported military.

In March, the trial of the Turkish translator and publisher of the 1995 Human Rights Watch report on arms transfers and human rights violations in Turkey came to an end. Ertu rul Kürkçü and Ay enur Zarakolu had been accused of "defaming and belittling the state military and security forces" for having translated and published the report in Turkish. The state prosecutor in particular had seized on a reference in the report to the special police teams as "brutal thugs," a term used, as it turned out, by an official at the U.S. embassy in Ankara who was quoted in the report. On March 14, a three-judge panel found the translator and publisher guilty of the charge of defamation, giving Kürkçü a ten-month prison sentence, suspended for two years, and fining Zarakolu the largely symbolic amount of 1.5 million Turkish Lira, about $12. The verdict was a violation of Turkey's obligations under Article 10 of the European Convention on Human Rights, and could intimidate journalists, writers, peaceful protesters, and others concerned with the conflict in southeastern Turkey. Kürkçü and Zarakolu both appealed the verdict; the appeal was still pending in late October. Human Rights Watch, the Belgium-based Reporters Without Borders, and the U.S. government all sent observers to the trial.

United States Policy

Figures released in 1997 indicated that the U.S. was the largest exporter of military equipment in 1996, the most recent year for which data were available (see above). In the most important step forward in transparency regarding U.S. arms exports in a decade and a half, a new congressionally mandated report was issued by the State Department in September. Known as the "Section 655" report (after the section of the Foreign Assistance Act requiring it), this document provides a very detailed breakdown of U.S. arms exports through both government and private channels, including types of weapons and dollar value, on a country-by-country and program-by-program basis. Among other things, it reveals that in FY 1996 the State Department approved licenses for private commercial firms to export $27 billion in weapons. The report was in essence a reinstatement of a reporting system discontinued by the Reagan administration in 1991; the Human Rights Watch Arms Project, joined by other NGOs, initiated the effort to reinstate the report in 1993 by calling on Congress to write the appropriate language into the Foreign Aid Authorization Bill.

Commercial imperatives continued to guide arms transfer policy, while U.S. participation in multilateral efforts at curbing arms proliferation was lukewarm at best. It took serious backroom bargaining and arm-twisting before the Clinton administration was able to garner enough support in the Senate to secure ratification of the Chemical Weapons Convention in April, just days before the treaty was scheduled to enter into force. Failure to ratify would have excluded the U.S. from a number of benefits accruing from participation in this international regime and, by depriving the CWC's monitoring group, the OPCW, of a significant financial contribution, would have rendered the treaty's effective implementation unlikely.

Support for the international effort to ban landmines was similarly reluctant, despite the fact that President Clinton had shown leadership on this issue in years past. In 1997, the U.S. at first refused to join the Ottawa Process to ban landmines, launching an ill-conceived effort at the U.N. Conference on Disarmament (CD). Both the ICBL and the ICRC condemned the U.S. move as diversionary and counterproductive to rapid achievement of a global ban. As it turned out, the sixty-one-member CD was unable even to agree on a mandate to discuss landmines, and could do no more than appoint a special coordinator to try to reach agreement. The CD adjourned amid bitter recriminations on September 9 without even setting a timetable for serious discussion of landmines or any other arms control initiative.

As newspaper editorials in the U.S. started challenging the Clinton administration's handling of the landmines issue, grass-roots activists began bombarding the White House with letters, postcards and a petition with over 100,000 signatures calling for a ban, and protesters organized vigils outside the White House and the offices of landmine producers. In August, under intense public pressure, the President finally agreed to send a negotiating team to Oslo. However, he did so without any change in U.S. policy on mines and as a result the U.S. delegation in Oslo insisted on a handful of amendments that would have gutted the treaty. In a testament to the Ottawa

process, each of the U.S. demands was rejected due to strong leadership by the International Campaign to Ban Landmines and key governments such as Norway, Canada, Austria, and South Africa. Anticipating defeat in a formal vote, the U.S. withdrew its amendments and later indicated it did not intend to sign the treaty in December. In an effort to ease the embarrassment of Oslo, the U.S. promptly announced that it would continue to pursue a ban in the CD, and that it was now committed to banning the weapon by the year 2006. Left out of the announcement was the fact that the U.S. intended to rename approximately one million of its "smart" antipersonnel mines as submunitions, thus exempting them from the ban. Having failed to convince other governments in Oslo with its attempt to relabel these mines, the Clinton administration was now trying its deception on the U.S. public.

At the end of 1997, the United States had yet to ratify the amended Protocol II to the Convention on Conventional Weapons (concerning landmines) or the new Protocol IV (banning the use and trade of blinding laser weapons). Even though it signed Protocol IV in October 1995, the U.S. was continuing in 1997 to pursue research on tactical lasers that have the capacity to blind.

The Work of Human Rights Watch

The Human Rights Watch Arms Project was established at the end of the Cold War to tackle the problems and exploit the opportunities that the new world order/disorder was expected to present. In the five years of its existence, it has brought a novel approach to both arms control and human rights advocacy, seeking to set new international norms and effect positive change in the behavior of international actors. In 1997, the strategy continued to be to investigate, to expose, to articulate new norms, to mobilize, to stigmatize, and to effect change, concentrating our efforts on the campaign to ban landmines, exposing the presence of chemical weapons in the former Yugoslavia, and highlighting the role of international actors in fanning the flames of conflict and human rights abuses in the Great Lakes region of Africa.

Banning Landmines

Only twice has the international community brought itself to ban a whole class of conventional weapons. One was blinding lasers, the use and trade of which were banned in 1995, and the other was antipersonnel landmines, with the comprehensive ban treaty of 1997. On both occasions Human Rights Watch played an instrumental role. As a founder of the International Campaign to Ban Landmines and a member of its steering committee, and as chair of the U.S. Campaign to Ban Landmines, the organization's Arms Project was in the forefront of efforts to reach consensus on a comprehensive landmines ban under the Ottawa Process. On October 10, the ICBL and its coordinator, Jody Williams, were jointly awarded the 1997 Nobel Peace Prize.

Human Rights Watch participated in all major conferences addressing this issue in 1997, and served as an ICBL representative and spokesperson at the government-sponsored treaty preparatory conferences in Vienna in February, Bonn in April, Johannesburg in May, and Brussels in June, as well as at the treaty-negotiating conference in Oslo in September. It had a prominent role in the organization of and region-wide build-up to the ICBL's conference held in Mozambique in February aimed at fostering the creation of a mine-free zone in southern Africa—a goal achieved just a few months later. In the U.S., Human Rights Watch engaged in regular dialogue with U.S. military and political officials in an ultimately futile bid to find common ground. The organization also visited a number of other national capitals to discuss our landmines concerns in an effort to bring stragglers on board and urge supporters to adhere to a comprehensive ban without reservations. Human Rights Watch was deeply involved in the unprecedented NGO role in drafting and negotiating the treaty, and worked in close cooperation with the key governments in the Ottawa Process.

The Human Rights Watch Arms Project published four reports on landmines in 1997. The first comprehensive exposé of U.S. companies involved in manufacturing antipersonnel mine components was published in April, identifying forty-seven U.S. corporations. Following correspondence with Human Rights Watch, seventeen of these

companies agreed to renounce all future landmine production—startling evidence of the power of the mine ban campaign. The devastating legacy of three decades of rampant landmine use in the southern part of the African continent was described in a report released in May, and provided African pro-ban activists with a powerful advocacy tool. It was presented at the mine conference in Johannesburg which led to the de facto creation of a "mine-free zone" in southern Africa. An analysis of the Pentagon's own archives on the use of landmines in the Korean and Vietnam wars was published in July. Evidence culled from these archives that tens of thousands of U.S. soldiers were killed and maimed by their own landmines in the wars in Korea and Vietnam made headlines and undercut one of the U.S. government's principal contentions, that landmines protect U.S. forces. The positions of the members of the British Commonwealth on antipersonnel landmines were elaborated in a report published at the Commonwealth meeting in Edinburgh in October.

Monitoring the Prohibition on Chemical Weapons

In March, less than two months before the Chemical Weapons Convention was to enter into force and its ratification by the U.S. Senate appeared to be blocked, Human Rights Watch sent a letter to Senate Majority Leader Trent Lott urging an early scheduling of a Senate vote on the issue in light of the CWC's hopeful promise to rid the world of this most insidious of weapons. In April, Human Rights Watch sent a statement, co-signed by twenty-six other U.S. NGOs—including human rights, relief, arms control, religious, peace and veterans' groups—urging all one hundred members of the U.S. Senate to vote in favor of ratification of the CWC.

At the end of March, the organization released a report based on a year of research on the existence of chemical weapons in the former Yugoslavia. The continued presence of a chemical weapons production capability in the region posed a potential threat to the fragile peace established under the Dayton accords. Members of the international community, especially the United States, who are aware that the republics of the former Yugoslavia are capable of producing chemical weapons, were shown to have been reluctant to make this information public. In 1997, the investigation continued of the alleged use of chemical weapons by Bosnian Serb forces around Srebrenica at the time of the collapse of this U.N. safe haven in July 1995.

Part of the interest in pursuing investigations of chemical weapons production, trade, and use was to encourage governments' transparency about existing capabilities so as to stave off a dangerous proliferation and possible use of these weapons in times of conflict. Following research based on documents obtained under the U.S. Freedom of Information Act, Human Rights Watch published an article in the *Bulletin of the Atomic Scientists* in September disclosing that the U.S. government has only selectively revealed what it knows about the chemical weapons capabilities of other states—protecting its allies as it fingered some of the so-called "rogue" nations. The article named over twenty countries in Europe, Asia, the Middle East and Africa that, according to U.S. assessments, had chemical weapons programs in various stages of development.

Monitoring Arms Transfers to Abusive End-Users

In 1997, Human Rights Watch continued to monitor arms flows to forces that were involved in serious abuses of international human rights or humanitarian law. In particular, we monitored conflicts in Turkey, Sudan, Angola, and the Great Lakes region in Central Africa, while keeping an eye on the principal arms suppliers: the United States, the Russian Federation, China, the United Kingdom, France, and, especially in Africa, South Africa. Research on Burundi and Sudan was completed in November.

In early 1997, Human Rights Watch drew attention to reported attempts by the Turkish government to make fresh purchases of military hardware abroad. We urged potential supplier governments to refrain from transferring weapons until the Turkish government showed concrete progress to end abuses and bring its military into line with international and North Atlantic Treaty Organization norms and guidelines; and made recommendations to the U.S. concerning end-use monitoring and regular reporting of its findings to the U.S. Congress.

The Great Lakes remained an important area of focus for Human Rights Watch in 1997 as well. The Arms Project initiated communications with governments involved in the supply of weapons to parties in the conflict in Burundi with a view to stemming the flow of arms into the area. We also urged the U.N. Security Council to revive the International Commission of Inquiry (UNICOI) in Rwanda, implement the important recommendations it made in 1996, and provide it with a new mandate to investigate arms trafficking in the Great Lakes region, including Rwanda, Burundi, and the Congo. Human Rights Watch published an article in the *Bulletin of the Association of Concerned Africa Scholars* in the fall, analyzing the work of the commission and the reasons for its untimely demise.

An important component of efforts to stem the flow of weapons to abusive end-users is the creation of mechanisms that control the export of arms by manufacturing states. Human Rights Watch has supported the campaign to institute an international Code of Conduct on arms transfers, at the United Nations and the European Union, as well as in the United States. In July, as a U.S. Code of Conduct for conventional arms transfers was moving slowly through Congress, Human Rights Watch wrote to Senator Jesse Helms, chairman of the Senate Foreign Relations Committee, as part of a coalition of three hundred arms control, human rights, women's professional, development and religious organizations. The Code had been included in a State Department Authorization Act which was approved by the House of Representatives in June. The Arms Project urged Senator Helms to keep the Code provision in this Act as it was debated in conference committee. In October, the Senate had yet to vote on the Act and its various provisions, including the Code.

Relevant Human Rights Watch reports:

Stoking the Fires: Military Assistance and Arms Trafficking in Burundi, 12/97
Killers in the Commonwealth: Antipersonnel Landmine Policies of the Commonwealth Nations, 10/97
Antipersonnel Mines in The Korean and Vietnam Wars, 7/97
Still Killing: Landmines in Southern Africa,
5/97
U.S. Companies and Production of Antipersonnel Mines, 4/97
Chemical Weapons in Former Yugoslavia,
3/97

THE CHILDREN'S RIGHTS PROJECT

Developments in Children's Rights

Abuses that uniquely affect children pose particular challenges for human rights action. Research requires new and specialized methodology; the assessment and development of policy options must address the special circumstances and vulnerabilities of children in need and the problems they confront; and to raise awareness, build coalitions, and bring about change, unique campaigning initiatives are needed. The range of abuses requiring attention include those carried out by governments as well as those in which governments do not exercise due diligence in protecting the rights of the child. Abuses by armed opposition groups are also crucial children's right issues, not least the use of children as soldiers.

Effective work toward an end to the abuses that expressly affect the rights of children requires devising innovative research and advocacy strategies, drawing on strong partnerships with local activists world-wide in their formulation and implementation. A crucial goal of an effective program for the rights of children is to bring international and national children's groups together with the larger human rights community.

In 1997 children continued to be victimized and exploited around the world. In some countries, eight-year-old children were forced to become child soldiers; some were forced to beat or hack other children to death. In other countries, five and six-year-old children worked as bonded laborers, laboring in dreadful conditions for long

hours to try to pay off loans made to their families. In many countries, children were routinely beaten by police officers, arbitrarily detained, and sent without due process to appalling institutions that provided no education or rehabilitation, while governments and the general public ignored their distress.

These are just some of the children's rights issues that required research and action for change in 1997. The sections that follow examine some of the unique human rights dimensions of the issues of child labor, child soldiers, street children, and juvenile justice, drawing from the work of Human Rights Watch in these areas over the past year.

Child Labor

My sister is ten years old. Every morning at seven she goes to the bonded labor man, and every night at nine she comes home. He treats her badly: he hits her if he thinks she is working slowly or if she talks to other children he yells at her. He comes looking for her if she is sick and cannot work . All I want is to bring my sister home. For 600 rupees I can bring her home. But we will never have 600 rupees.

— Lakshmi, a nine-year-old beedi (cigarette) roller in Tamil Nadu in India, in an interview with Human Rights Watch. Six hundred rupees is the equivalent of about U.S. $17.

The International Labor Organization (ILO) has estimated that 250 million children between the ages of five and fourteen worked in developing countries—at least 120 million full time. Sixty-one percent of these were in Asia, 32 percent in Africa, and 7 percent in Latin America. Most working children in rural areas were found in agriculture; urban children worked in trade and services, with fewer in manufacturing, construction and domestic service. Bonded child labor, a form of slavery, is the part of this larger picture upon which Human Rights Watch has focused its efforts.

Children who work long hours, often in dangerous and unhealthy conditions, are exposed to lasting physical and psychological harm. Working at looms, for example, has left children disabled with eye damage, lung disease, stunted growth, and a susceptibility to arthritis as they grow older. They are denied an education and a normal childhood. Some are confined and beaten, reduced to slavery. Some are denied freedom of movement—the right to leave the workplace and go home to their families. Some are even abducted and forced to work.

Child labor is not a simple issue. Even nongovernmental organizations (NGOs) and others concerned with child labor are sharply divided on how to proceed, arguing variously that all child labor be eliminated immediately; or that the conditions in which children work be reformed with a view toward ultimate elimination; or even that working at a young age may play an important and positive role in children's lives and in their relations with their families, and that it should be reformed but not abolished.

Simply demanding the discharge of child workers can lead to devastating results for the children. In Bangladesh in 1993, for example, garment manufacturers discharged thousands of child workers, believing that proposed legislation prohibiting the importation into the United States of any product made with child labor had been enacted into law. Subsequent studies found that none of the children discharged ended up in school, that many ended up on the street in prostitution or crime, and that the rest were working in worse conditions and for less pay.

The trade sanction approach—seeking boycotts of employers who use child workers in order to eliminate child labor—is, in its seeming simplicity, appealing; it has been used in the carpet industry and with soccer ball manufacturers. In theory, consumers can discourage child labor by not buying products made by children, and feel content to have played a part in reform. Unfortunately, employers' assurances that they have not used child labor cannot be verified without the presence of independent monitors and it is impossible at present to monitor manufacturing workplaces worldwide. No such mechanisms exist today. At any rate, the ILO estimates that only about 5 percent of child laborers work in export industries and the Bangladesh example shows that there are no guarantees that children affected by a boycott will necessarily be better off.

Conditions of child labor range from that of four-year-olds tied to rug looms to keep them from running

away, to seventeen-year-olds helping out on the family farm. In some cases, a child's work can be helpful to him or her and to the family; working and earning can be a positive experience in a child's growing up. This depends largely on the age of the child, the conditions in which the child works, and whether work prevents the child from going to school.

Forced and bonded child labor stand out in that the rights abuses entailed are clear and acute. Tackling these aspects of the complex and troubling child labor issue can serve to draw attention to the plight of bonded and forced child laborers and help to end these appalling practices, while contributing to the debate on the rights dimension of the larger issue of children and work. Both forced labor and bonded labor are viewed in international law as forms of slavery; legislation in many countries forbids these practices, but is frequently unenforced. Forced or bonded child laborers are denied the rights to freedom from slavery, freedom of movement, freedom from violence and abuse, and the right to an education and a normal childhood.

Bonded labor takes place when a family receives an advance payment (sometimes as little as U.S. $15.) to hand a child—boy or girl—over to an employer. In most cases the child cannot work off the debt, nor can the family raise enough money to buy the child back. In some cases, the labor is generational—that is, a child's grandfather or great-grandfather was promised to an employer many years earlier, with the understanding that each generation would provide the employer with a new worker—often with no pay at all. In India alone, 15 million children work as bonded laborers.

Child Labor in India

Bonded child labor exists throughout India, with the vast majority found in industries that produce products for domestic consumption, although bonded children are also to be found laboring in some export industries. Bonded child laborers in six industries in India—silk, beedis (hand-rolled cigarettes), leather, silver, gemstones, and carpets—have been found by Human Rights Watch to involve similar practices, in which the lives and labor of children as young as five were mortgaged to private employers. The children were bound by this form of slavery to work long hours, to perform tasks that resulted in lasting physical injury, in conditions that were often unsafe, for periods that were in effect limited only by the child's capacity to continue completing the tasks required. They lose their health, their right to receive an education, and their futures: many of the children now in bonded servitude have inherited the debts of parents' who themselves lost their childhoods as bonded laborers. Unless broken, this cycle of bondage offers little hope for their own children.

The Indian government's failure to enforce its own laws against bonded labor had condemned millions of children to lives of grueling labor in unsafe conditions, and prevented them from receiving the education to which they were entitled. Pressure to this end, led by Indian nongovernmental organizations, some parts of the Indian judiciary, and supported by international nongovernmental organizations led to some movement toward reform in late 1996 and 1997. A report prepared by Human Rights Watch, in consultation with Indian counterpart organizations, appeared in October 1996. A series of recommendations agreed by these partner organizations centered on the importance of India's implementation of its own laws that outlaw bonded labor, while providing a remedy for injustices done to the children freed from bondage that would look to their future. The principal proposal to this end was that the government provide education, in compensation for, and as a measure of rehabilitation for the wrong done these children and to prevent their return to bondage—and that the guilty employers contribute to this.

The Indian Supreme Court in December 1996 ordered child laborers to be freed from hazardous industries and promoted compulsory education for children through the creation of a trust fund from employers and the government. It also recommended a program of job replacement aimed at providing jobs for adult family members who would replace the freed children. The court also ordered state labor ministries to complete surveys of child labor. In January 1997 the Karnataka State Labor Department raided five establishments that employed child labor and filed a total of twenty-five cases against their owners. Similar raids in Tamil Nadu in April 1997 and in

Gudiyatham in November 1996 resulted in the identification of bonded child laborers.

In another promising development, the Karnataka State High Court ruled in 1997 that children in the sericulture (silk) industry must be taken out of work and that their educations must be provided for by employers under the directives of the December Supreme Court ruling. NGOs in partnership with Human Rights Watch said that the decision gave them a useful tool in eradicating child labor in the silk industry.

Research revealed that the silk industry, which was heavily supported by the World Bank, employed many bonded child laborers. The World Bank, embarrassed by this disclosure, chose to include NGO monitoring of projects for child labor as a condition of support on future projects. The bank has now acknowledged that child labor was used in its projects and, in cooperation with the government and nongovernmental organizations, was exploring pilot programs that would remove children from the workplace, rehabilitate them, and provide them with education. It has also begun the process of developing a policy on child labor that could be reflected in its lending agreements with countries.

The Swiss Development Corporation, which also funded sericulture projects in India, convened an NGO working group to develop programs aimed at curbing the use of child labor in Swiss Development Corporation/World Bank funded programs. The working group met regularly to design approaches to alleviate the human rights abuses resulting from child labor in sericulture.

Child Soldiers

I was good at shooting. I went for several battles in Sudan. The soldiers on the other side would be squatting, but we would stand in a straight line. The commanders were behind us. They would tell us to run straight into the gunfire. The commanders would stay behind and would beat those of us who would not run forward. You would just run forward shooting your gun. . . . I remember the first time I was in the front line. The other side started firing, and the commander ordered us to run towards the bullets. I panicked. I saw others falling down dead around me. The commanders were beating us for not running, for trying to crouch down. They said if we fall down, we would be shot and killed by the soldiers. In Sudan we were fighting the Dinkas, and other Sudanese civilians. I don't know why we were fighting them. We were just ordered to fight.

— Fourteen-year-old boy, abducted by the Lord's Resistance Army, interviewed by Human Rights Watch in Gulu, Uganda in May 1997.

One of the most alarming trends in contemporary armed conflicts is the reliance on children as combatants. An estimated quarter of a million children under the age of eighteen serve as soldiers in government forces or armed opposition groups around the world. Children as young as eight are being forcibly recruited, coerced, or induced to become combatants, targeted to become soldiers because of their unique vulnerability as children. Their emotional and physical immaturity make them particularly malleable and easily susceptible to psychological and physical control. Manipulated by adults, children are drawn into violence that they are too young to resist, while they are too young to appreciate and cope with its consequences.

Children are recruited in a variety of ways. Some are conscripted, others are forcibly recruited, press-ganged or kidnaped and literally dragged from their homes, schools, and villages. Some families offer their children for military service, driven by poverty and hunger, and sometimes children become soldiers simply in order to survive, when their families are dead or the children have become lost or separated from their families. Without other means of support, for some children becoming a soldier may be a means of guaranteeing meals, clothing, and security in troubling times.

Child soldiers perform a variety of duties, ranging from support functions as cooks, porters, messengers and spies, to actually fighting as combatants—due in part to the increased availability of light weight, simple to operate, and inexpensive automatic weapons. Girls are also often forced to provide sexual services to other

soldiers. Whether serving in support functions or as combatants, all children are likely to find themselves at times in the midst of heated battle, where their inexperience and physical immaturity make them particularly vulnerable to injury and death.

Even after children are demobilized, their future is often tragically bleak. Effective planning and long-term support for demobilized children is essential for the meaningful reintegration of children into their families and into civilian society. In addition to meeting children's immediate physical, emotional, and psychological needs, children must be equipped with the skills and education necessary in order for them to survive and live productively as civilians. This is true for all children, but especially so for those who remain separated from their families or whose families have been killed or whose whereabouts are unknown. Without families that are able and willing to accept, support and nurture the children upon return, prospects for their future are especially grim without strong government and community support.

Children were used as soldiers by all of the warring factions in Liberia's long civil war, including the National Patriotic Front, led by Charles Taylor, whose election to the presidency in July 1997 appears to have brought an end to the conflict. In 1994, UNICEF estimated that some 10 percent of the 40,000 to 60,000 fighters were children under the age of fifteen. A major challenge in the rebuilding of Liberia will be the rehabilitation of tens of thousands of children— traumatized by their experiences as child soldiers and cut off from any access to education in their formative years—so they can become a part of civil society. In southern Sudan, the long war between the (Muslim) Khartoum government in the north and (non-Muslim) southern secessionist movements continued. The southern rebel movements, in particular the Southern People's Liberation Movement (SPLA), continued their longstanding practice of mass abductions of young boys, for indoctrination and mobilization as child soldiers, and the employment of children in combat. At the same time, the abduction of children by Sudanese government troops and government-backed militia, for child soldiers or sale as slaves, continued to be reported.

The abduction of children by the northern Ugandan opposition group calling itself the Lord's Resistance Army (LRA) is only the most recent situation of the exploitation of child soldiers to be the object of intensive human rights field research and international attention. Over the past two years, between three and five thousand children have escaped from LRA captivity; a total of between six and ten thousand children were estimated to have been abducted. Former child captives who had managed to escape said that heavily armed LRA rebels abducted children as young as eight from their schools and homes, and forced children to march to rebel base camps in southern Sudan, carrying heavy loads, without rest and with very little food and water. Children who protested, or who could not keep up or attempted to escape, were killed, often by other child captives who were forced to participate in killings as a means of breaking their spirits and initiating them into the ways of the LRA. In Sudan the children received rudimentary military training and were armed and sent into combat. The children were forced to fight against the Ugandan government army and against an armed Sudanese rebel group. They were forced to loot and destroy villages and to abduct other children, during the course of which they often became involved in combat. Abducted girls, in addition to performing duties as servants, cooks, and sometimes fighters, were also given as "wives" to LRA soldiers. The abducted children became virtual slaves; their labor, their bodies, and their lives were all at the disposal of their captors.

Those who were lucky enough to escape or be captured alive by the Ugandan government soldiers faced a harsh reality upon their return to civilian life in Uganda. With many of their family members dead, displaced, unlocatable, or fearful of having the children return home, many children found that they had nowhere to go and no means of supporting themselves. In addition to dealing with severe emotional and psychological trauma, malnourishment, disease and physical injuries suffered while in captivity, many children faced worries about their basic survival— how they would feed, clothe, and shelter themselves.

Street Children

We didn't sleep at all last night. That's why we're sleeping now, during the day. Night is the most dangerous for

us. The police come while we're sleeping and catch you off guard, and grab and hit you. They'll take you to Makadara court and then you'll be sent to remand [detention] for months. Last night there was a big roundup and we had to move so many times to avoid being caught. There was a large group of police in a big lorry, driving around, looking for kids. They're cleaning up the streets now to prepare for the Nairobi International Show [an annual international commerce and trade fair held in Nairobi].

—Moses, a Nairobi street boy, interviewed by Human Rights Watch in Nairobi, Kenya in September 1996.

Street children throughout the world have been subjected to physical abuse by police or been murdered outright, as governments have treated them as a blight to be eradicated—rather than as children to be nurtured and protected. They were frequently arbitrarily detained by police simply because they were homeless, or charged with vague offenses such as loitering or vagrancy, or petty theft. They have been tortured or beaten by police and often held for long periods in poor conditions. Girls were sometimes sexually abused, coerced into sexual acts, or raped by police. Few advocates have spoken up for these children, and few street children have had family members or concerned individuals willing and able to intervene on their behalf.

The term street children refers to children for whom the street more than their family has become their real home. It includes children who might not necessarily be homeless or without families, but who live in situations where there is no protection, supervision, or direction from responsible adults.

While street children have received a fair amount of national and international public attention, that attention has been focused largely on social, economic and health problems of the children—poverty, lack of education, AIDS, prostitution and substance abuse. With the exception of the massive killings of street children in Brazil and Colombia, often by police, which Human Rights Watch reported in 1994, very little attention has been paid to the constant police violence and abuse from which many children suffer. This often neglected side of street children's lives has been a focus of Human Rights Watch's research and action.

The public view of street children in many countries has been overwhelmingly negative. Police round ups—or even murder—of the children, as means to get them off the street, have had public support. There has been an alarming tendency by some law enforcement personnel and civilians, business proprietors and their private security firms, to view street children as almost sub-human. In several countries, notably Brazil, Bulgaria, and Sudan, the racial, ethnic, or religious identification of street children has played a significant role in their treatment. The disturbing notion of "social-cleansing" has been applied to street children even when they were not distinguished as members of a particular racial, ethnic, or religious group: branded as "anti-social," or demonstrating "anti-social behavior," street children have been viewed with suspicion and fear by many who would simply like to see street children disappear.

In India, Kenya and Guatemala, police violence against street children was pervasive in 1997, and impunity was the norm. The failure of law enforcement bodies promptly and effectively to investigate and prosecute cases of abuses against street children allowed the violence to continue. Establishing police accountability was further hampered by the fact that street children often had no recourse but to complain directly to police about police abuses. The threat of police reprisals against them served as a serious deterrent to any child coming forward to testify or make a complaint against an officer. In Kenya, Human Rights Watch worked with NGOs and street workers to encourage the establishment of a network for documenting and reporting police abuses against street children, and to follow up on individual cases. Yet even in Guatemala, where the organization Casa Alianza has been particularly active in this regard and has filed approximately 300 criminal complaints on behalf of street children, only a handful have resulted in prosecutions. Clearly, even where there are advocates willing and able to assist street children in seeking justice, police accountability and an end to the abuses will not be achieved without the commitment of governments.

Street children make up a large proportion of the children who entered the criminal or juvenile justice systems and who end up being committed, often without due process, to correctional institutions. Street children

who entered the criminal or juvenile justice systems often ended up adjudicated "delinquent" and confined in institutions which did little to assist and rehabilitate children, even when optimistically called "schools." While it may sometimes be necessary and in the interests of the child to commit a child to institutional care, the conditions in such institutions should always be aimed at promoting the rehabilitation, education, and welfare of the child, rather than punishment.

Conditions in Children's Institutions

E.B.T.R.. [East Baton Rouge Louisiana Training School], that's a messed up place. The guards will beat you. One of them named Mr. O, he has a thing called a 'house party': if you work on weekends, he wake you up at 5 a.m. He calls you in the back where we take showers and beats you for a whole hour. When we go to mess hall to eat we have to count, and he tells you to come see, then he calls you into the washroom and beats you up [illegible] another sergeant comes to beat you. It has only happened two times to me . . . .'New jacks' come in talking, and they beat them up for nothing. This boy at EBR with me, a guard broke his arm with a broom . . . if you tell a counselor, all it's going to do is make it worse.

—Fifteen-year old boy to Human Rights Watch in 1995.

In 1997, throughout the world, children were confined in correctional institutions—sometimes adult prisons, sometimes juvenile "training schools"—in conditions that hindered their development and damaged their health. The general public was rarely concerned about these children, viewing them as "predators," or particularly vicious criminals. Few voices were raised in concern for these children's human rights. Children in confinement rarely received education, vocational training, psychological treatment or other forms or rehabilitation. They were often held in filthy, unsanitary conditions with no privacy. All of these children eventually return to society: failure to prepare them for their return was not only cruel but shortsighted—the social costs were enormous.

Children in confinement have often suffered doubly, having been taken into custody only after having previously suffered abuse at the hands of their families or in the streets they have made their homes. Police violence against street children in Bulgaria, India, Kenya and Guatemala (discussed above) was accompanied by appalling conditions of confinement. In Guatemala, for example, abused or neglected children (including rape victims), runaways, and others were mixed in with violent offenders. Eight-year old abuse victims were locked up with seventeen-year-old convicted murderers. Children received no formal education, psychological treatment, or vocational training. These conditions contravened international standards as set forth in the U.N. Convention on the Rights of the Child (Article 40), a binding treaty to which Guatemala is party, and norms such as the Standard Minimum Rules for the Administration of Juvenile Justice, the U.N. Rules for the Protection of Juveniles Deprived of their Liberty, and the U.N. Guidelines for the Prevention of Juvenile Delinquency.

Shockingly poor conditions for children in correctional institutions existed in the United States as well. State and federal legislators have enacted laws that required trying children in adult courts at younger and younger ages: twelve years old in Colorado, for example. Exaggerated fears of youthful crime led to the incarceration of more and more children and extremely overcrowded institutions in many states, in spite of the FBI's finding that only 7 percent of the juvenile arrests in the U.S. in 1994 were for violent crimes. Legislators were willing to provide money for bricks and mortar, but reluctant to provide money for education, rehabilitation and treatment of children in their care.

Conditions for children in correctional institutions in the three U.S. states of Louisiana, Georgia, and Colorado, have been the object of Human Rights Watch inquiries and reports. There was pervasive brutality by guards against children in Louisiana's four secure institutions. Children were handcuffed and then beaten by guards; children were put in isolation for long periods. These findings, published in 1995, led the U.S. Department of Justice (DOJ) to investigate these four facilities. In 1997 the DOJ issued a damning report: it referred to "life-threatening" abuses, and documented extreme brutality by guards, as well as a failure to protect children from

sexual and physical abuse. The DOJ threatened to sue the state, and was negotiating with the state to ensure significant reforms.

In Georgia's children's correctional institutions many children were held in overcrowded, squalid, and unsanitary institutions with inadequate programming. Children were held in four-point restraints, tied by wrists and ankles to a bed, a technique used as a punishment and also for children considered possibly suicidal. Isolation was used as punishment (one child was held this way for sixty-three consecutive days), although international standards forbid isolating children at all. These findings were set out in a 1996 Human Rights Watch report. Again, the DOJ took on the case, and in 1997 opened a formal investigation into the Georgia institutions; that investigation is ongoing.

Research in eight Colorado institutions in 1996 found that virtually every incarceration facility for children was seriously overcrowded (some at two-and-a-half times capacity) and unsafe. The staffs used restraints excessively and punitive segregation: children who could learn and be supervised within the community and presented no threat to public safety were routinely committed; children were sent to facilities out of state, away from their families, or to private contract facilities where the state exercised little control over day-to-day operations or the quality and training of staff. Children complained of chronic hunger; and in several facilities incidents of physical abuse by staff were reported.

The Role of the International Community

The U.N. Committee on the Rights of the Child, UNICEF, and the U.N. Commission on Human Rights were the international governmental bodies which were at the forefront of work for children's human rights.

The U.N. Committee on the Rights of the Child, the treaty body charged with monitoring enforcement of the U.N. Convention on the Rights of the Child, was particularly effective, urging governments, for example, to set up juvenile justice systems where none existed. The U.N. secretary-general also acted upon the committee's recommendations that he institute a two-year study on the impact of armed conflict on children. The committee also prevailed upon U.N. member states to set up a working group to draft an optional protocol to the Convention on the Rights of the Child to raise the minimum age for combat—that working group was next to meet in January 1998.

In March 1997 Human Rights Watch submitted to the committee a report on the Czech Republic's denial of citizenship to Roma (Gypsy) children who had spent their entire lives there, thus denying them their right to acquire a nationality, a guarantee set forth in the U.N. Convention on the Rights of the Child (Articles 7 and 8), which has been ratified by the Czech Republic. Of particular concern was the situation of orphans who faced possible deportation as a result. The Czech government considered many of them to be Slovak, even if they had been born in the Czech Republic and had no ties to Slovakia.

The two-year U.N. Study on the Impact of Armed Conflict on Children (known as the Machel study for the chair of the group, Graca Machel) concluded its work. Human Rights Watch had assisted by providing information, suggestion, and proposing language for the final report that was presented to the General Assembly in November 1996. A major recommendation of the study was that an expert, responsible directly to the secretary-general, be appointed to follow up on the study's recommendations. That special representative, Olara Otunnu, was appointed in September.

United Nations Children's Fund (UNICEF) was active in addressing questions of bonded child labor, child soldiers, police violence against street children, and other issues of concern to nongovernmental organizations working for children's rights. Children's issues to be incorporated into the draft legislation to establish an international criminal court and plan complementary advocacy steps were the object of consultation between Human Rights Watch and UNICEF officials in August 1977. In September, UNICEF head Carol Bellamy issued a press release on the Lord's Resistance Army's treatment of children citing the findings of Human Rights Watch and

Amnesty International.

In March 1997 Human Rights Watch submitted to the U.N. Commission on Human Rights a statement on worldwide police violence against street children, and on bonded child labor. The safety and well-being of the two boys identified as the eleventh Panchen Lama—one identified by the Dalai Lama of Tibet and the other identified by the Chinese government—were also raised with the commission. Human Rights Watch findings on police violence and arbitrary detention of children in Guatemala and Kenya were submitted to the U.N. special rapporteur on torture and the U.N. Working Group on Arbitrary Detention.

United States

At the time of writing, the U.N. Convention on the Rights of the Child has been ratified or acceded to by 191 countries. Only two countries had not ratified the treaty: Somalia, which has no internationally-recognized government, and the United States, which had signed but not ratified the convention. The administration had not forwarded the convention to the Senate Foreign Relations Committee, the body charged with reviewing the treaty. Jesse Helms, the chair of that committee, has described the convention as a "pernicious document" and continued in 1997 to advise the administration that submitting the treaty for ratification would be fruitless.

In January 1997 the United States continued its obstructionist tactics with the working group charged with drafting an optional protocol to the Convention on the Rights of the Child on the minimum age for combat. Almost all the nations that have taken part in the drafting sessions have agreed to raise the age from fifteen to eighteen. The United States stood virtually alone in refusing to accept the age of eighteen: U.S. armed forces permit the enlistment of seventeen-year-olds with their parents' permission.

On a more positive note, the administration in August 1996 called together representatives of the footwear and apparel industries, labor, NGOs and consumer groups to examine the issue of sweatshops. In April 1997, President Clinton announced a partnership agreement among those groups that established a workplace code of conduct that would ensure that clothes and shoes bought in the United States would be made under decent and humane conditions. The code would, among other things, prohibit child labor, forced labor, worker abuse and discrimination, and require a safe and healthy work environment. The code has not yet been implemented.

In September 1997, Labor Secretary Alexis Herman announced that the administration would press the Organization for Economic Cooperation and Development to combat child labor and eradicate sweatshops in the garment industry.

The Work of Human Rights Watch

During 1997 Human Rights Watch worked to gather detailed information on violations of children's human rights and carried out advocacy programs to work toward ending the abuses we found. We researched and campaigned to bring to attention the plight of bonded child laborers in India; street children violently attacked by police in India, Guatemala and Kenya; the ill-treatment of children in correctional institutions in those countries, as well as in Colorado in the United States; abuse of unaccompanied minors by the U.S. Immigration and Naturalization Service; and the abduction and killing of children by a rebel group, the Lord's Resistance Army, in Uganda. Human Rights Watch worked closely with local, national, and international nongovernmental organizations in its research and advocacy, and made regular submissions to the human rights mechanism of the United Nations, in particular the Committee on the Rights of the Child.

Bonded Child Labor

In a two-month investigation in India in late 1995 and early 1996, Human Rights Watch researchers talked with more than one hundred bonded child laborers, as well as lawyers, social workers, human rights activists, and government representatives. The fact-finding plan was to look at four industries: three producing for export and one for

the domestic market, with a view to using the trade sanction potential as the main advocacy tool. During the investigation, however, our researchers found that the vast majority of children worked in domestic industries; export industries were a small part of the problem. As a result, research and action were redirected toward six industries—five domestic and one export—with findings reported. Meetings with children, NGOs, lawyers, social workers and others, led us to the conclusion that advocating only the firing of child workers —or trade sanctions—could make matters worse. A broader approach was necessary—chiefly to recommend that the Indian government comply with its own constitution and laws that outlaw bonded labor; and that it provide education for those released from servitude, in compensation for, and as a measure of rehabilitation for the wrong done to them and to prevent their return to bondage.

Indian NGOs differed sharply on solutions to the child labor dilemma, but made common cause in contributing to, and supporting the conclusions and recommendations of the report. Moreover, the government of India responded constructively to the findings, and vowed to take steps to end bonded child labor.

Child Soldiers

Human Rights Watch began its work on child soldiers in 1994 in Liberia and has since then met with scores of children, some as young as nine or ten, who were used as soldiers in armed conflicts around the world. Research in southern Sudan documented the plight of boys abducted by rebel groups and government troops and militia and identified means to end their use as child soldiers in 1995, in a practice that continues. In 1996, we documented the use of child soldiers in eight countries; and, in a separate report in 1997 we reported research findings and recommendations on the use of child soldiers in Burma.

In 1997, a team of Human Rights Watch researchers traveled to northern Uganda to investigate the abduction of children for military purposes by a brutal armed opposition group calling itself the Lord's Resistance Army (LRA). The abduction, torture, rape and killing of abducted children was documented in a September 1997 report: this report was launched jointly with an Amnesty International report on abuses by the Lord's Resistance Army.

Human Rights Watch worked to encourage the Ugandan government to take greater steps to protect children from abductions, to secure the release of abducted children, and to actively provide for the support, rehabilitation, and reintegration into society of children upon their return. The international community, in turn, was pressed to provide assistance to all children affected by the armed conflict. There was little progress in mobilizing pressure on the LRA itself to halt its abuse of children.

Documenting children's experiences as military "recruits" around the world has been a means towards ending the horrific practice of using children to fight adult wars. Towards that end, the Children's Rights Project also continued work in support of the drafting of an optional protocol to the Convention on the Rights of the Child that would raise the minimum age for soldiering from fifteen to eighteen. Research was also undertaken to consider the impact that proposed draft legislation to establish an international criminal court could have on furthering the protection of children affected by armed conflicts, including child soldiers. This included work to try to influence the drafting of that legislation to take into account the interests and needs of children affected by armed conflict.

Human Rights Watch informed the U.N. Committee on the Rights of the Child in September 1997 of our findings concerning the Lord's Resistance Army in Uganda and its pattern of abduction and killing of children, as well as the Ugandan government's failure effectively to protect and rehabilitate children who have escaped from the LRA.

Street children

In 1997, Human Rights Watch documented police violence against street children in India, Kenya and Guatemala, and pressed for greater accountability for police who perpetrated abuses against the children . This research, the findings of which were set out in three reports, highlighted the severity of the abuses in these countries, at times rising to deadly levels, and the lack of accountability by police for their actions.

Human Rights Watch findings on police violence and arbitrary detention of children in Guatemala and Kenya were submitted to the U.N. Commission on Human Rights, and to its special rapporteur on torture and Working Group on Arbitrary Detention.

Conditions in Children's Institutions

The correctional institutions in which children are confined, sometimes with adults, present a range of human rights abuses requiring intensive research and programmatic remedies. Conditions in these institutions in the United States and in other regions have been the object of research by Human Rights Watch since the inception of its Children's Rights Project. In 1994 we reported on the inhumane conditions in which children were illegally confined in adult lockups (jails) in Jamaica; the report contributed to the government's releasing some of the children and ordering the development of alternative facilities.

Fact-finding in eight Colorado juvenile correctional institutions was completed in 1996. Officials in Colorado were extremely open, permitting access to all institutions and children and providing Human Rights Watch with damning internal audits. The findings of the inquiry, published in 1997, were widely covered by the press in Colorado, while contributing to the founding of a local group of lawyers, social workers and others committed to follow up on the investigation's findings and recommendations and to work toward improving the lot of Colorado children in conflict with the law.

In January 1997, the U.N. Committee on the Rights of the Child met with Bulgarian government representatives and cited the Human Rights Watch's submission on shortcomings in the juvenile justice system in its discussions. The committee asked the government to take steps previously sought by Human Rights Watch, including measures to train police, and to provide safeguards to prevent discrimination against minority children, to protect children in "boarding institutions" and "Labor Education Schools" (both are correctional institutions), and to reform the juvenile justice system.

Relevant Human Rights Watch reports:

The Scars of Death: Children Abducted by the Lord's Resistance Army in Uganda, 9/97 *High Country Lockup: Children in Confinement in Colorado*, 9/97
Guatemala's Forgotten Children: Police Violence and Arbitrary Detention, 7/97
Juvenile Injustice: Police Abuse and Detention of Street Children in Kenya, 6/97
Slipping Through the Cracks: Unaccompanied Children Detained by the U.S. Immigration and Naturalization Service, 4/97
Burma: Children's Rights and the Rule of Law, 1/97

THE WOMEN'S RIGHTS PROJECT

Women's Human Rights

In 1997 voices as disparate as United Nations Secretary-General Kofi Annan, World Bank President James D. Wolfensohn, and U.S. Secretary of State Madeleine K. Albright called for the full integration of women's human rights into the policies and practices of national governments and international agencies. Secretary-General Annan stated that he remained "dedicated to mainstreaming a gender perspective into the work of the entire United Nations system and to ensuring that women's rights and women's programs remain integral parts of the Organization's global mission." Secretary Albright called on all states to act on their responsibility to end violations of women's human rights.

This surge in high-level pronouncements on women's human rights represented a watershed in the decade-long

effort by women's rights activists from around the world to highlight human rights issues. Years of often frustrating lobbying by women's rights activists in national, regional, and international fora finally bore significant fruit, with the statements of international leaders reflecting the growing strength and influence of the global women's human rights movement. Whether at the World Trade Organization or during the negotiations for a permanent International Criminal Court, the growing presence of women and increased attention to women's rights concerns were keenly felt.

Unfortunately, as is the case with international human rights practices generally, the political rhetoric surrounding women's human rights was rarely accompanied by any significant action, whether at the international or national level. At the United Nations, the Commission on Human Rights, the two ad hoc war crimes tribunals, and the various specialized agencies continued to give only inconsistent attention to women's human rights and in general acted only when prompted by outside pressure or media coverage. The gap between principle and practice was no less evident at the national level, where governments continued not only to tolerate widespread violence and discrimination against women but to commit such abuses themselves. In fact, as research by the World Bank and others revealed, the world's governments continued more often than not to abuse women's human rights rather than observe them.

One of the most pressing human rights concerns of 1997 was the continued prevalence of violence against women by both state and non-state actors. Conflict-related violence and its effects on women were evident everywhere from Colombia to the Democratic Republic of Congo, and prison abuse of women emerged in several countries as a growing concern. Both wartime and custodial violence continued in large measure to occur with widespread impunity and persistent international inaction. This was no less true of abuse by private actors which, while affecting women everywhere, was adequately addressed by governments virtually nowhere. Police, prosecutors, and judges commonly exhibited indifference to or outright bias against women victims of such abuse who themselves experienced little meaningful relief.

Some bright spots in this otherwise bleak record included important legal reforms in the domestic violence laws of several countries, including South Africa and Peru, lawsuits brought by the U.S. Department of Justice against Arizona and Michigan for the sexual abuse of women in custody, and the decision by the U.N. Human Rights Commission to renew the mandate of the special rapporteur on violence against women.

While violence against women continued to be universally condemned, if infrequently combatted, discrimination against women was still publicly and vigorously defended in many countries. Defending draft legislation that would deny women equal inheritance rights in Nepal, opponents to such equality argued that it would "create a state of social disorder." The U.N. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) continued to be the U.N. treaty with the most reservations and did not include an optional protocol—a formal mechanism that establishes the right of individuals as well as governments to petition. Some countries, including the United States, failed to ratify CEDAW altogether.

The worldwide prevalence of violence and discrimination against women was particularly worrisome in the age of economic and labor globalization. In 1997 more women entered the formal and informal economic sectors than ever before, yet too often they were forced to choose between their jobs and their rights. This was particularly evident in the growing problem of the trafficking of women, which is reported in virtually every region of the world. Moreover, while the U.S. National Administrative Office (U.S. NAO), which oversees compliance with the labor rights side agreement to the North American Free Trade Agreement (NAFTA), did take initial steps to investigate violations of anti-discrimination provisions of the labor rights side agreement to NAFTA, such concern for the ways in which workforce discrimination hinders or harms women's participation in the workforce was notably absent from debate about trade regulations—whether bilateral, regional, or transnational—elsewhere.

The inattention to women's human rights in the policies and programs of both national governments and international bodies was mirrored in their failure to commit adequate resources in this area. Thus, the U.N.'s repeated pledge to uphold the rights of women and integrate attention to these issues throughout its programs

was not meaningfully reflected in the distribution of its resources. This assessment applied equally to national governments, including the U.S., the 1997 budget of which reflected only a minimal contribution to the protection and promotion of the human rights of women.

The following section is designed to provide an overview of the state of women's human rights in 1997. It focuses in particular on the problems of violence and discrimination against women as committed and tolerated by states and is drawn from the work of Human Rights Watch in these areas over the past year.

Violence Against Women

Violence against women by both state and non-state actors was among the most serious and pervasive human rights abuses that the international community confronted in 1997, yet most countries were at best ineffectual and at worst negligent in taking action to end such abuse. Private actors often committed acts of violence against women, including rape and physical abuse, with impunity because states failed to prosecute and punish them. Moreover, in some countries, state agents themselves, such as military, police, and prison personnel, inflicted rape and other forms of violence on women without sanction.

While no reliable statistics exist regarding the scope of wartime or custodial violence against women, such abuse was clearly common. For example, reports from the Democratic Republic of Congo indicated that violence against women was prevalent during fighting between rebels and government forces. In both Rwanda and Bosnia women continued to face the consequences of wartime violence with little assistance from national governments or international entities. They continued to experience inadequate criminal justice, widespread displacement, and discrimination in access to property and financial resources.

The problem of custodial sexual abuse fared little better in 1997. Because of the routine failure of states to uphold the Standard Minimum Rules for the Treatment of Prisoners, particularly with respect to cross-gender guarding, women were particularly vulnerable to custodial abuse, often by male officers. For a variety of reasons, including the relatively small population of female prisoners in most countries, this abuse was routinely overlooked. In one important exception to this inattention, the European Court of Human Rights, in a September 1997 judgment, found that Sukran Aydin, a young Kurdish woman from southeastern Turkey, was subjected to torture when she was raped by guards who detained her in June 1993. In addition, the Inter-American Court on Human Rights issued an important decision related to custodial violence against women. In a September 17 judgment, the court ordered the immediate release of María Elena Loayza Tamayo, a Peruvian professor who was tortured and raped by police in February 1993 and then convicted of terrorism in Peru's "faceless court" system and given a twenty-year prison sentence. While the Inter-American Court found that there was insufficient evidence to prove rape, Peru was ordered to release her immediately and to pay her reparations for the "grave material and moral injury suffered."

Domestic violence has been one of the principal causes of female injury in almost every country in the world. Because most countries do not collect yearly data on the incidence of domestic violence, there is a dearth of current global statistics tracking the prevalence of this abuse. Nevertheless, the data that are available indicate that domestic violence is widespread. The World Health Organization reported in 1996 that in twenty-four countries across four continents, 20 to 50 percent of adult women had been victims of domestic violence at some point in their lives, and that in 50 to 60 percent of those cases, the violence included rape. In some countries, estimates were higher. For example, in Lima, Peru, over 6,000 cases of domestic violence were reported in 1996. According to the Peruvian Ministry of Justice, only one out of every five domestic violence cases actually gets reported. While the U.S. Department of Justice reported that approximately one million women suffered intimate violence in 1994, the American Medical Association estimated that the true incidence neared four million. In Russia, officials estimated that in 1993 15,000 women were killed and over 50,000 hospitalized because of domestic violence; however, there are no official statistics on its actual incidence, and the statistics department of the general prosecutor's office does not compile statistics on domestic violence. A 1994 study in India found that 91

percent of female murder victims had been killed by their husbands.

In addition to domestic violence, sexual assault was a persistent threat to women globally. Because so little official attention was devoted to the subject, the true dimensions of this problem must be inferred from partial studies. One 1994 study found that 23.3 percent of Canadian college students surveyed had been victims of rape or attempted rape. In the U.S., the Department of Justice reported that in 1994 there was one reported rape for every 270 females twelve years old and older, and a 1996 American Medical Association report estimated that one in five women is sexually assaulted by the time she reaches twenty-one years of age. In Russia, according to the Ministry of Internal Affairs, 10,000 rapes were reported to officials in 1996—a figure believed to be significantly lower than the actual incidence. In Peru, women's rights activists estimated that 25,000 women are raped every year.

In 1997 we investigated the effects of wartime violence in Rwanda, Bosnia, Liberia, Burundi, and the Democratic Republic of Congo; custodial abuse in Peru, the United States, and Venezuela; and private actor violence against women in Pakistan, Peru, Russia, and South Africa.

Wartime Violence and Post-Conflict Abuse

During the 1994 Rwandan genocide, women from both the Tutsi and Hutu ethnic groups were subjected to sexual violence—individual rapes, gang rapes, rapes with objects such as sharpened sticks or gun barrels, sexual slavery, and sexual mutilation—on a massive scale. These crimes were perpetrated, directed, or sanctioned by military and political leaders, as well as heads of militia, with a view toward furthering their political goals. Extremist propaganda denouncing the sexuality of Tutsi women, for example, served as one means to incite the widespread use of rape as an instrument to degrade and destroy the Tutsi community.

Throughout the war from 1991 to 1995 in the former Yugoslavia, countless women were victims of rape and other crimes of sexual violence—forced pregnancy, forced maternity, and sexual slavery. While these crimes were committed by all parties to the conflict, they were undertaken most notably by Bosnian Serb soldiers as a military strategy to seize territorial control in the former Yugoslavia. Whether committed against women in front of their families or in the village square, in the home or in a rape camp, once or repeatedly, the deliberate use of rape advanced a political objective: to humiliate, intimidate, and terrorize women and others affected by their suffering as well as to seize territory through the ethnically motivated expulsion of civilians.

In large part, however, the International Criminal Tribunals for Rwanda (ICTR) and the former Yugoslavia (ICTY) failed to deliver substantive justice to the thousands of women who endured brutal acts of sexual violence. After three years of operation, only in June 1997 did the ICTR levy charges of rape against two alleged war criminals. Moreover, shortcomings plagued the few initiatives undertaken by the ICTR to strengthen its investigative and prosecutorial strategies concerning sexual violence. The nascent sexual assault team, for instance, remained severely understaffed and ineffective. Moreover, the appointment of a gender advisor to address the needs of female witnesses, although a step in the right direction, failed to compensate for the overall absence of sufficient protection for witnesses at all stages of the trial. The ICTY, too, experienced limited success in securing women's access to international justice. Its failure to apprehend persons indicted for war crimes in the former Yugoslavia exacerbated women's fear of reprisals against them and their relatives. Wholly inadequate protection measures before and after trial reinforced these fears and further deterred women's participation with the tribunal.

In the wake of warfare, Rwandan and Bosnian women assumed critical roles in rebuilding the social and economic infrastructures of their transformed societies. At the same time, however, they continued to face discrimination in their access to property or financial resources, social stigmatization resulting from rape, deteriorating physical health, and intensifying poverty. Beyond suffering from psychosocial trauma as a consequence of the sexual violence committed against them during the genocide, Rwandan women faced dire

economic difficulties as a result of their second-class citizenship status. Because Rwandan women, pursuant to customary law, are unable to inherit property absent explicit designation as beneficiaries, thousands of widows or orphaned daughters had no legal claim to their late husbands' or fathers' property or finances. Many women were thus rendered destitute, living in abandoned houses or with relatives or friends, struggling to make ends meet, to reclaim their property, and to raise children. Hutu women whose husbands were killed, in exile, or imprisoned on charges of genocide dealt with similar issues of poverty, as well as with the recrimination directed at them on the basis of their ethnicity or their ties to alleged war criminals.

Women in the former Yugoslavia fared no better. "Ethnic cleansing" campaigns during the war there resulted in staggering numbers of refugee and internally displaced women. Many were unable to return home, in part because of the failure to apprehend war criminals, who enjoyed not only freedom but the power to obstruct the return of refugees and displaced persons. In significant numbers, displaced women lived in collective centers, abandoned houses, or other temporary accommodations, dependent on minimal humanitarian aid for basic survival. Moreover, rampant unemployment continued to threaten the future of Bosnian women as they coped with heightened economic responsibilities, particularly after the loss of their husbands, brothers, fathers, and sons to the war.

Despite their obvious needs and vital roles in rebuilding the social and economic infrastructures in their post-war societies, Rwandan and Bosnian women were not viewed as a priority, either by their respective governments or by international donors, humanitarian organizations, and reconstruction and development agencies. Shortchanged in the reconstruction process, Rwandan and Bosnian women continued to suffer personal, social, and economic hardships, in part because of a dearth of services and programs designed to assist these women in rebuilding their lives. The only monetary aid specifically targeted to assist Bosnian women in the transition—the U.S.$5 million Bosnian Women's Initiative from the United States—was scheduled to end in 1997. Although U.N. High Commissioner for Refugees (UNHCR) pledged to sustain the initiative, the only member of the international community that responded to appeals for support was Denmark with only $150,000. A similar United States Agency for International Development (USAID) initiative in Rwanda commanded almost $1.6 million, but despite praise for the program, it was planned to run only through 1998.

Custodial Violence

Unredressed custodial violence against women affected both political prisoners and those accused or convicted of common crimes. In Nepal, for example, border police allegedly gang-raped a female Tibetan refugee in December 1996. At the time of this writing, more than ten months later, this case has still not been seriously investigated. Similarly, in Peru, against the backdrop of the lingering effects of the armed conflict between the Peruvian military and the Shining Path (Sendero Luminoso), members of the Peruvian police and army continued to enjoy nearly complete impunity while committing sexually violent torture against women. As far as Human Rights Watch could determine, there has been only one successful prosecution of sexually violent torture against a detained civilian. Juana Ibarra Aguirre was gang raped and tortured by members of the Peruvian army at the Monzón base on August 29, 1996. On February 17, 1997, a military court convicted Lt. Cpl. Luis Daniel Figueroa Fernández Dávila of abuse of authority against Ms. Ibarra Aguirre and Jorge Chávez Espinoza (who was beaten to death). Fernández Dávila was permanently separated from the army and sentenced to twenty-five months of prison for both crimes and a reparations payment equivalent to $118 to Ibarra Aguirre.

In the common-crimes context, women were the victims of widespread, unchecked violence. In the United States, for example, where the female prison population increased by nearly 400 percent between 1980 and 1995, a Human Rights Watch investigation revealed that women warehoused in overcrowded prisons were regularly subjected to verbal degradation and harassment, unwarranted visual surveillance, abusive pat frisks, rape, and sexual assault. This situation resulted, in part, from the fact that women prisoners in the United States were guarded predominantly by male officers, most of whom were not properly trained to refrain from custodial abuse. Some guards threatened to deny women visitation by their children unless the women submitted to sexual advances—a

glaring instance of the abuse of power by those charged with overseeing and protecting the women prisoners.

This abuse of women prisoners in the United States was compounded by the failure of both the state and federal governments to establish effective grievance and investigatory procedures to sanction abusive officers appropriately. Women who resisted sexual overtures from guards or who filed grievances alleging unprofessional and abusive conduct on the part of the guards were typically subjected to retaliatory actions such as threats by the accused corrections officer or his peers, physical abuse, or disciplinary sanctions, including solitary confinement or transfer to another facility. The U.S. Department of Justice, in charge of investigating civil rights violations of prisoners, does not have a mechanism in place to track complaints of sexual abuse. As a result, despite the filing of numerous complaints, it may be years before official action actually occurs.

Women in prisons in Venezuela also suffered from civil and political rights violations, including regulations that discriminated on the basis of gender. Human Rights Watch investigations found that, like their male counterparts, two-thirds of the women being detained have not been sentenced. For example, one woman with nine children ranging in age from four to nineteen had waited more than four years for her case to be resolved. Incarcerated women were stigmatized by society and many women were rejected by their families and communities. Although Venezuelan law prohibits cross-gender guarding, male National Guard personnel had access to the women, and the cases of brutality Human Rights Watch documented were at the hands of the guardsmen. An example of discriminatory regulations was the contrast between a liberal conjugal visit policy for men and a very stringent conjugal visit policy for women that effectively precluded most women from qualifying for the visits, further alienating them from their families.

Violence by Private Actors

In Pakistan, Peru, Russia, and South Africa, where Human Rights Watch investigated sexual and other violence against women, there were gross deficiencies in the states' response to such abuse by private actors. Access to justice was blocked or extremely difficult at every step of the legal process, from the police to the forensic doctors, prosecutors, and judges. In many cases, survivors who lodged complaints of domestic violence were further victimized by hostile and unsympathetic authorities who refused to accept the gravity of their assaults, routinely acted as if these assaults were provoked or deserved, and ultimately denied complainants protection or redress. These practices reflected both deficiencies in the laws of each country with respect to private actor violence as well as discriminatory and prejudiced practices on the part of state authorities.

Police routinely failed to exercise minimum diligence in the recording and investigation of rape and domestic violence complaints. It was common practice for police to refuse to accept domestic or sexual violence complaints outright, and in many cases victims were told that they deserved to be beaten, or had provoked their rapists, or were simply lying. In Russia, police blamed women for making themselves vulnerable to rape because of the clothing they wore, because they went out late at night, or because they consumed alcohol. In Peru, women reported that they were told by police, prosecutors, and justices of the peace that they deserved to be beaten for being disobedient, stubborn, or refusing sex with their partners.

Given such official bias against women, medical evidence can be crucial to the effective prosecution of such abuse, despite the fact that the victim's own testimony should be sufficient. Some countries even went so far as to require medical exams for victims while at the same time failing to ensure that those exams were properly or expeditiously conducted. Access to such exams was often geographically or financially impossible to obtain, and the exams themselves were ordinarily inadequate, incomplete, and conducted by poorly trained personnel with distinct biases against corroborating victims' claims. Doctors frequently failed to examine thoroughly sexual assault victims for any evidence other than obvious signs of forced vaginal penetration and usually centered on prejudicial and, in most cases, irrelevant information regarding the victims' imputed sexual history. In Russia and Peru, doctors tended to focus on the condition of the victim's hymen and how recently she was "deflowered," regardless of her age, marital status, or prior sexual experience, in some cases claiming that there was "nothing

to find" in women who were not virgins. In Pakistan, it was standard procedure for doctors to insert several fingers into the victim's vagina to determine whether she was "habituated to sex."

The actual prosecution of private actor violence against women was recurrently hampered by the official tendency in both law and practice to treat such abuse as a lesser offence. In Peru and Pakistan, cases of domestic violence and of rape of adult women were seldom prosecuted by the state. (Children's cases were treated more seriously.) Many Peruvian survivors of rape could pursue their cases only through private suits that they or their families initiated. In Pakistan, domestic violence victims could seek redress only through private suits. In Russia, the state rarely prosecuted domestic violence, and the law does not provide for protective orders to prevent the continued abuse of the victim. In the countries we investigated, only a very small percentage of domestic and sexual violence complaints ever reached adjudication. It was considered normal for judges to examine victims' behavior and reputation more exhaustively than the defendants' acts of violence. For example, one Pakistani judge dismissed a divorce case in which domestic violence was alleged, saying that the Koran allows men to admonish their wives. Criminal judges in Peru routinely suspended the sentences of convicted rapists, letting them free.

Another form of violence by private actors practiced in over thirty African countries, in parts of Asia, and among immigrant communities in the U.S. and elsewhere was female genital mutilation (FGM), also called female circumcision. FGM was performed on infants, children, teens, and adult women and was defended by practitioners as an appropriate way of controlling women's sexuality, an important initiation rite, or a prerequisite for marriage. In Egypt, where a 1995 government-supported study indicated that over 90 percent of the female population underwent FGM, a July court decision undermined initial government efforts to combat the practice by overturning the health minister's ban on FGM on the grounds that it exceeded his authority. Egyptian human rights activists lobbied hard for the government to stand by its opposition to FGM, and the government pledged to appeal the court decision.

Discrimination

In addition to violence against women, which itself reflects and perpetuates discrimination, systematic discrimination against women persisted in 1997 in myriad forms throughout the world. Numerous states, including those that have ratified CEDAW, continued to maintain and enforce statutory laws that require differential and discriminatory treatment against women. In many states without such de jure discrimination, de facto discrimination flourished. The belief that discrimination on the basis of sex is acceptable in some forms or on certain occasions frustrated efforts both to eliminate sex discrimination—as called for by CEDAW—and to secure justice for women suffering its consequences.

In a major setback in the struggle to secure equal rights, women in Afghanistan saw their status plunge in 1997 as the Taliban took control over much of their country. Taliban edicts severely restricted women's freedom of movement and denied women and girls' access to education. Women whose dress did not comport with Taliban standards—which outlawed makeup, jewelry, and shoes that make noise—reportedly were beaten in the street. Variations of these extreme forms of sex discrimination exist in countries around the world. In 1997, we investigated state-committed or -tolerated discrimination in Morocco, Russia, Nepal, Egypt, Guatemala, Mexico, Malaysia, and Lebanon.

State-Sponsored Discrimination

As governments adopted the language of women's human rights in the wake of the 1995 Fourth World Conference on Women in Beijing, many pointed to their constitutional guarantees of equal rights to all citizens, equal opportunity regardless of sex, or equal protection of the law. Yet these guarantees were often nullified by specific statutes that, among other things, limited women's access to divorce or their ability to inherit property or denied them equal citizenship rights. Morocco's constitution, for example, provides limited equality: women are

guaranteed equality in politics, education, and the workplace but are not guaranteed equality as a civil right that would apply in other areas, such as the family law. The government of Morocco submitted its record on complying with the Convention on the Elimination of All Forms of Discrimination Against Women for the first time in January 1997. Although Morocco could claim that certain forms of discrimination had been eliminated through legal reform—women no longer needed their husbands' express permission to work outside the home—it defended as consistent with religion and tradition the sex discrimination that pervades its Family Code and makes women minors under the law regardless of their age. Morocco succeeded in exporting this discrimination to France. Despite a French constitutional guarantee of equality, the French and Moroccan governments have operated since 1981 under an agreement to apply Moroccan family law to Moroccan nationals living in France.

Egypt's constitution provides a much stronger guarantee of equality, stating, "Citizens are equal before the law. They have equal rights and duties without distinction because of sex, origin, language, religion, or belief." Nonetheless, Egyptian President Hosni Mubarak continued to refuse women equal citizenship by denying their right to pass on their nationality to their children. Instead, in 1997 his government offered to eliminate some of the consequences—high education fees, barriers to residency, visas—faced by families with Egyptian mothers and non-Egyptian fathers but failed to remove the discriminatory provisions from the law.

Women's rights in the workplace were also curtailed by law. In Russia, for example, labor legislation adopted in 1996 denied women the right to work in 400 professions considered inconsistent with their femininity and maternal responsibilities. Morocco also denied women access to certain jobs, specifically prohibiting them from working at night (with some exceptions), from holding jobs that are "immoral," and from serving in particular posts in the ministries of interior and defense, in national security, and in the government post and telecommunications office. In addition, in April 1997, the Taliban, who controlled nearly two-thirds of Afghanistan, announced an outright ban on women working outside the home, except in the health sector.

Unfortunately, tenacious efforts to eliminate sex discrimination continued to be undercut by official and broad-based opposition to women's equality. Nepali women's rights activists lobbied their parliament to grant women equal inheritance rights. As of September 1997, the bill under discussion allowed only unmarried daughters the right to inherit parental property. Opponents of giving women equal inheritance rights argued that, in the words of Supreme Court lawyer Madhab Koirala, it would "create a state of social disorder."

In another example of the state's participating directly in the subordination of women, Guatemala's civil code allows husbands to refuse their wives permission to work outside the home and appoints the husband as the representative of all family concerns. In 1994 María Eugenia Morales de Sierra, represented by the Center for Justice and International Law, challenged these provisions as discriminatory on the basis of sex. Morales de Sierra brought her case to the Inter-American Commission in Human Rights, which inexplicably and uncharacteristically declined to consider the case for eighteen months. At the September 1996 hearing, Guatemala agreed to promote legal reform but did not act on this promise. Despite continued government failure to reform the challenged laws, as of October 1997, the Inter-American Commission has not issued a ruling on the case.

State-Tolerated Discrimination

The state's direct role in perpetuating discrimination and violence against women was evident not only through the promulgation of biased laws but through its complicity with private actors in failing to enforce protective law. By failing to take measures to prohibit discrimination and protect the right of women to nondiscrimination, governments throughout the world contributed to the creation of an environment in which non-state entities could openly discriminate against women without fear of condemnation or prosecution. In 1997 Human Rights Watch focused on the particular abuses suffered as a result of state-tolerated sex discrimination by women in the paid workforce and trafficked women.

Although many countries of the world have outlawed some of the most pernicious forms of workplace discrimination, many de facto discriminatory practices persist. This is a particularly troubling fact given that

women participated in the workforce (informal and formal sectors) in increasing numbers in the developing world as well as in industrialized nations. The United Nations estimated that in 1994 approximately 41 percent of the world's women age fifteen and over were economically active but that most of the job growth for women had occurred in low-wage positions. Unfortunately, women's participation was often defined by conditions that kept them chronically poor or subsisting. Women worked in segregated, primarily low-wage industries that offered them the least amount of benefits, pay, potential for advance, skills development, or job security. According to a 1995 International Labour Organisation (ILO) report, women were paid less than men for comparable work, including in developed nations. Moreover, the ILO found that when women began to enter in significant numbers any category of work previously dominated by men, there was a simultaneous downgrading of that occupation, in both pay and status; examples included teaching and senior civil service positions.

Regardless of the sector in which women worked or how much they were paid, they continued to face de facto discrimination in the labor force. One glaring example of such discrimination was hiring practices. Associating women primarily with their reproductive capacities, many employers assumed that women would leave the workforce once they bore children and thus saw female workers as bad investments and tried to avoid hiring them. Such biased notions against female job applicants resulted in discriminatory hiring practices in many countries, often despite clear labor laws and international obligations to the contrary.

In Mexico's export processing (maquiladora) sector, for example, Human Rights Watch research in 1996 and 1997 found that women applying for work as line assemblers were required to undergo mandatory, hiring-related pregnancy testing before they were offered work. Those found to be pregnant were denied jobs. Those who became pregnant shortly after being hired risked being forced to resign. Some companies required new female employees to certify that they remained non-pregnant, typically by forcing them, at regular intervals, to undergo mandatory checks of their used sanitary napkins. When confronted with evidence of these discriminatory practices, few of the responsible parties made any effort to address it. General Motors Corp., the largest employer in the maquiladoras, and ITT Corp. were two notable exceptions: after receiving our findings, these corporations pledged to discontinue pregnancy-based sex discrimination. The government of Mexico, however, characterized such discriminatory hiring practices as legal and failed to sanction offending companies, among them Zenith and Johnson Controls, which continued to argue that such discriminatory practices were legally permissible.

Few international remedial bodies exist to explore and make judgments on workforce discrimination against women and to require reforms. The Mexico maquiladora sector, however, is subject to such a mechanism. In July 1997, the United States National Administrative Office (U.S. NAO, the body charged with hearing cases of alleged violations by Canada or Mexico of the North American Agreement on Labor Cooperation, commonly referred to as the labor rights side agreement of the North American Free Trade Agreement, NAFTA) accepted for review a petition filed by Human Rights Watch, the International Labor Rights Fund, and the National Association of Democratic Lawyers (Asociación Nacional de Abogados Democráticos), which charged the Mexican government with failure to enforce its domestic labor code or set up effective mechanisms to adjudicate labor disputes. The U.S. NAO was expected to issue its findings by November 1997. (For more information on the U.S. NAO process, see the Mexico chapter.)

The experiences of migrant women workers provided another striking example of de facto discrimination against women. All over the world, women migrated from their home countries to wealthier receiver countries to work in factories or to provide in-home domestic or other services. A variety of government action or inaction, including the implementation of legislation with a negative disparate impact on migrant women workers, the condoning of discriminatory contractual agreements, and the failure to enforce contractual protections for migrant workers, resulted in violations of women workers' rights. Migrant women workers faced not only loss of promised wages but exploitative hours, physical abuse, and confinement by their employers, and arbitrary detentions and summary deportations by the state.

Governments' failure to provide remedies to violations of women workers' rights, at times combined with overtly prejudicial laws and regulations, resulted in discrimination and physical abuse; some governments or their agents tolerated or collaborated in discriminatory, arbitrary detentions and deportations. In Malaysia, for example, the government, by promulgating a law that excludes domestic workers from labor protections, indirectly but nonetheless effectively sanctioned discrimination against migrant women workers. Malaysia's Employment Act, the primary law governing worker rights in that country, extends to both foreign and Malaysian workers but specifically exempts domestic workers from key provisions. These provisions include those guaranteeing maternity leave, those which place limits on advances, and those governing permissible working hours. Although many of the exemptions are couched in gender-neutral language, because the vast majority of domestic workers are women, it is clear that these provisions have had a particularly significant impact on decreasing protections afforded to women workers.

The Malaysian government's complicity with private discrimination against migrant women workers was also evident in its inaction with regard to the discriminatory contracts issued by Malaysian employers. A Human Rights Watch investigation in 1997 found that thousands of Indonesian women migrated to Malaysia to work as either factory workers or domestic servants. Contracts for the domestic servants generally included a standard prohibition on association, barring them from "forming or participating in any social club in Malaysia" during their employment. Contracts for the migrant factory workers often included bans on trade union activity and on pregnancy. With regard to the latter, factory employers were able to enforce the pregnancy provisions because of Malaysian immigration regulations, which require migrant women to have full medical examinations that screen for pregnancy prior to their entry into Malaysia, a follow-up examination one month after entry, and then subsequent yearly examinations. Those found to be pregnant are barred from working in Malaysia and are subject to immediate dismissal and deportation.

Even when women were able to negotiate labor contracts that satisfactorily protected their rights, they were still not safe from abuse by their employers. These situations arose because of some governments' failure to provide adequate mechanisms for the women workers to enforce their contracts or seek remedies for their violation. In Lebanon, for example, women from as far away as Ethiopia migrated with the help of Lebanese employment agencies to work as household servants. In one widely publicized case, an Ethiopian woman, Zenebech Girma, alleged that she had been working in Lebanon as a domestic servant, yet her wages were underpaid (or not paid at all), she was confined to her employers' home and denied freedom of movement, physically and mentally abused, and refused permission to end her contractual relationship with her employer and return to her home country. At this writing, the Lebanese government had initiated an investigation but had yet to take any action on their findings.

The lack of adequate legal protection was particularly stark not only for household domestics, migrant workers, and workers in assembly plants but also for victims of trafficking. In virtually every region of the globe, women were coerced or tricked into migrating to work in prostitution, the garment trade, or other sectors, in addition, frequently, to suffering abuses in the workplace. Human Rights Watch has investigated trafficking in women in the United States, Thailand, Nepal, India, Brazil, and Pakistan.

Once transported to an unfamiliar and often hostile milieu, women were inevitably left at the mercy of traffickers who then more easily exploited their labor and operated outside of applicable frameworks of labor, criminal, and contractual laws. Trafficking victims were hence particularly susceptible to a range of abuses in the workplace, including debt bondage, forced labor, illegal confinement, enforced isolation, wage withholding, deprivation of identity documents, and sexual and other physical abuse. Women who had not been trafficked into these sectors frequently found themselves suffering such abuse as well.

Trafficking victims were commonly denied access to legal remedies and redress for severe human rights violations both during recruitment and in the workplace. Most trafficked women were socially, linguistically, culturally, and legally isolated in their host countries. Frequently they were under the physical control of their

employers, lacking any identity papers and uncertain of their status and rights in the receiving country. Most were illegal migrants, subject to the constant threat of detention and deportation. Women trafficked into prostitution feared, in addition, harsh criminal sanctions. All these factors contributed to an atmosphere that inhibited trafficked persons from speaking out to officials or seeking redress from state agencies.

Human Rights Watch investigations revealed that even when trafficked women did come in contact with law enforcement officials, they were frequently treated as illegal migrants or as criminals or both, routinely detained, and summarily deported. With few exceptions, officials failed to investigate or record the testimony of victims in state custody as to the abuses they suffered during recruitment and in the workplace or to allow them an opportunity to file charges or bring civil suits against their employers and traffickers. Rarely were systematic efforts made to track down and prosecute the employers or traffickers. On the contrary, in many countries law enforcement and immigration officials profited from the traffic in women. For a price they aided and abetted the coercive passage of women and ignored abuses in their jurisdictions.

In the United States, as in many other countries, upon their detection in brothels or sweatshops, trafficked women were generally detained and deported unless their testimony was required for criminal cases against their traffickers or employers. Where criminal suits were instituted against the latter, in many cases, the charges did not reflect the full range of civil and human rights violations committed against the women. Rather, the traffickers and brothel owners were typically prosecuted for harboring illegal aliens and conspiring to commit prostitution. This pattern was due, in part, to domestic criminal laws that failed fully to protect the rights of trafficked women and others held in debt bondage and involuntary servitude and to practices which often reflected an official bias against both immigrants and prostitutes.

Notably Belgium and the Netherlands have domestic laws that afford a measure of due process protection and allow for the provision of basic support services to women believed to be victims of trafficking. The laws allow trafficked women who want to bring charges against their traffickers and employers to obtain temporary residence permits for the duration of the judicial process. Furthermore, victims of trafficking are entitled to social security benefits, safe shelters, legal aid, medical care, and psychological counseling while they consider whether to press charges, and, in some cases, beyond that as well. The Dutch and Belgian governments also support nongovernmental organizations working with trafficked women and cooperate with them in implementing government initiatives for trafficking victims. Neither the Dutch nor Belgian governments criminalize prostitution, although Belgium does outlaw procurement and brothel keeping.

The Role of the International Community

In recent years, the international community has made important advances in the recognition of violence against women as a human rights concern, recognizing the need for states to respond appropriately. In 1992, the U.N.'s Committee on the Elimination of Discrimination Against Women (the CEDAW Committee), which monitors state compliance with the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW), issued General Recommendation No. 19, finding that gender-based violence is a form of discrimination that states must take measures to eradicate. The U.N. General Assembly subsequently adopted the Declaration on the Elimination of Violence Against Women in 1993. Later that year, at the World Conference on Human Rights in Vienna, states reaffirmed that governments have a duty to eliminate violence against women in order to ensure women's enjoyment of their human rights and fundamental freedoms. In 1994 the Commission on Human Rights appointed a special rapporteur on violence against women. That year the Organization of American States adopted the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (the Belem do Pará Convention). These efforts reached an apex in 1995, at the Fourth World Conference on Women in Beijing, China, where states adopted a Platform of Action and individual states made commitments to take specific actions to promote gender equality, including the eradication of all forms of violence against women.

The international community's commitment to achieving the goal of gender equality did not, however, lead to sustained efforts to eliminate other forms of sex discrimination, including laws and practices that deny women equal rights in the workplace and in the family. For example, in June 1993, governments at the World Conference on Human Rights asked the Commission on the Status of Women (CSW) and the CEDAW Committee to create a stronger enforcement mechanism for victims of sex discrimination. Four years and much discussion later, the CSW had managed only to draft and circulate a proposal for an optional protocol that would give victims of sex discrimination the right to petition the CEDAW Committee. Moreover, in negotiations over the draft proposal, most governments refused to integrate specific means to make the petition mechanism available and functional for actual victims of sex discrimination.

United Nations

While it is widely acknowledged within the United Nations that attention to women's human rights must be integrated into the U.N.'s programs and mission, the international body's actual practice fell far short of its rhetoric during 1997. A press release issued by the Economic and Social Council (ECOSOC) in July 1997, for example, quoted a Russian delegate as stating that the U.N.'s approach to mainstreaming women's issues was over-theoretical and "risked being nothing but arcane paper-churning." This observation followed the release of a June 1997 ECOSOC draft outlining concepts, principles, and specific recommendations for integrating women's concerns and issues into the overall work of the United Nations. In this draft, ECOSOC recognized that "a gender perspective has not been fully integrated." A July 1997 report by Secretary-General Kofi Annan on humanitarian assistance acknowledged that the U.N. had yet to implement specific measures to address the protection of women's human rights in times of conflict.

The U.N.'s failure fully to address women's human rights concerns was perhaps best reflected in its allocation of resources. Although a wide variety of U.N. officials have publicly committed to promoting women's human rights, these commitments have mostly failed to lead to concrete programs or, because of the U.N. accounting system, actual work to promote women's rights cannot be measured. Secretary-General Annan acknowledged in a report issued in June 1997 that the U.N. method of budgeting made it impossible to assess allocation of resources disaggregated by sex or by beneficiary. However, even absent such information for 1997, it was clear that women's human rights got short shrift. In December 1996, United Nations Development Program (UNDP) issued a directive committing 20 percent of its 1997 budget for programs to promote gender equality and the advancement of women, but this purported increase in support could not be assessed because UNDP failed to modify its reporting system so as to clarify whether the goal would be reached. On an even more disturbing note, the United Nations Development Fund for Women (UNIFEM), an autonomous body in association with UNDP and the only U.N. agency that provides direct support to promoting women's human rights and development projects, received less than 2 percent of the UNDP's 1997 budget of $1 billion.

In addition to concerns about budgeting, the U.N. reform process, spearheaded by Secretary-General Annan, prompted concerns both within and outside the United Nations that women's human rights would become increasingly marginalized. Not only was Angela King, the special adviser to the secretary-general on gender issues, excluded from the initial reform process, but the final ninety-page document guiding the process makes only three references to women's human rights. Furthermore, despite repeated pledges to achieve gender parity at all levels within the U.N., in his first round of high-level appointments in January 1997 Secretary-General Annan named two women and seventeen men. On a positive note, he later appointed Mary Robinson to be High Commissioner for Human Rights.

While overall, the U.N.'s actions failed to match its rhetoric, the organization did make some progress in addressing specific women's rights, particularly with respect to human rights bodies. The reports of Special Rapporteur on Violence Against Women Radhika Coomaraswamy continued to make a significant contribution to exposing the issue and securing government action to address it. The rapporteur's February 1997 report on sexual

violence in South Africa, for example, highlighted the relationship between the high rate of violence against women and the legacy of apartheid and recommended a complete "overhauling of the criminal justice apparatus to respond to violence in general and violence against women in particular." The Commission on Human Rights, in recognition of the importance of the rapporteur's work, renewed her mandate for three additional years.

In addition, the Human Rights Committee, responsible for reviewing country reports under the International Covenant on Civil and Political Rights, increased its focus on violence against women. For example, in considering Peru's latest report, the committee focused on violations which were gender specific, including de jure discrimination. Specifically, the committee recommended the repeal of the provision in the Peru's Penal Code that exempted a rapist from punishment if he married the victim. The committee criticized the fact that rape in Peru can only be prosecuted privately as well as provisions in the Civil Code that discriminate against women, including a difference in the minimum age of matrimony.

Though such specific improvements were welcome, the U.N.'s human rights system continued in general to accord too little attention to women. Thus, a UNIFEM review of reports to the U.N. Commission on Human Rights by special rapporteurs and by countries characterized them as providing "inconsistent attention to, and analysis of, gender-specific violations." UNIFEM also noted that few reports included analysis of the relationship between the abuse suffered by women and their subordinate status in public and private life. In a March 1997 letter circulated at the fifty-third session of the Commission on Human Rights, UNIFEM presented specific suggestions on how to analyze human rights violations from a gender-sensitive perspective. The letter called for differentiating gender-specific forms of violence and discrimination, for analyzing the circumstances and consequences of violations which may be gender-specific, and for identifying gender-specific barriers in access to remedies.

The United Nations' uneven treatment of women's human rights was equally evident in its approach to trafficking. The 1997 report of the U.N. special rapporteur on violence against women noted that existing international instruments are clearly inadequate to address the problem. She emphasized that the 1949 Convention on the Suppression of the Traffic in Persons is flawed, lacks widespread support, and has a weak enforcement mechanism. Yet when the Subcommission on Prevention of Discrimination and Protection of Minorities' Working Group on Contemporary Forms of Slavery issued a report five months later, it failed to take into consideration the special rapporteur's analysis and called for widespread ratification of the 1949 Convention.

Attempts to address the human rights of women more fully were increasingly evident in U.N. programs, which until recently have not viewed this work as within their mandate. Both United Nations Population Fund (UNFPA) and the United Nations Children's Fund (UNICEF) have taken welcome steps in this direction and in 1995 and 1996, respectively, adopted mandates based on promoting human rights and in particular the rights of women and girls. UNFPA adopted a rights approach to family planning which incorporated the objectives set forth at the 1994 International Conference on Population and Development (Cairo Conference), including gender equity and equality; education, especially for girls; infant, child, and maternal mortality reduction; and universal access to reproductive health services. UNICEF officially changed its mandate to make its mission the universal ratification and implementation of Convention on the Rights of the Child (CRC), with an explicit reference to the fact that the well-being of children is directly correlated to that of their mothers. In the *Progress of Nations – 1997*, an annual UNICEF publication, the commentary on women focused on violence against women and girls. Whether these changes will translate into full-fledged programmatic attention to women's rights by these agencies remains to be seen.

The potential gap between policy and practice with respect to the treatment of women's human rights by U.N. agencies was also evident during 1997 at the Office of the United Nations High Commissioner for Refugees (UNHCR). When UNHCR staff did implement procedures to protect women refugees and train workers, we were able to document significant improvements in the situation for women refugees. However, the failure to translate these policies into practice continued, as evidenced by a 1997 International Rescue Committee (IRC) survey of approximately 3,800 women refugees from Burundi who have spent the last three years as refugees in Tanzania that revealed that

26 percent had been victims of sexual violence in the camps. UNHCR had no protection officers assigned to the camp and only conducted trainings on preventing sexual violence after learning of the IRC report.

An important U.N. initiative in the area of accountability and access to justice was the move to create an International Criminal Court, negotiations for which continued through 1997. However, here again women's issues fared poorly and were nearly always at risk of being overlooked entirely without the watchful eyes and targeted efforts of women's rights activists. The proposed establishment of an ICC has great significance for women because they are commonly the targets and victims of egregious international crimes and, at the same time, have frequently been denied access to justice at both national and international levels. The conflicts in Rwanda and the former Yugoslavia are only the most recent examples of horrifying levels of violence against women, including acts of rape, enforced prostitution, and other forms of sexual assault. Although it is well established that these abuses can constitute genocide, serious violations of the laws and customs of war, or crimes against humanity, the prosecution of sexual and gender violence presents unique challenges in terms of developing appropriate investigative methods and legal theories, as well as particular difficulties in ensuring the participation and protection of victims and witnesses. This fact might account, in part, for the initial reluctance of the tribunals for the former Yugoslavia and Rwanda to investigate and prosecute these crimes with the seriousness they deserve. Drawing on lessons learned from the experiences of the ad hoc tribunals, the permanent International Criminal Court must be fully empowered to prosecute sexual and gender violence if it is to fulfill its mandate to end impunity for the most serious violations of international law.

Nevertheless, the Preparatory Committee on the Establishment of an International Criminal Court, convened by the U.N. General Assembly in December 1995, did not deal in any detail with the specific concerns of women victims of violence until February 1997, when, owing to the pioneering efforts of a few committed delegations and a caucus of women's rights activists, these concerns entered the debate on the definitions and scope of crimes within the court's jurisdiction. At the conclusion of the meeting, the draft consolidated text expressly categorized crimes of sexual and gender violence as war crimes and crimes against humanity. Although this move does not represent a progressive development of international law, such express reference is necessary for the prosecution of these crimes to be treated as an integral part of the court's mandate.

Although the momentum created in February was sustained during the August meeting of the Preparatory Committee, it was again the result of the labors of a small number of dedicated and outspoken delegations and women's rights advocates. Based on their efforts, the draft consolidated text on principles of criminal procedure included an explicit direction to the prosecutor to ensure that the investigation of crimes of sexual violence be carried out in a manner conducive to eliciting relevant testimony from victims and witnesses. It also contained an instruction to the court to take necessary measures to ensure the safety, physical and psychological well-being, dignity, and privacy of victims and witnesses and explicitly referenced victims of sexual and gender violence in this regard. Beyond this hard-won success, the August meeting was marked by setbacks on critical foundational issues (*see* the discussion of the ICC in the Special Issues section).

World Bank

The World Bank, which is charged with promoting social and economic development through loans, investment, and technical assistance, has publicly recognized the impact of violations of women's rights on women's participation in the social and economic development of their countries. In his address at the 1995 Fourth World Conference on Women in Beijing, World Bank President James D. Wolfensohn stressed the critical role that governments and development institutions have to play "to support the investments which can help women to achieve equality and escape poverty." He called for an end to "empty words" in place of real action to improve the lives of women worldwide.

Unfortunately, the World Bank did not successfully respond to this call for action by its own president. A 1994 study by the bank did acknowledge violence against women as a human rights concern and a health issue that greatly affects women's participation in socioeconomic development, but the bank did not undertake projects to follow up on the report—its first and only comprehensive work on violence against women. This lack of institutional support meant that in 1997 violations of women's human rights committed by recipients of World Bank assistance were not explicitly addressed by bank project work on gender inequity. In a potentially important step, the bank in 1996 and 1997 developed "gender action plans" for every region. However, the extent to which these plans, and particularly their attention to women's rights, were being implemented was difficult to assess given the lack of monitoring of this undertaking.

United States

U.S. leadership shared with that of the U.N. a flair for strong statements in defense of women's rights. Much less obvious were the effects of this rhetoric on the implementation of U.S. policy in countries around the world. With the December 1996 appointment of Madeleine K. Albright as secretary of state, the Clinton administration gained a forceful advocate for making women's human rights a foreign policy priority. President Clinton emphasized his administration's intent to make women's human rights a U.S. foreign policy priority at a Human Rights Day ceremony on December 10, 1996 that honored women's rights activists from around the world. In early March 1997, Secretary Al-bright underscored that improving the status of women is the "mission" of U.S. foreign policy, saying, "Women will only be able to contribute to their full potential if they have equal access, equal rights, equal protection, and a fair chance at the levers of economic and political power." First Lady Hillary Rodham Clinton also supported women's rights activists in her trips to Asia in late 1996 and to Africa in March 1997 and raised women's human rights in her speeches, including on International Women's Day and in a meeting with human rights activists in Costa Rica in May.

The rhetoric was accompanied by some modest signs of progress within the State Department. The senior advisor on international women's issues, Theresa Loar, appointed in late 1996, increased the scope and reach of her staff's activities in 1997 and created interagency working groups to coordinate U.S. policy on violations of women's human rights such as trafficking and female genital mutilation. Loar's office began work to ensure that a G8 initiative involving the governments of the United States, Russia, Japan, France, Great Britain, Germany, Italy, and Canada to promote democracy building, announced in Denver in early 1997, would translate into aid and trade policies to advance women's human rights, especially their political participation. The State Department's Bureau of Democracy, Human Rights, and Labor also stepped up efforts to integrate women's rights more consistently and prominently into U.S. foreign policy by raising women's human rights concerns in bilateral talks with governments such as Russia and Mexico, requesting more reporting on women's rights from embassies around the world, and supporting small grants for women's rights organizations and programs in different countries. At the U.S. Agency for International Development (USAID), a legal rights initiative supported legal rights education for women in the newer independent states of the former Soviet Union, Bangladesh, Cambodia, Nepal, and Sri Lanka. Breaking new ground in 1997, the Department of Justice brought lawsuits against the states of Arizona and Michigan for violating women's constitutional rights by allowing prison staff to sexually abuse female prisoners with impunity.

Overall though, U.S. government claims to international leadership in promoting women's rights were undermined by its inconsistent pursuit of this mission. In some cases, the U.S. government made no effort to translate verbal pledges into concrete programs. Despite the Clinton administration's repeated commitment to combat domestic and sexual violence against women throughout the world, the State Department's country reports did not denounce the failure of states to prohibit and remedy such abuse. Not surprisingly, U.S.-supported programs also did little to combat such state inaction. Only after pressure from Congress did the administration dedicate $1 million of the $12 million allotted to the State Department Bureau of International Narcotics and Law

Enforcement Matters, Office of International Criminal Justice, for work in Russia to train Russian law enforcement to investigate violence against women. Moreover, the department's initial undertaking with these funds—a Washington, D.C. conference on trafficking of women and children for senior Russian and U.S. officials—focused more on child pornography and the Internet than on improving Russian law enforcement's response to violence against women. In the cases of Peru and Pakistan, none of the available U.S. assistance funds for democracy, rule of law, or civil society programs squarely confronted government failure to provide justice to women victims of violence.

Nor did the U.S. actively seek to secure justice for women victims of violence in international negotiations to establish a permanent International Criminal Court (ICC). Since the beginning of the U.N. process to create this critical body for trying serious human rights abuses, the United States has been conspicuously silent on the need to ensure that the court emerges as a mechanism for justice for women victims of egregious international crimes. In fact, at the August 1997 meeting of the Preparatory Committee for the Establishment of an International Criminal Court, the U.S. questioned the rationale for including in the draft statute an explicit reference to the witness protection needs of victims of sexual and gender violence, hence obstructing efforts toward this end. Furthermore, by aggressively taking restrictive stances on critical issues that bear on the independence and effectiveness of the ICC in general, such as the preconditions for triggering the court's jurisdiction and the independence of the prosecutor to initiate investigations, the U.S. has worked to restrict access to justice at the ICC for all victims of genocide, crimes against humanity, and war crimes.

Even where the U.S. government did initiate specific policies and programs to promote women's rights, they received only small-scale resources. Since its 1995 inception, the USAID women's legal rights initiative, for example, was allocated a total of just over $6 million. By contrast, in 1997 alone, USAID committed over $400 million to democracy programs. And, although Secretary of State Albright stated in March that "we will take part in a global effort to crack down on illegal trafficking in women and girls," the only resources devoted to this problem funded the above-mentioned conference. In late 1996, President Clinton did announce a $5 million initiative to promote women's participation in the economic and social reconstruction of Bosnia, but the initiative was not renewed for fiscal year 1998. On a more positive note, for a similar program in Rwanda to assist women to participate in the rebuilding of their country, USAID increased its funding from $1 million in 1996 to almost $1.6 million in 1997 and extended the program's mandate, but only until the end of 1998.

The U.S. commitment to women's rights as a cornerstone of U.S. policy took backseat in 1997 when other policy concerns conflicted with this goal. In one significant example, the U.S. pursued trade relations with Mexico despite widespread, blatant pregnancy-based sex discrimination in Mexico's maquiladora (export processing) sector. In its *Country Reports on Human Rights Practices* for 1996, 1995, and 1994, the State Department reported this practice but stopped short of condemning the discrimination and the Mexican government's tolerance of it. The U.S. also passed up a key opportunity to press for better labor rights: at an April 1997 meeting on women and work hosted by the Mexican government for all signatories to NAFTA, the U.S. failed to speak out against or even to mention pervasive pregnancy-based sex discrimination in Mexico's private sector. Later in the year, however, the U.S. did express its concern over discrimination in the maquiladoras in human rights meetings with Mexican officials. At the same time, systematic discrimination in other countries with claims to U.S. interests never appeared on the U.S. agenda. Although Secretary Albright invited her counterparts to join her in a discussion on women's status in the region during a September 1997 visit to the Persian Gulf, the administration produced no evidence that it had pressed for women's rights in countries such as Saudi Arabia, where women's mobility, education, job opportunities, and rights are restricted on the basis of sex.

While some U.S. officials called for improved respect for women's rights abroad, U.S. women could not benefit from international standards at home. Despite entreaties from President Clinton and Secretary Albright, chair of the Senate Foreign Relations Committee Jesse Helms refused to move toward ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). That women in the U.S. need the protection of

international human rights standards was made pointedly clear by revelations in late 1996 and through 1997 of widespread sexual abuse of women in U.S. state prisons. Although presented with extensive evidence of sexual abuse and harassment by prison staff against female prisoners, state and federal authorities did precious little in 1997 to put an end to the abuse. Thirty-three states and the federal government expressly criminalize custodial sexual misconduct, yet efforts to enforce these prohibitions were wholly inadequate. For example, the U.S. failed to ensure that prison guards were trained to refrain from abusing their authority by having sexual contact with female prisoners, to respect women's privacy, and to avoid subjecting prisoners to cruel, inhuman and degrading treatment. Congress did indicate its interest in ending this custodial abuse by introducing legislation in October 1997 that sought to compel all states to criminalize custodial misconduct. The bill also would establish a hotline for women to report custodial sexual misconduct to the Department of Justice (DOJ) and would prohibit the rehiring of guards found liable for such misconduct.

Work of Human Rights Watch

In 1997, Human Rights Watch capitalized on high-level pronouncements of support for women's human rights—coming from governments, U.N. officials, and other international actors—to press for programs and policies that would move states toward meeting their international obligations to protect women's rights. We conducted field investigations in Mexico, Peru, Pakistan, Bosnia, the Hague and Arusha, Tanzania that documented violations of women's rights and the international response to such crimes and used this fact base to demonstrate the serious shortcomings in policies promoting women's rights.

Key among our efforts was securing accountability for acts of violence against women, whether committed by soldiers during conflicts, by jailers guarding female prisoners, or by husbands behind apartment doors. In January 1997, Human Rights Watch other women's rights activists, including the International Human Rights Law Group, the Center for Women's Global Leadership, and the International Women's Human Rights Law Clinic, initiated efforts to press governments negotiating the creation of an International Criminal Court at the U.N. to ensure that women's rights concerns were fully integrated into the treaty. We drafted and helped distribute action alerts to concerned organizations around the world on the status of negotiations and prepared position papers in February, August, and November for government delegates to strengthen support for taking up women's rights. We also joined coalitions of nongovernmental organizations (NGOs) to emphasize the need for an effective, independent ICC in meetings with delegates to the negotiations and policy makers in the U.S. government.

The acute need for creating international mechanisms to secure justice for women victims of human rights abuse is underscored by Human Rights Watch's work monitoring the tribunals established to prosecute violations of human rights and humanitarian law in Bosnia-Hercegovina and Rwanda. In 1997, we investigated the progress of the two tribunals in improving efforts to investigate crimes of sexual violence. We pressed governments at the 1997 session of the U.N. Commission on Human Rights to ensure that the resolution on Rwanda expressed concern about ongoing violations of women's rights and stressed the need for justice for victims of sex-specific crimes. In October 1997, Human Rights Watch participated in a workshop convened by Justice Louise Arbour, chief prosecutor for both tribunals, to reinforce her staff's commitment to and develop their skills in investigating and prosecuting sexual violence in both Bosnia and Rwanda.

Human Rights Watch raised the issue of securing justice for women who suffer violence in conflict situations at the first meeting of the Organization for Security and Cooperation in Europe (OSCE) to take up the issue of women's status in the region. At the October meeting in Warsaw, governments agreed on the importance of improving OSCE attention and response to problems of violence against women and several expressed support for creating a high-level advisor on gender integration into OSCE activities.

We also fought to increase access to justice for women abused while in custody. Following the December 1996 release of our report on sexual abuse of women in U.S. state prisons, we began working with congressional staff to draft and introduce legislation requiring states to make it a crime for prison staff to have any kind of sexual

contact with female prisoners and creating a secure hotline for prisoners to report instances of sexual abuse. In June 1997, we wrote to Illinois Gov. James Edgar, urging him to sign into law a bill criminalizing custodial sexual misconduct in Illinois state prisons, a step he did take.

Based on detailed investigations into state responses to violence against women by private actors, we pressed governments to acknowledge their role in denying women access to justice. In August 1997, we released a report on violence against women and the medico-legal system in South Africa detailing the government's failure to respond adequately to violence against women, particularly the obstacles created by the state's forensic medical system which women must navigate in order to prosecute successfully the abuses committed against them. In July 1997, we joined experts and activists at a World Health Organization meeting in Copenhagen to discuss ways of improving the forensic medical treatment of victims of violence.

In the case of the U.S. government, we urged officials to commit foreign assistance to improving law enforcement handling of violent crimes against women. Although the U.S. government devotes millions of dollars each year to training police and judicial authorities around the world, almost none of those monies target law enforcement failures to respond to violence against women. Human Rights Watch thus urged that Congress renew its request—and it did so in October 1997—that the State Department devote a portion of its law enforcement budget in Russia to improving the response to violence against women. We also urged that U.S. assistance support a pilot program in Moscow to serve as a model of an effective, coordinated response to women who report violence, a project now being developed by the State Department.

In November 1997, Human Rights Watch honored Marina Pisklakova and her work fighting official indifference to violence against women in Russia. Ms. Pisklakova is the founder and executive director of the Moscow Crisis Center for Women and started one of the first domestic violence hotlines in Russia. Since its 1993 founding, the center has helped more than 9,500 women, providing them with counseling and social and legal support services.

Although international attention is more and more directed toward violence against women, discrimination on the basis of sex often goes unchallenged. In 1997, Human Rights Watch confronted official indifference to sex discrimination in a variety of fora. In collaboration with the International Labor Rights Fund and Mexico's National Association of Democratic Lawyers, Human Rights Watch filed a petition with the U.S. NAO challenging the Mexican government's failure to enforce its laws protecting labor rights and prohibiting sex discrimination by allowing pregnancy-based discrimination to flourish in its maquiladora sector. The U.S. NAO accepted the petition and scheduled a hearing for November 1997. We raised concern over these practices in a March letter to Secretary of State Madeleine Albright, and in meetings with U.S. human rights officials and representatives of companies perpetuating such discrimination. Our work on sex discrimination in the maquiladoras inspired Working Assets, a long-distance telephone company that promotes social responsibility, to design a call-in and writing campaign to General Motors, one of the chief offenders. Working Assets enclosed in its phone bills information urging its subscribers to send protests to General Motors to urge it to stop discriminating against women workers in its factories in Mexico. The highly successful campaign generated 22,228 letters and 4,425 phone calls from subscribers of Working Assets.

Earlier in the year, we focused on discrimination against women under Morocco's family law and submitted to the members of the CEDAW committee a memorandum presenting our findings on the effects of laws that render women legal minors regardless of their age. Committee members drew upon the memo in critiquing Morocco's failure to comply with CEDAW. In meetings with Senate staff and Clinton administration officials, we joined other groups in urging immediate U.S. ratification of CEDAW.

Human Rights Watch also worked in 1997 to document trafficking of girls and women into forced prostitution, marriage, domestic service, and other forms of labor. Our advocacy strived to turn the international response from cracking down on trafficked women as undocumented migrants to protecting women's rights in the recruitment process and in the abusive situations in which they worked and lived. In April 1997, we submitted a

statement to the U.N. Human Rights Commission detailing our findings and recommending action to combat trafficking and abuses against women workers. We also participated in meetings in Uganda and Canada to discuss the international dimensions of trafficking. In July, we worked with Rep. Louise Slaughter's office to prepare a resolution condemning trafficking and calling for improved response by the U.S. and the international community. In November, we joined U.S. officials, congressional staff, and other NGOs to assess the problems associated with trafficking in the U.S. and the needed response.

Much of Human Rights Watch's work on women's human rights in 1997 was directed toward the overarching goal of ensuring that women's human rights were treated as a priority concern by governments and international actors. Thus, in meetings with officials such as U.S. Assistant Secretary of State John Shattuck and his Russian counterpart, Teymuraz Ramashvilli, we urged specific actions to improve their governments' records on ameliorating women's status. At the U.N., we pursued this goal by supporting the renewal of the mandate of the special rapporteur on violence against women and by meeting with the Human Rights Centre staff about integrating women's rights into all aspects of their work.

On another level, we continued our work with women's rights activists to discuss with and train them in using international human rights methods, standards, and mechanisms to increase the power and visibility of their work. To this end, in June 1997 Human Rights Watch released a women's human rights advocacy manual, produced jointly with Women, Law and Development International. This manual is designed to train women rights activists in using women's human rights fact-finding, documentation, and advocacy. The manual is designed to demystify human rights documentation and advocacy to make it accessible to activists the world over in their efforts to promote the human rights of women. We plan to conduct training sessions, to be sponsored by regional women's human rights organizations around the world, aimed at increasing women's awareness of and expertise in human rights law and practice.

Relevant Human Rights Watch reports:

Violence Against Women and the Medico-Legal System in South Africa, 9/97
All Too Familiar: Sexual Abuse of Women in U.S. State Prisons, 12/96

INTERNATIONAL FILM FESTIVAL

The Human Rights Watch Film Festival was created to advance public education by illuminating human rights issues and concerns using the unique medium of film. Each year, the festival exhibits the finest human rights films and videos in theaters, at universities and on cable television throughout the United States and a growing number of cities abroad—a reflection of both the scope of the festival and the increasingly global appeal that the project has generated.

The Human Rights Watch Film Festival was established in 1988, in part to mark the tenth anniversary of the founding of what has become Human Rights Watch. After a hiatus of three years, it was resumed in 1991 and has since been presented annually. The 1997 festival featured twenty new films from fifteen countries over a two-week period first in New York, as a collaborative venture with the Film Society of Lincoln Center, and then in Los Angeles with the Museum of Tolerance, and in London in partnership with the Institute of Contemporary Art. A majority of the screenings were followed by discussions with the filmmakers and Human Rights Watch staff on the issues represented in each work. The festival included feature-length fiction and documentary films as well as works-in-progress and experimental films.

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 over 600 films and videos to create a diverse and challenging program that represents a broad array of countries and issues. Once a film is nominated for a place in the festival, staff of the relevant division of Human Rights Watch also view the work to confirm its accuracy in the portrayal of human rights concerns.

Each year the festival is launched in New York with an opening night that features a film's U.S. premiere. In 1997 the festival's opening night centerpiece was "The Truce", by Italian director, Francesco Rosi. The award-winning film is based on Primo Levi's autobiographical novel which traces his return to Italy at the end of the Second World War.

In conjunction with the opening night, the festival annually awards a prize in the name of cinematographer and director Nestor Almendros, who was a cherished friend of the festival. The award, which includes a cash prize of $5,000, goes to a deserving new filmmaker in recognition of his or her contributions to human rights through film. The 1997 recipient of the Nestor Almendros Award was Zimbabwean filmmaker Ingrid Sinclair, for her outstanding film "Flame," a fictional account of two young women's fight against white minority rules in what was then Rhodesia. Because of a short scene in the film in which its heroine is raped by her commander, "Flame" was almost banned before its completion and for more than one year provoked widespread debate within Zimbabwe. "Flame" also became the centerpiece of the festival's Women's Day Program— a day and evening exclusively devoted to films and videos that address women's rights around the world.

In 1995, in honor of Irene Diamond, a longtime board member and supporter of Human Rights Watch, the festival launched a new award, the Irene Diamond Lifetime Achievement Award, which is presented annually to a director whose life's work illuminates an outstanding commitment to human rights and film. The 1997 award went to American director Alan J. Pakula, for his role in encouraging American independent filmmakers to produce provocative, challenging human rights films for wider audiences.

Highlights of the 1997 festival featured thematic screenings including films dealing with ethnic conflict, land rights, international conspiracies and the right to education. The 1997 festival also included a retrospective of the work of African-American director Charles Burnett, whose latest film, "Nightjohn," had its commercial theater premiere. Unlike Burnett's other films, "Nightjohn" is a period piece set in the antebellum South, a compelling story of a slave who gives up freedom in order to teach fellow slaves how to read and write. The retrospective of Burnett's work highlighted his thirty- year career of making films chronicling everyday lives in black families and communities and celebrated him as one of America's greatest social realist filmmakers.

In 1997 the festival continued its collaborative screenings with the New York African Film Festival, highlighting human rights themes in new African-American cinema.

During the festival's two-week run in New York, its high school project offered daytime screenings for students followed by interactive discussions among the students, their teachers, visiting filmmakers, and Human Rights Watch staff. Special high school screenings were also held in Los Angeles.

In an effort to reach a wider audience and satisfy the growing demand for these films, the festival continued, for the third year, its "Global Showcase," a touring program of films and videos, which appeared in seven U.S. cities. A tailored version of the global showcase also traveled to Bogotá, Colombia and to Gent, Belgium.

In December, in collaboration with the International American Institute for Human Rights, the festival appeared in San José, Costa Rica exhibiting new films from the Americas dealing with human rights themes. The festival also assisted with the programming for the first human rights festival organized by university students in the Philippines, at the end of December.

The second annual full-scale Human Rights Watch Film Festival in Europe, opened in London on September 30. The collaborative venture between the festival and the Institute of Contemporary Art (ICA) presented an opening-night British premiere of the dramatic feature "Prisoner of the Mountains," about Russian-Chechan conflict. The

film was directed by Sergei Bodrov and adapted from a Tolstoy novella. A one-week festival of film and video screenings followed, along with panel discussions with filmmakers from around the world and Human Rights Watch staff. The 1997 London series showcased a weekend of films and discussions with filmmakers from the former Yugoslavia as well as films from Northern Ireland, Japan, Taiwan and the U.S.

SPECIAL ISSUES

The complexity that human rights work has acquired, and the diversity of opportunities for advocacy and action, have increasingly demanded that Human Rights Watch undertake cross-regional or thematic initiatives involving a specialized focus or expertise. At times, those initiatives consist of a single opportunity to make our voice heard on a crucial issue, but often they take the form of campaigns that have become a sensational part of our program. Some of the issues in which we undertook or maintained special initiatives in 1997 included the following:

PRISONS

Prison massacres, dramatic protests, and violent guard abuse earned occasional news headlines in 1997, but the deplorable daily living conditions that were the plight of the great majority of the world's prisoners passed largely unnoticed. With scant public attention to the topic in most countries, correspondingly little progress was made in rectifying the abuses routinely inflicted in prisons and other places of detention. Many countries, moreover, fostered public ignorance of prison inadequacies by denying human rights groups, journalists, and other outside observers nearly all access to their penal facilities. A smaller group of countries, including China, Cuba, and Peru, even barred the International Committee of the Red Cross (ICRC) from providing basic humanitarian relief to people in their prisons.

Unchecked outbursts of prison violence continued to violate prisoners' right to life. The August 29 killings of at least twenty-nine prisoners in a remote jungle facility in Venezuela led the country's Justice Ministry, charged with prison administration, to promise reforms, and its Public Ministry to conduct an extensive investigation of the incident's causes. The Tajikistan government, earlier in the year, chose to cover up an even bloodier prison massacre. Although information about the events was scarce, reports indicated that in mid-April the Tajik security forces stormed a prison in the northern city of Khujand, killing over a hundred prisoners. Earlier that week, inmates had rioted and taken several guards hostage to protest life-threatening detention conditions. Ignoring Human Rights Watch's request for information and its calls for a thorough and impartial investigation of the incident, the Tajik government apparently took no action to punish those responsible for the deaths.

In Morocco's Oukacha prison, twenty-four prisoners were burned alive in early September; they had been crammed together in a cell reportedly built to hold eight. The cause of the fire was not announced, but the country's Justice Ministry did acknowledge that overcrowding might have played a role in the deaths.

The most common cause of death in prison was disease, often the predictable result of severe overcrowding, malnutrition, unhygienic conditions, and lack of medical care. A special commission of inquiry, appointed after the 1995 death of a prominent businessman in India's high-security Tihar Central Jail, reported in September that the 10,000 inmates held in that institution endured serious health hazards, including overcrowding, "appalling" sanitary facilities, and a shortage of medical staff. Similar conditions prevailed in the prisons of the former Soviet Union, where tuberculosis continued its comeback. Russia's prosecutor general announced in March that about 2,000 inmates had died of tuberculosis in the previous year.In Kazakhstan, the disease, including drug resistant strains, reached epidemic proportions. AIDS also plagued many prison populations.

Inadequate supervision by guards, easy access to weapons, lack of separation of different categories of prisoners, and fierce competition for basic necessities encouraged inmate-on-inmate abuse in many penal

facilities. In extreme cases—as in certain Venezuelan prisons with one guard for every 150 prisoners, and an underground trade in knives, guns, even grenades—prisoners killed other prisoners with impunity. Rape, extortion, and involuntary servitude were other frequent abuses suffered by inmates at the bottom of the prison hierarchy.

In contrast, powerful inmates in some facilities in Colombia, India, and Mexico, among others, enjoyed cellular phones, rich diets, and comfortable lodgings. With guard corruption rampant in so many prisons around the world, the adage "you get what you pay for" was only too appropriate. Indeed, in Indonesia, two prisoners reportedly escaped in September after bribing guards to bring them to a brothel.

Besides corruption, physical abuse by guards remained a 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. In the aftermath of prison riots or escapes, physical abuse was even more predictable, and typically much more severe.

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 of Rwanda's *cachots* (local lockups), where a large proportion of the country's approximately 120,000 detainees were held, overcrowding was so acute as to be life-threatening. In Rwanda and elsewhere, even large prisons were crowded far beyond their capacity. Panama's Modelo prison, for example, held over ten times the number of prisoners it was built to hold. So notorious were its conditions that, in a symbolic choice of dates, the government finally demolished it on International Human Rights Day in December 1996.

The Modelo prison was built in 1917, exemplifying another common problem: that of old, antiquated, and physically decaying prison facilities. Nineteenth-century prisons needing constant upkeep remained in use in some countries, including the United States, Mexico, Russia, and the United Kingdom, although even many modern facilities were in severe disrepair due to lack of maintenance. Notably, many prisons lacked a functional system of plumbing. In Hong Kong, one of the most prosperous and technologically advanced places in the world, prisoners in some older facilities had to "slop out," that is, to defecate in plastic buckets that they were periodically allowed to empty. In Venezuela, inmates in parts of some facilities did not even get buckets: they resorted to defecating in newspapers that they threw out the window.

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 have been integrated into the prison laws and regulations of many countries, few if any prison systems observed all of their prescriptions in practice.

The poor prison conditions existing in many countries arose from a complex of causes. Fiscal constraints and competing budget priorities were surely a factor in most countries, although these pressures were never a valid excuse for violating minimum standards of decency. In other countries, an element of deliberate cruelty seemed evident. For example, describing some prisoners as "animals that must never see sunlight again," South Africa's corrections commissioner released a March statement in favor of converting disused mine shafts into super-maximum security penal institutions.

Even those unsympathetic to convicted criminals and entirely skeptical of the idea of rehabilitation should nonetheless be concerned about the inhumane treatment of prisoners. Although comprehensive figures were impossible to obtain, the available statistics showed that an impressive 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.

Some of these detainees—who under basic human rights standards are presumed innocent and should be treated as such—had been confined for years before being acquitted of the charges against them. The Nigerian government's national human rights commission reported in September, for example, that at least 60 percent of the country's prisoners were pretrial detainees, and at least half of them had been awaiting trial for more than five years.

Shielded from public view, and populated largely by the poor, uneducated, and politically powerless, prisons tended to remain hidden sites of human rights abuse. By struggling against this natural tendency toward secrecy and silence, the efforts of numerous local human rights groups around the world—who fought to obtain access to prisons, monitored prison conditions, and publicized the abuses they found—were critical in 1997, as in the past. In some countries, moreover, government human rights ombudspersons, parliamentary commissions, and other monitors helped call attention to abuses. In South Africa, notably, the national human rights commission conducted numerous investigations into prison conditions, resulting in substantial public criticism of prison authorities.

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 the penal institutions of approximately a dozen countries in 1997, including those of Turkey, Spain, and Estonia. In December 1996, the CPT released a public statement on Turkey, declaring that "the practice of torture and other forms of severe ill-treatment of persons in police custody . . . remained widespread."

In Africa, the recently-appointed special rapporteur on prisons and conditions of detention, an adjunct to the African Commission on Human and Peoples' Rights, began work in January 1997 and made an initial fact-finding mission to Zimbabwe in early March. Human rights organizations with observer status at the commission reported, however, that the special rapporteur's oral report on his mission presented an insufficiently detailed or critical view of the country's prison situation. (As of October, no written report had yet been released.) In August, the special rapporteur inspected prisons in Mali.

Protests, Riots, and Killings in Latin American Prisons

Like 1996, 1997 was an eventful year in the prisons of Latin America, which held approximately half a million inmates. Conditions continued to stagnate—and even to worsen in some countries—inspiring dramatic forms of prisoner protest. Massacres, riots, and other violent incidents struck prisons across the region, further evidencing the failure of Latin America's penal systems.

Prison unrest erupted over the course of the year in Bolivia, Brazil, Colombia, Ecuador, Guyana, Honduras, Jamaica, Mexico, Panama, Peru, and Venezuela. In Brazil alone, there were over sixty prison riots in the first six months of the year. Fifty-two hostages were taken in one such mutiny at a São Paulo prison in August. In Bolivia, thousands of prisoners went on a hunger strike in March to protest the slow pace of the judicial system and the uneven application of the parole law; several of them sewed their mouths shut to dramatize their plight.

As exemplified by the Bolivian protest, prisoners in Latin America were subject not only to horrendous conditions of confinement but to entire criminal justice systems in need of reform. Prisons around the region were filled with *procesados*: inmates whose cases languished at some stage of the criminal process. Indeed, some 90 percent of Honduran, Paraguayan, and Uruguayan inmates were unsentenced, while in the Dominican Republic, Panama, Haiti, El Salvador, Peru and Venezuela, the proportion of unsentenced inmates ranged from 65 to 85 percent. The slow pace of criminal proceedings, combined with the routine denial of pretrial release, was at the origin of these unhappy statistics.

Human rights ombudspersons from all over Latin America discussed the state of the region's prisons at a February conference on prison overcrowding that was organized by ILANUD, the U.N. criminal justice institute for Latin America; their reports paint a depressing picture of prisons in crisis. The ombudsperson for El Salvador, for example, spoke of the "systematic violation of the human rights of the prison population" and the unfortunate reality of "cruel, inhuman, and degrading treatment." The Guatemalan representative compared his country's prison

conditions against the U.N. Standard Minimum Rules for the Treatment of Prisoners and the Guatemalan Constitution, concluding that neither set of standards was obeyed. With regard to Mexico, the capital's human rights commission confirmed that the majority of the country's prisons "lack basic services," and that inmates "enjoy privileges or suffer wants depending on their economic resources." Other countries' delegates made similar reports.

An encouraging contrast to this generally bleak picture were the vigorous efforts of numerous Latin American countries in working to establish a U.N. mechanism to monitor the treatment of persons deprived of their liberty (described below). Latin American delegates, particularly the representatives of Argentina, Chile, Costa Rica, and Uruguay, were key players in the U.N. debates on the proposed monitoring body, presenting compelling arguments in support of a strong and effective mechanism.

U.N. Prison Monitoring Effort

The vast scale and chronic nature of the 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 the past several years, a U.N. working group has been hammering out a draft treaty that would establish a U.N. subcommittee authorized to make periodic 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 basic goal of the subcommittee would be to prevent torture and other ill-treatment. Accordingly, 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.

Although the proposed monitoring mechanism had great promise, 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 met for its sixth session in October 1997, reaching negotiated agreement as to the content of several draft provisions. Although most countries active in the deliberations—including South Africa, the Netherlands, Denmark, Sweden, Australia, and several Latin American countries—clearly favored establishing a strong and workable mechanism, a few recalcitrant states were able to hinder the working group's progress toward this goal. Because the proceedings were conducted on a consensus basis, rather than by simple majority vote, a small minority of countries could have an exaggerated impact on the draft text. As of this writing, the working group has not yet taken a definitive position on public reporting and other fundamental issues, but there is fear that given this consensus approach the lowest common denominator could prevail.

Relevant Human Rights Watch reports:

Cold Storage: Super-Maximum Security Confinement in Indiana, 10/97
Hong Kong: Prison Conditions in 1997, 6/97
Punishment Before Trial: Prison Conditions in Venezuela, 3/97
All Too Familiar: Sexual Abuse of Women in U.S. State Prisons, 12/96

CORPORATIONS AND HUMAN RIGHTS

The debate on corporate responsibility for human rights captured broad public interest worldwide in 1997. Local activists at the point of production, supported by advocacy groups in the United States, Canada, the European Union, and Asia, spurred a steady stream of reports, counter-reports, articles, and press releases. These documented and/or refuted allegations of physical abuse and suppression of freedom of association and expression against women workers. In total, this discourse underscored how far the debate had moved from earlier discussions of whether corporations even had a responsibility for human rights. The focus of the intensifying debate increasingly centered on the steps companies needed to take to make their codes of conduct meaningful. Responding to mounting public concern, several U.S. apparel and footwear corporations attempted to grapple with new implementation methods for their codes. At the same time, allegations of human rights abuses at plants contracted by Nike Incorporated in Asia provided a concentrated focus of attention throughout the year.

The debate, while still centered in the apparel, footwear, food and rug industries, expanded beyond these sectors to touch the multinational oil companies. Feeling the sting of allegations of complicity in rights violations and their effect on corporate image, a few of the oil giants made general commitments to human rights without the programmatic steps to implement them. In 1997, the Canadian, British, German and U.S. governments, as well as intergovernmental bodies and agencies like the European Parliament and the International Labour Organisation, were drawn into the debate. There was some progress, stemming in part from Human Rights Watch's work. In March, General Motors, in response to the 1996 Human Rights Watch Women's Rights Project report on forced pregnancy testing in the maquiladoras (export-oriented assembly plants) of northern Mexico, announced that it was ending its practice of pre-hire pregnancy screening; the new policy was implemented on April 1. In August, seventeen U.S. manufacturers of anti-personnel mine components agreed to cease their involvement in landmine production following an April report issued by the Human Rights Watch Arms Project. As a result of campaigning on Burma by an international coalition of human rights groups, including Human Rights Watch, a few companies ceased production there.

The Apparel Industry

Across the globe corporations and their critics debated monitoring. In May, the director-general of the International Labour Organisation floated a proposal for a " global social label" to tag goods produced according to core labor standards. He suggested that specific country labeling would be a more effective check on labor rights violations than voluntary codes of conduct. In May, following reports of worker abuse and child labor in the textile industry in South Asia, members of the European Parliament adopted a resolution calling on the European Commission to adopt E.U. legislation to ensure that clothes, shoes, and carpets imported from developing countries would be labeled to indicate that worker rights had been respected. A high-profile, tripartite attempt occurred in the United States with the work of the White House-convened Apparel Industry Partnership. The Partnership, a group of U.S.-based apparel and footwear manufacturers, labor unions, and nongovernmental organizations, was launched by President Clinton in 1996 to formulate a global code of conduct to eradicate sweatshop practices in the companies' operations, both in the U.S. and abroad. The companies included L.L. Bean, Liz Claiborne, Nike, and Phillips-Van Heusen, among others. After eight months, on April 19, the Partnership issued an interim report. Its "Workplace Code of Conduct" consolidated and advanced the best of the existing U.S. voluntary company codes of conduct on freedom of association and expression. It prohibited forced labor, child labor, harassment of employees in the workplace, and discrimination, as well as recognizing the rights to freedom of association and collective bargaining. It also attempted to address minimum standards on health and safety, wages and benefits, and overtime. The provisions on wages, benefits and overtime were criticized by some analysts

who saw them as insufficient to meet workers' basic needs and sanctioned excessively long working hours. The report's "Principles of Monitoring" defined company responsibilities in internal monitoring. These required companies to publicize their codes actively in the workplace, articulate employee notification of workers' rights and responsibilities, and conduct periodic audits to ensure compliance with the code.

The most important, and divisive, element of the Apparel Industry Partnership's report was the section on independent external monitoring. In 1996, apparel and footwear companies had resisted independent monitoring of their codes. By 1997, however, several companies had accepted the fact that their voluntary efforts would not be credible unless compliance could be independently verified. Others, however, opposed independent monitoring. Two of the corporate members, Warnaco Incorporated and Karen Kane Incorporated, claimed that independent monitoring would jeopardize essential trade secrets and that internal monitoring procedures afforded adequate safeguards. These corporations withdrew from the partnership in opposition to any plans for independent monitoring involving local religious, labor, or human rights organizations in the countries where operations are based. The April report's section on this issue left the essential elements of independent monitoring unresolved. The report required only that local human rights, labor rights, religious or other similar institutions be "consulted." Furthermore, creating no role for public accountability, the report omitted a disclosure requirement that monitors' evaluation reports be made public. As of November, the partnership was continuing its attempt to resolve the outstanding differences over independent monitoring and establish an association empowered to supervise adherence with the code in a meaningful way. Human Rights Watch, believing that it could better contribute by remaining outside this group, was not a participant in the Apparel Industry Partnership.

The appeal of voluntary codes of conduct and the debate over their implementation spread in 1997. The export manufacturers association in Guatemala, VESTEX, announced the promulgation of its own voluntary code of conduct, and the Guatemalan subsidiary of the U.S. accounting firm, Ernst & Young, conducted several audits of its implementation. In contrast to this auditing, during 1997 a coalition of Guatemalan religious, human rights and labor groups had formed a committee to monitor corporate codes of conduct. Parallel efforts were also underway in El Salvador, where working conditions and hiring practices of multinational corporations and their subcontractors had received bad publicity. In May 1997, the Salvadoran clothing manufacturers association, ASIC, announced that it had formulated its own code of conduct. ASIC likened the code to the Apparel Industry Partnership's effort and stated that it would use international auditing companies "to certify that international norms are not violated." According to one Salvadoran newspaper headline, the widespread adoption of the code would "eliminate the effects of international campaigns." The manufacturers' undertaking stood in contrast to work already in place, specifically that of the Independent Monitoring Commission which is composed of members of Salvadoran nongovernmental organizations and which monitors the Mandarin plant in the San Marco free trade zone.

Responding to the calls for transparency in monitoring, the world's largest accounting firms, such as Ernst & Young and Coopers & Lybrand, presented themselves as independent monitors able to perform social audits. While Ernst & Young did a commendable job in documenting egregious health and safety violations at a Nike contractor in Vietnam, the competence of accounting firms to conduct sensitive human rights investigations, combining testimonial evidence with statistical analysis, was doubtful. Despite the importance of active guidance and participation of local human rights defenders, the large firms' social "auditing" would involve these knowledgeable, activist groups in minimal consultation, at best. In addition, the firms would simply convey their findings to their employers, the contracting companies, with no provision for the public disclosure or accountability necessary to establish and maintain effectiveness and credibility. The effect of this lack of transparency was highlighted in early November with media reports on an Ernst & Young audit of a Nike contractor in Vietnam. The document, issued on January 13, 1997, detailed numerous violations of health and safety and wage and hour standards in Nike's facilities but had remained an internal and confidential report until it was leaked to the press by an inside source.

While several U.S. footwear and apparel companies were actively exploring the possibility of independent

monitoring as of November, the only functioning—and quite effective—locally-based independent monitoring program in existence was the program implemented at the Mandarin factory, a supplier to Gap Incorporated, in El Salvador.

Nike

The sharpest and most persistent controversy over corporate responsibility for human rights and independent monitoring of company codes of conduct swirled around the practices of Nike contractors in Vietnam, China, and Indonesia. Vietnam Labor Watch (not affiliated with Human Rights Watch) issued a report in March citing physical abuse of workers at a Nike contractor in Vietnam. In Indonesia, workers at Nike subcontractors went on strike to demand payment of the country's newly promised minimum wage. In the face of repeated allegations by international and regional investigators of abusive labor practices at subcontractor facilities in those three countries, Nike hired former U.S. Ambassador to the United Nations Andrew Young and his consultancy firm, GoodWorks, to conduct an audit of Nike facilities in all three countries. The methodology employed by Ambassador Young was disturbingly flawed: he spent very limited time at each facility; interviewed workers at random on company premises; and conducted the interviews with the assistance of company-supplied translators. Such methods reinforce the strain on those workers selected for interviews and make it difficult, if not impossible, to unearth patterns of subtle but invidious harassment. Ambassador Young's report, released in June, found that Nike facilities were generally respectful of human rights and that there was "no evidence or pattern of widespread or systematic abuse or mistreatment of workers" in the factories he had visited.

Ambassador Young recommended that the company should more actively publicize its code of conduct in supplier factories, implement an independent monitoring system, and organize a committee of "distinguished individuals" to perform spot-checks at their factories abroad. Following the report, Nike took out full-page advertisements in several newspapers, including the *New York Times*, *USA Today*, and the *Washington Post*, publicizing the findings as a vindication of its corporate image and standards. The subsequent public disclosure of the January Ernst & Young internal report on Nike facilities in Vietnam cast doubt on whether the company would implement these recommendations in good faith.

In contrast to Ambassador Young's findings, the Hong Kong-based Asia Monitor Resource Center and the Hong Kong Christian Industrial Committee released a report drawn from their investigations of Nike (and Reebok) contractors in south China. Highlighting the different findings that emerge from widely varying orientations and methodologies, this investigation documented very different conditions than those reported by Ambassador Young. The two groups found consistent patterns of labor rights violations in Nike contractor facilities in China. They found that freedom of association was "harshly repressed" and that there were no independent trade unions or nongovernmental organizations available to represent workers. The report also documented pregnancy-related discrimination and illegal firings because workers over the age of twenty-five were considered "too old" by factory management.

That report concluded that conditions in the Chinese facilities were in gross violation of the Nike (and Reebok) codes of conduct, the Apparel Industry Partnership's "Workplace Code of Conduct," and Chinese labor law. Based on their findings, the organizations argued that until real independent monitoring could be implemented in Chinese factories, labor rights violations would continue unabated. The report was released just prior to the Nike annual shareholder meeting in September. At that meeting, Nike claimed that it had investigated the report's allegations and had found them to be erroneous. Unfortunately, Nike management responded to the allegations by sharply attacking the bona fides of the Hong Kong-based monitors. A company press release stated, "Enough is enough. It's time for the public magnifying glass to be focused back on these fringe groups, which are again using the Internet and fax modems to promote mis-truths and distortions for their own purposes."

Also at the shareholder meeting, Nike management announced that it had severed relations with four Indonesian contractors on the grounds that they did not meet the company's code of conduct requirements. Specifically,

there was a disagreement over payment of wages to workers at these facilities. Nike also announced at the meeting that it would distribute wallet-sized cards, with its code of conduct printed in eleven languages to all its employees. These actions resulted in the withdrawal of a shareholder resolution, filed by the General Board of Pensions and Social Responsibility of the United Methodist Church, seeking reforms in Nike's overseas labor practices. No further commitments to establish independent monitoring as called for by Ambassador Young were made known by the company.

In October, a coalition of U.S.-based women's groups, including the National Organization for Women, the Ms. Foundation for Women, and the Feminist Majority, launched a campaign against Nike in order to highlight the problems female workers faced at Nike's Asian contractor facilities. The coalition noted that, "While the women who wear Nike shoes in the United States are encouraged to perform their best, the Indonesian, Vietnamese and Chinese women making the shoes often suffer from inadequate wages, corporal punishment, forced overtime and/or sexual harassment." The campaign called on Nike to allow independent monitors into their facilities abroad and to address issues related to the treatment of women and wage issues in Nike contractor operations.

Phillips-Van Heusen

Another example of the critical importance of independent monitoring, this one involving Human Rights Watch, was demonstrated in the controversy at the Phillips-Van Heusen (PVH) factories in Guatemala. Starting in September 1996, Van Heusen was confronted by allegations from union organizers and international labor rights activists that its workers' rights to free association, specifically their right to engage in collective bargaining, at PVH's Camisas Modernas factories was being suppressed. Local labor activists also alleged that union members were being pressured to resign from the union and the company with offers of large severance packages. Because a member of the Human Rights Watch board of directors served as the chief executive officer (CEO) of the company, Human Rights Watch staff members agreed to go to Guatemala to investigate the allegations on-site. In January, Human Rights Watch sent a team to determine whether the union had gathered the 25 percent support necessary under Guatemalan labor law to compel the company to engage in collective bargaining and whether company management had harassed or discriminated against union activists. Based on the investigation, during which the organization received cooperation from both the company and the union, Human Rights Watch released a report which found that the union had met the critical 25 percent support threshold and that the Guatemalan Labor Ministry had failed in its duty to resolve the conflict between the union and the company over union strength. Furthermore, our investigation found that union members had faced subtle but pernicious forms of discrimination, including deprivation of earnings and large severance packages in exchange for their resignations.

On receiving an advance copy of the report, the CEO of Phillips-Van Heusen announced that the company accepted the findings on union support and would immediately begin collective bargaining negotiations. In August, negotiations between the company and union resulted in the first-ever collective bargaining agreement in the Guatemalan maquiladora sector. At this writing, the agreement awaits approval by the Guatemalan Ministry of Labor.

The Oil Industry

Increasingly, multinational oil companies, expanding exploration and drilling operations to states ruled by governments that are serious human rights violators, were criticized for the human rights consequences of partnering with those governments. Operations in such human rights trouble spots as Colombia, Nigeria, and Burma repeatedly received press attention.

Colombia

In 1997, faced with an increase in guerrilla attacks and paramilitary activity, multinational oil companies operating in the Casanare and Arauca regions of Colombia found themselves deep in controversy over the human rights implications of their security arrangements with the Colombian Defense Ministry. In November 1995, the

companies had signed agreements with the armed forces, committing to pay U.S.$2 million annually to a military institution known for abusing human rights with impunity, for protection of their pipelines and installations from guerrilla attack.

In Casanare, the consortium operating the massive Cusiana–Cupiagua oil fields comprised British Petroleum (BP), TOTAL Exploratie en Produktie Maatschippij B.V. (TOTAL), Triton Energy, and the state-owned ECOPETROL. Arauca province was the site of the Occidental Petroleum, Royal Dutch/Shell, and ECOPETROL consortium's Cano Limón–Covenas oil fields and pipeline. By putting the companies in a new relationship to the military, the contracts had raised serious questions. The direct contracts signed with the Ministry of Defense inappropriately tightened the companies' relations with an abusive military and compounded the fundamental problem: that the companies relied on that abusive military institution for security and thereby assumed a responsibility to take concrete, programmatic measures to prevent violations and to confront those that may arise. Yet, the companies took little action regarding human rights. For instance the agreements with the Defense Ministry failed to mention human rights compliance as a condition of contract. In addition, abuses that have been attributed to the military units defending the companies have not received a strong response from the companies. Some have been completely ignored.

Controversy over the companies' relations with Colombian military and police was particularly active in Britain. A *World in Action* documentary on the BBC reported, among other things, that the U.K.–based private security firm that BP had contracted to protect the Casanare installations had been involved in training Colombian police not only in security, but also, in counterinsurgency techniques. Responding to various media reports, British-based rights groups sharply criticized the new Labour government for appointing Sir David Simon, the CEO of British Petroleum, as minister of trade and competitiveness in Europe.

Human Rights Watch called on the partners in the Arauca consortium to disclose publicly the contents of their contract with the Colombian military. As of this writing, neither Occidental nor Shell has made any public statement as to how human rights may be respected in the course of their Colombian operations, but by November some of the companies were saying that they would no longer continue the contract with Colombia's armed forces. Nonetheless, they will continue to rely on the military and police to protect their companies under a payment scheme that, at this writing, is still being negotiated.

Nigeria

In the case of Shell, human rights concerns were not limited to company operations in Colombia. In March, following two years of criticism for its partnership with the Nigerian government and the role the company had played in events leading to killings in Ogoniland, Shell announced that it would explicitly acknowledge respect for human rights and the environment in its revamped internal code of conduct. As part of its general business principles, the company expressed "support for fundamental human rights in line with the legitimate role of business." The announcement was hailed as a breakthrough in that Shell had acknowledged that its operations had a significant impact on human rights. However, beyond the inclusion of this very vague language, it was unclear what specific steps the Royal Dutch/Shell group of companies would take to put those words into practice.

On May 14, at the annual general meeting of the Shell Transport and Trading Company in London, management soundly defeated a resolution brought by the socially responsible investment organization, Pensions and Investment Research Consultancy (PIRC), to conduct an independent audit of its human rights and environmental policies. The resolution was brought on behalf of various nongovernmental organizations including Friends of the Earth, the World Development Movement, and the Movement for the Survival of the Ogoni People (MOSOP). While defeating the resolution, Shell did announce that it agreed in principle to independent auditing, but that a shareholder resolution was not the appropriate mechanism to initiate such an action.

Burma/Thailand

The Burma operations of California–based UNOCAL and French–based TOTAL continued to draw fierce criticism and became the focus of an important lawsuit in U.S. federal court. The suit was brought on behalf of a number of unidentified citizens of Burma and a California resident. The complaint argues that the State Law and Order Restoration Council (SLORC) regime in Burma has been responsible for human rights violations in the course of constructing a pipeline to carry natural gas from the offshore Yadana gas fields to Bangkok. The plaintiffs contend that the companies were liable because residents in the area of the project were "subjected to the death of family members, assault, rape or other torture, and other human rights violations in furtherance of the Yadana gas pipeline project in which defendants are joint venturers."

On March 25, Judge Richard Paez declined to dismiss the lawsuit against UNOCAL and TOTAL and ruled that they could be sued in U.S. federal court, under the Alien Tort Claims Act, for abuses committed by SLORC. Compounding the problems for UNOCAL and other United States–based multinationals invested in Burma was the April 22 executive order by which President Clinton banned new investment in Burma on grounds of SLORC's dismal human rights record. While the order did not affect existing investments in Burma, such as UNOCAL's, it sent a message that, at least in the case of Burma, human rights considerations would be a factor. Roger Beach, the CEO of UNOCAL, defiantly announced that the only way UNOCAL would leave Burma was "if we are forced to by the enactment of law."

Meanwhile, UNOCAL established a second headquarters in Malaysia on April 21, to manage its non–U.S. operations. Oil industry analysts believed this was the beginning of an attempt by the company to withdraw from the United States and to minimize any liability brought by the lawsuit or because of sanctions against U.S. corporations doing business in Burma.

Nongovernmental Organizations' Initiatives

Advocacy and grassroots campaigning spread to more countries in 1997, and it was clear that pressure mounted by grassroots organizations, the press, and the public at large was playing an important role in holding corporations accountable for complicity in governmental human rights and labor rights violations. In the United States, several campaigns centered around sweatshop–like practices of U.S. apparel manufacturers. The National Labor Committee, a nongovernmental lobbying group associated with the U.S. labor movement, launched efforts against the Ralph Lauren apparel company for its sourcing of products from Burma and against Walt Disney Corporation for sourcing from sweatshops in Haiti and Thailand. In July, Ralph Lauren announced that it was ceasing business in Burma "until conditions have changed." Warnaco, a company that had left the Apparel Industry Partnership, made a similar announcement. The U.S.–based organizations Press for Change and Global Exchange continued their campaigns against Nike, and the Union of Needle Trades, Industrial and Textile Employees (UNITE) continued to campaign against the apparel manufacturer GUESS Incorporated because of its labor practices in the United States and abroad. In an effort to hold public actions to maintain pressure on companies, in early October a coalition of labor unions, religious groups and solidarity organizations sponsored a National Day of Conscience in various U.S. cities to focus on child labor and "to affirm the dignity of life and human rights."

Throughout the member states of the European Union, a coalition, based on the Dutch Clean Clothes Campaign, was joined by Labor Behind the Label in the United Kingdom, Les Magasins du Monde in Belgium, Artisans du Monde in France, and the Dutch industry organization, FENECON, in a concerted effort to highlight the problems of manufacturing abroad and to implement an independent monitoring system for European apparel manufacturers.

In Australia, a coalition comprising trade unions and community–based activist groups began the Fairwear campaign—an effort to implement a sourcing code of conduct among Australian retailers and manufacturers. As a result of campaigning by nongovernmental organizations in Germany, members of the Green Party introduced a bill into parliament calling for codes for conduct for German companies operating in China.

Campaigns were not limited to countries in the North. In India the South Asian Coalition on Child Servitude (SACCS) sponsored the Fair Play campaign in June in an attempt to eliminate child labor from the Indian sporting goods industry. In Hong Kong, the Asia Monitor Resource Center (AMRC) continued its campaigns to highlight abuses faced by workers in the Chinese footwear and toy industries. A coalition of groups from Honduras, Thailand, Ecuador, Indonesia, India, and Bangladesh continued their campaign to publicize and curtail activities of the worldwide shrimp industry that have created human rights and environmental problems.

In a surprising success, a four-year boycott of Holiday Inn and its parent company, Bass Private Limited, on the grounds that it was the only multinational hotel chain with operations in Tibet, resulted in Holiday Inn announcing that it would not continue its partnership with the Chinese government and would not extend its contract past the expiration date of October 1997. The campaign was organized by the Free Tibet Campaign, based in the U.K., and included activist groups in the United Kingdom and United States.

Relevant Human Rights Watch reports:

Exposing the Source: U.S. Companies and the Production of Antipersonnel Mines, 4/97
Corporations and Human Rights: Freedom of Association in a Maquila in Guatemala, 3/97

DRUGS AND HUMAN RIGHTS

Efforts to curtail the trafficking, sale and consumption of illegal drugs continued to acerbate prison overcrowding, stress criminal justice systems, and weaken legal protection for civil liberties. In countries with vastly different political, social and economic systems and traditions, anti-narcotics strategies included tactics inconsistent with human rights principles. Drug offenders faced the death penalty in a number of countries, including China, Indonesia, Iran, Iraq, Malaysia, Pakistan, Turkey and Saudi Arabia. Statistics were not available for the number of people executed for drug offenses in 1997. In August, Amnesty International reported that 534 people in China were executed for drug trafficking in 1996; available information suggested the execution rate did not change in 1997. The quantities of drugs that trigger death sentences can be small: one man was executed in China in September for peddling ten ounces of heroin. In Kuala Lumpur, two Indonesians were sentenced to death for trafficking three kilograms of marijuana. In Vietnam, where selling as little as one hundred grams of drugs can be punished with death, at least eighteen people were executed for drug offenses in 1997, including a twenty-eight-year-old sentenced to die by firing squad for trafficking 5.7 kilograms (12.5 pounds) of heroin.

Prisons in countless countries face burgeoning populations because of drug offenses. For example, in Ecuador and Venezuela, thousands accused of drug possession or trafficking languish in prolonged pre-trial detention, some of them for longer than the maximum sentence that would be applicable if convicted. According to the Organization of American States, in 1996 over sixty-three thousand people were detained in the Americas (excluding the United States and Canada) for drug offenses. Thailand's prisons are crowded with individuals serving life sentences for relatively minor roles in drug trafficking enterprises, including working as drug couriers.

Evidence of growing recognition of the problems caused by prevailing anti-drug law enforcement strategies was the concern evidenced in the most recent annual report of the International Narcotics Control Board:

[W]hile many members in the higher echelons of drug trafficking groups go unpunished, the growing number of small-time pushers and drug users being arrested is putting pressure on criminal justice systems by increasing prison populations and prison expenditure, as well as the cost of running law enforcement operations and the judicial system. This may lead to a feeling of injustice in the community and undermine public confidence in the criminal justice system.

The International Narcotics Control Board recommended that states consider giving priority to targeting large-scale drug traffickers and the organizers of drug trafficking operations, and pointed out, "Both the

absolute number of drug-related convictions and the often increasing length of prison sentences can have adverse effects upon prison conditions."

The adverse human rights effects of excessively aggressive criminal drug law enforcement were perhaps most starkly displayed in the United States, the world's capital of drug consumption. The arrest and conviction of U.S. drug offenders continued to swell the prison population. According to official statistics released in 1997, 22 percent of state prisoners and fully 60 percent of federal prisoners in the United States were incarcerated for drug offenses. The vast majority were low-level offenders, including persons convicted of drug possession. FBI statistics indicated that approximately one-half million people were arrested in 1996 for marijuana possession. The implementation of anti-drug laws continued to affect black Americans disproportionately: for example, blacks account for 38 percent of arrests for drug offenses, 59 percent of persons convicted of drug felonies in state courts. Such statistics supported the widespread perception that the "war on drugs" in the United States has unfairly targeted blacks and has been as devastating to black families and communities as drugs themselves.

Prison sentences for U.S. drug offenders are uniquely severe among constitutional democracies. For example, a person convicted of a single sale of two ounces of cocaine in the state of New York faces the same mandatory prison term as a murderer—fifteen years to life. In Michigan, a person with a spotless prior record convicted of a minor role in a drug transaction involving one-and-one-half pounds of cocaine must be sentenced to life without parole. Under U.S. federal law, simple possession of a mere five grams of cocaine base requires a sentence of five years in prison. In 1997 in Oklahoma, a jury imposed a sentence of ninety-three years on a man convicted of growing marijuana plants for sale in the basement of his house. More than three dozen U.S. congressmen supported legislation in 1997 that would have imposed the death penalty for anyone who imported two ounces of marijuana into the U.S. Draconian sentences also arise under legislation that imposes severe mandatory sentences on repeat offenders. For example, in California, conviction of a third felony is punished with mandatory life imprisonment. At least thirteen people in California were serving life sentences for conviction of a third felony consisting of the possession of marijuana for sale.

Prison sentences for drug offenses in many cases are so disproportionate that they constitute cruel punishment in violation of fundamental rights. Human Rights Watch released a report in March which criticized the human rights impact of drug sentences in New York for low-level or marginal drug offenders. While the report did not challenge the state's decision to use criminal sanctions in its effort to curtail drug trafficking and drug abuse, we insisted that such sanctions must be proportional to the gravity of the offense. All too often, however, drug sentences constituted arbitrarily severe punishment, shaped by public concerns and political pressures that have run rough-shod over human rights considerations.

Partisan politics doomed reform of New York's drug laws in the 1997 legislative session. In other states, efforts at drug law reform had mixed results. For example, the Michigan legislature developed proposals for reforms that would have ameliorated some of the harshest aspects of its drug sentencing laws; at this writing, they are pending. Despite the hesitations of politicians, public debate about drug policies and their impact on individual well-being continued to grow. In late 1996, two states, Arizona and California, passed public initiatives endorsing the legal use of marijuana for medical purposes and numerous medical organizations, journals and groups endorsed both access to marijuana for medical purposes and access to clean needles through syringe exchange programs to halt the spread of AIDS. During 1997, however, the federal government strongly opposed efforts to remove criminal sanctions for the medical use of marijuana and continued to refuse to fund needle exchange programs.

Federal drugs laws in the United States require judges to impose dramatically higher penalties for crack than powder cocaine offenses, even though the two drugs are chemically identical. Although the cocaine sentencing laws are racially neutral on their face, their application has created stark racial disparities as far more blacks are convicted of crack offenses than whites and consequently receive the much stiffer penalties. The sentencing

laws have been widely criticized as a symbol of the racial injustice many Americans feel characterizes the "war on drugs" in the United States. In July 1997, President Clinton proposed narrowing, although not entirely eliminating, the differential between crack and powder cocaine sentences.

The U.S. Supreme Court has almost uniformly rebuffed constitutional challenges to law enforcement tactics adopted to pursue drug trafficking, thus reducing protections of individual privacy against state intrusion in the form of searches and seizures. In an important departure from this tradition, the Supreme Court in April struck down as unconstitutional a Georgia law that required candidates for public office to submit to a drug test. The court held that the law was not tailored to serve purposes other than that of demonstrating a commitment against drugs, and that such a symbolic purpose was not important enough to override individual privacy interests. The decision had a direct impact on a small group of people, but it may signal a new approach by the Supreme Court to anti-drug measures, one that would weigh individual privacy or liberty interests more heavily against state efforts to "send a message about drugs." In another important decision also announced in April, the court ruled that the constitutional rule requiring police to knock and announce their presence before executing a search warrant does not contain a blanket exception for drug searches.

U.S. supported counternarcotics programs overseas, particularly in Latin America, continued to raise human rights concerns. Bolivia, where Human Rights Watch continued research on anti-drug policies and violence, was a case in point. In 1996, the U.S. and Bolivian government signed agreements for U.S. counter narcotics assistance that included strong human rights provisions. Those provisions appeared to go largely unimplemented in 1997. For example, there was no sign of improved riot and crowd control measures by the police; arbitrary search and seizures continued; impunity for police abuse remained rampant. The government's human rights office in the Chapare region—the center of Bolivia's coca cultivation—continued to be underequipped, understaffed and ignored by the police.

Renewed violence between Chapare coca growers and anti-drug police included deaths from the police's apparently indiscriminate use of lethal force. There were also reports of torture and ill treatment in custody. The worst violence occurred on April 17, 1997 when the Mobile Rural Patrol Unit (Unidad Móvil de Patrullaje Rural,UMOPAR) and other police forces killed six civilians during clashes between local residents and police eradicating new coca seedbeds in Eterezama, in the Chapare. Violence erupted after fifty-three-year-old Alberta Orellana García was shot by police. According to her children, she was unarmed, kneeling and imploring the police not to destroy her crop. Angered by her death, residents armed mainly with sticks and stones went on a rampage, setting fire to a building belonging to the government crop substitution office. Police launched tear gas canisters from helicopters, and reportedly fired indiscriminately at protesters' feet.

According to eyewitnesses, an UMOPAR agent fired six times at Elio Escobar, aged sixteen, while he was entering his house and not presenting a threat. Four bullets struck him in the legs, one in the neck, and another perforated his hand. After he was hit and on the ground, an UMOPAR agent struck him in the head with the butt of his rifle and beat his younger brother, who tried to help him. The police later severely beat people detained after the incident, including unionists and local government officials.

There were also disturbing reports of Chapare peasants being abused after their detention. Seventeen-year-old Cyprian Santos was beaten by UMOPAR agents who, because of his muddy feet, suspected him of working in pits where coca leaves are trampled. Nine peasants detained after the death of a policeman in early July 1997 were beaten and forced to pose for photographs holding dynamite, Mauser rifles and ammunition. One of them, sixteen-year-old Abelardo Iraíso Zelada, told the press that UMOPAR agents beat him all day: "I don´t know how many times I passed out, they almost killed me. One of the moments I came to I found bullets and dynamite in my pockets." Seven of the detainees, including Iraíso, were released without charge for lack of evidence.

As the government stepped up its coca eradication efforts in the Chapare, local prisons became stretched to bursting point, and detainees were being held in deplorable, overcrowded conditions in police lockups. Women detainees in the Cochabamba detention center of the Special Force for the Battle Against Drug-trafficking

(FELCN) went on hunger strike to protest conditions. They were forced to sleep sitting up, and one alleged that she had to deliver her child chained to a hospital bed. She told reporters the baby nearly died because police beat her when she was pregnant to force her to sign a statement.

The Clinton administration continued to encourage military involvement in antinarcotics efforts in Latin America and continued to press for significant counternarcotics assistance to military and police forces. In August, for example, the Office of National Drug Control Policy stated that the U.S. would provide more than $100 million worth of equipment and training to the Colombian armed forces and police to assist drug eradication and interdiction efforts.

Following the severe criticism of Colombia's record in the 1996 U.S. State Department Report on Human Rights, the Clinton administration sought to distance itself from the dirty-war tactics of the Colombian military by extending the human rights restrictions contained in foreign assistance appropriations legislation for Fiscal Year 1997 to all counternarcotics assistance. Despite strong pressure from members of Congress who insisted that fighting the war on drugs take precedence over human rights, the Clinton administration withheld military assistance until the Colombian military high command signed a formal agreement containing human rights conditionality and end-use monitoring provisions. U.S. counternarcotics assistance in Colombia was limited to military units that do not have records of unsanctioned human rights violations. Difficulties promptly surfaced with trying to target aid to clean units within a military that, as an institution, has a notorious human rights record. In October, for example, in an area of the country the U.S. had designated as being free of military abuses, the Colombian security forces reportedly supported a paramilitary massacre that left six civilians dead. The commander of the Colombian armed forces in the same month stated that U.S. aid could be used against rebels whether or not they are involved in cocaine operations. Similar problems regarding the use of U.S. anti-drug aid have arisen in other countries.

Relevant Human Rights Watch report:

Cruel and Usual: Disproportionate Sentences for New York Drug Offenders, 3/97

REFUGEES, DISPLACED PERSONS AND ASYLUM SEEKERS

Refugees, displaced persons and asylum seekers are among the most vulnerable victims of human rights abuse. Forced to leave their homes, possessions, friends, and, often, family, traumatized by killings or other crimes that caused them to flee, they find themselves adrift, sometimes alone, dependent on strangers in a foreign region or land. At special risk are women and children who are often subjected to violence and sexual abuse in their place of refuge.

Unfortunately, as ethnic and communal violence continue to create new waves of refugees and displaced persons throughout the world, many countries that have traditionally welcomed refugees are now turning them away or passing legislation restricting their ability to apply for asylum. Moreover, the protection of refugees and asylum seekers has significantly deteriorated over the past few decades. Refugees and displaced persons are subjected to abuse in their places of exile and are in danger of being returned to countries or regions from which they fled, thereby endangering their safety.

Europe

Increased restrictions on the right to asylum were imposed in European Union member states in 1997, reflecting, among other things, a general disinclination to take in refugees from the Bosnian crisis. Asylum seekers were given only limited access to asylum procedures once their asylum claims were deemed either "manifestly

unfounded" or the responsibility of a "safe third country," defined as any country where the asylum seeker would be admitted and protected against persecution or *refoulement*. These policies gave immigration officials considerable discretion to deny asylum after little or no substantive review of the asylum claim. The right to appeal was rendered meaningless because the asylum seeker had no right to remain in the country while the appeal was pending. "Safe third country" rules subjected asylum seekers to the risk of chain of deportations from one country to another, and expanded in 1997 as E.U. member states negotiated an ever-widening number of readmission agreements with their eastern and southern neighbors.

Despite the Dayton peace agreement, which brought a fragile peace to Bosnia, local authorities obstructed the return of displaced persons to their prewar homes in 1997, and ethnically motivated expulsions and evictions continued. Of the more than two million Bosnians who were displaced by the war, only some 250,000 had returned to the country by November, and of these very few to their pre-war homes. Since the Dayton accord was signed in 1995, another 80,000 individuals were displaced due to transfers of territory. In Croatia in 1997, the government continued to hamper attempts to return by some of the 200,000 to 350,000 non-Croat refugees who were forced into exile by the war. In May, some one hundred Serbian refugees were expelled after an attempt to return to homes near Sisak. The Federal Republic of Yugoslavia (FRY) maintained an inconsistent and discriminatory policy toward the estimated 600,000 refugees from the former Yugoslavia living in the FRY. Large numbers were denied refugee status, thereby limiting the amount of humanitarian aid they could receive and threatening them with possible repatriation. Discrimination against minorities encouraged emigration from the country, and the influx of Serbian refugees from Bosnia and Croatia to Vojvodina in recent years led to state-sponsored seizures of minorities' homes for Serbian refugees and coerced land swaps.

In September 1997 it was revealed that the prime minister of Slovakia, in August meetings with the Hungarian prime minister, had proposed a "population exchange" of ethnic Hungarians living in Slovakia for ethnic Slovaks living in Hungary.

United States

In the United States, the implementation of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 hindered the ability of asylum seekers to exercise their right to seek asylum by allowing immigration inspectors at the port of entry to make a determination about the legitimacy of their cases without allowing the applicant to have legal counsel or permitting independent monitoring of this process. Those allowed to make a case had a very limited time in which to do so. The bill provided for the detention of individuals arriving without proper documentation, many of whom were held in substandard conditions. Hundreds of children were detained, including many with no responsible adult present, who were not informed of their rights and were often detained in prison-like conditions.

Confederation of Independent States

In Russia the situation of asylum seekers from countries of the former Soviet Union remained grave in 1997: they were detained by police, threatened with deportation, and at least thirty were deported without the opportunity to apply for asylum. Amendments to the 1993 Law on Refugees brought some improvements but did not change the refugee determination procedure. Most refugees arriving at Moscow's international airport were sent back to their country of origin without being given a chance to apply for asylum.

In Tajikistan large numbers of refugees and all but a few internally displaced persons were able to return safely to their homes. But hostilities in northern Afghanistan, which led the authorities in Uzbekistan to close the Afghan-Uzbek border, limited repatriation through Uzbekistan for 7,000 refugees in Sakhi camp in northern Afghanistan. Following intense international pressure, Uzbekistan in late October agreed to open its border with Afghanistan to allow for the passage of the Sakhi refugees through Termez to Tajikistan.

Africa

In late 1996, soldiers of the rebel Alliance of Democratic Forces for the Liberation of the Congo (ADFL) and their Rwandan allies attacked camps in the Democratic Republic of Congo (DRC) that sheltered more than one million Rwandans. Most of the Rwandans were refugees, but others were soldiers, militia, or civilian authorities responsible for the 1994 genocide in Rwanda. Some 600,000 Rwandans returned home, many willingly but some against their will. Other refugees fled west, some of them forced to accompany soldiers and militia, and were chased down by the ADFL and its allies. Armed elements among the refugees sometimes used the noncombatants as human shields or even killed them directly if they refused to follow orders. In mid-1997, more than 200,000 persons were still missing, many of them dead from attacks or deprivation of food, water, and medicine. The disaster resulted in part from the refusal of the international community to heed pleas from the UNHCR and others to separate out the armed elements, who were making incursions into Rwanda, from the real refugees. Soon after the massive return from the DRC, more than 470,000 other refugees returned to Rwanda from Tanzania, many of them forcibly repatriated by Tanzanian authorities. Rwandan authorities generally maintained calm, but in subsequent months more than 200 returnees were killed and hundreds more were reported missing from their communities. Up to 15,000 Rwandan refugees fled from the DRC into Angola, where humanitarian organizations had difficulty reaching them; they were reportedly mistreated, and some were conscripted into UNITA forces.

In Burundi, nearly one tenth of the population had fled their homes by mid-1997 in a continuing civil war. Of the 570,000 living in camps, some 223,000 were Hutu forced into the camps by soldiers of the Tutsi-dominated army who used murder, rape, pillage, and destruction of homes to create zones of scorched earth in regions contested by the primarily Hutu rebel movements. Others were Tutsi who had gathered spontaneously in camps to seek protection from rebel attacks. Many died from diseases associated with overcrowded conditions in the camps, particularly in the Hutu camps where relief services were limited by the government.

Close to one million Liberians remained displaced within and outside of the country in 1997, mainly women and children of rural background. In July, elections were held that swept former faction leader Charles Taylor and his party into power, but one of the preconditions for the elections— the return of refugees—was not achieved. In 1997 in South Africa, there allegations of police brutality against foreigners, including the death of at least one asylum seeker shortly after he was released from police custody. A government-appointed committee published a Green Paper on migration policy, proposing a more rights-based approach.

Asia

The government of Thailand failed to protect some 117,000 refugees from Burma in camps along the Thai-Burmese border in 1997. Refugee camps in Thailand were attacked from across the border on several occasions, and refugees were killed and injured. In a reversal of its previous policy, the Thai army and Border Patrol Police either denied entry to or pushed back some 8,500 refugees, violating international strictures against *refoulement*. In several instances, the United Nations High Commissioner for Refugees (UNHCR) was criticized for lending legitimacy to the process by observing some apparently involuntary returns. Refugees from Cambodia faced similar problems in Thailand, where conditions in the refugee camps and immigration detention centers remained poor. Thailand also blocked the establishment of new camps for refugees.

In Burma the number of internally displaced was estimated to be more than 300,000. Forced relocations were accompanied by rapes and killings, and scores are believed to have died from malnutrition and other diseases related to poor conditions at the government-controlled sites.

Before the transfer of sovereignty to Hong Kong, Chinese dissidents who had fled there as political refugees were successfully resettled in third countries. Many Vietnamese asylum seekers, however, were pushed out by the Hong Kong government and the UNHCR, which had made conditions in the camps intolerable in response to Chinese

pressure to send all the boat people home before the July 1 transfer of sovereignty. More than 2,000 Vietnamese whom the Vietnamese government refused to take back on the grounds that they were not Vietnamese citizens remained in Hong Kong.

Latin America

In Colombia, between 1985 and 1996, some 920,000 civilians had been forcibly displaced by political violence. The number of displaced continued to grow in 1997 and included an unprecedented exodus of 13,000 peasants from northwest Colombia, most of whom languished in crowded camps without adequate food, health care or physical protection. In April, some 300 Colombians were forcibly repatriated from Panama, only to be evacuated from their place of return in September after one returnee was killed and paramilitaries threatened to kill a list of others. The government responded to the national problem by appointing a presidential counselor on displacement and passing legislation dealing with assistance, prevention, and protection issues, but the law and national policy were criticized for lack of funding and for not guaranteeing the safety of returnees. In June, the UNHCR opened an office at the invitation of the government, but at the time of this writing has not undertaken any formal activities.

The Reponse of the International Community

The protection of refugees ultimately rests with the individual nations involved and with the international community as a whole. Their safety is guaranteed by international human rights and humanitarian law, and by the 1951 Convention on the Status of Refugees and the 1967 Protocol. UNHCR is the preeminent agency for the protection of refugees and has the expertise and experience to ensure refugees' rights. However, many states are hampering the activities of the UNHCR by blocking its access to refugee camps and returnees and otherwise obstructing its work.

United Nations High Commissioner for Refugees

UNHCR, in turn, has shifted its focus from exile-oriented strategies to an emphasis on voluntary repatriation and on the prevention of refugee flows. This has resulted in an erosion of protection standards. Human Rights Watch has documented cases in recent years in which the UNHCR has resorted to the reduction of rations in order to "encourage" refugees to repatriate, or failed to provide a neutral and accurate account of the situation in the region from which the refugees have fled, in an effort to encourage them to repatriate "voluntarily." UNHCR has also assisted in the repatriation of refugees in situations where it did not have adequate control to determine whether the decision to return was truly voluntary and whether their safety would be ensured. UNHCR policies to protect and assist victims of sexual violence were still not being adequately integrated into UNHCR programs and services in the field. Receiving governments should cooperate with UNHCR to institute protection programs to prevent sexual assault of women, which is common during some stage of their flight of refuge, and in some situations rampant.

Human Rights Watch has urged the UNHCR to play a stronger and more active role, including the use of various U.N. channels, in situations where governments are abusing refugees and hindering humanitarian and protection work. We also have urged the UNHCR to work more closely with nongovernmental groups that are experienced in refugee needs and human rights. Governments should cooperate with UNHCR in providing access to refugees and displaced persons and in ensuring their safety both in exile and when they return home. We have called on the international community to use its leverage to encourage governments to cooperate with UNHCR and to cease practices that are abusive to refugees.

Some of our concerns about the UNHCR role were as follows:

* In the case of Rohingya refugees crossing from Burma to Bangladesh in 1991 and 1992 and again in 1996, UNHCR,

starting in 1994, encouraged their repatriation, despite the fact that the conditions in Burma that caused them to flee had not been ameliorated. UNHCR failed to supply the refugees with adequate information about conditions that they might face in Burma upon their return. In addition it circulated information indicating that refugees might be arrested in Bangladesh. While such information may have constituted an accurate reflection of the Bangladeshi government's treatment of the new arrivals, UNHCR would have better directed its efforts to seeking protection for newly arrived Rohingya who sought to exercise their fundamental right to seek asylum. In 1997 Rohingya Muslims returning to Burma from Bangladesh reported continued persecution by the Burmese military because of their race and religion: some 20,000 fled once again to Bangladesh after returning home.

* In Tajikistan, where UNHCR's presence had significantly improved the situation for returning refugees, the agency considerably decreased its staff in , despite continuing tensions in the civil war, and also relinquished certain monitoring functions to the Organization for Security and Cooperation in Europe (OSCE).

* With regard to refugees from Bosnia, the UNHCR used the concept of "temporary protected" status, which allowed large numbers of people to get out of harm's way in a short period of time. However, the UNHCR stressed the "return-oriented" nature of the protection, with emphasis on the safety of the return, rather than its voluntary nature, in order to convince governments to receive the asylum seekers. Human Rights Watch has been concerned that "temporary protected" persons may not be afforded a full opportunity to raise claims for traditional refugee status under the 1951 refugee convention.

* UNHCR has traditionally neglected the issue of sexual violence against women in refuge, as in the widespread rape in 1993 of Somali refugee women in camps in Kenya close to the Somali border. Following publicity on this issue, extensive and quite successful efforts were made by the UNHCR and the Kenyan government to improve the situation. Significant steps were taken by the agency, including guidelines for the protection of refugee women in general, but in 1997 implementation remained a problem.

* While UNHCR has issued guidelines on the protection of children in refuge, they have not been adequately implemented. In Ethiopia in 1996, UNHCR failed to protect unaccompanied Sudanese boys from forced military recruitment. Many of the boys, sent to fight on the Sudan-Ethiopia border, reportedly died in battle.

United Nations Development Program (UNDP)

UNDP, the United Nations' development arm, is increasingly administering reintegration programs for the internally displaced. Although human rights functions have not been an established feature of its traditional work, UNDP has formally acknowledged that its mandate and its programs for the internally displaced must incorporate human rights and other issues. UNDP made human rights a central component of its successful reintegration program in Central America between 1989 and 1995. However, the lessons of the Central American program were not translated into UNDP's Kenya program, carried out between 1993 and 1995 to reintegrate an estimated 300,000 displaced persons. In 1997 Human Rights Watch undertook a detailed evaluation of UNDP's Kenya program and made a series of recommendations that we believe, if implemented, would lead to greater success in the implementation of all future UNDP programs for the internally displaced.

Relevant Human Rights Watch reports:

Emerging from the Destruction: Human Rights Challenges Facing the New Liberian Government, 11/97
What Kabila is Hiding: Civilian Killings and Impunity in Congo, 10/97
France—Toward a Just and Humane Asylum Policy, 10/97
Rohingya Refugees in Bangladesh: The Search for a Lasting Solution, 9/97

No Safety in Burma, No Sanctuary in Thailand, 7/97
Failing the Internally Displaced: The UNDP Displaced Persons Program in Kenya, 6/97
Uncertain Refuge: International Failures to Protect Refugees, 4/97
Zaire—Transition, War and Human Rights,
4/97
Slipping Through the Cracks: Unaccompanied Children Detained by the U.S. Immigration and Naturalization Service, 4/97
Zaire— "Attacked by All Sides": Civilians and the War in Eastern Zaire, 3/97
Hong Kong: Abuses against Vietnamese Asylum Seekers, 3/97

ACADEMIC FREEDOM

Educators, researchers and students are frequent targets of state-sponsored violence and repression. In the most notorious cases, such as China during the Cultural Revolution and Kampuchea under Pol Pot, governments bent on imposing a monolithic state ideology have disproportionately targeted teachers and educated individuals for imprisonment, torture and murder. More commonly, governments use intimidation, physical abuse and imprisonment to silence critical scholars and students, deny access to educational institutions to girls, women and members of disfavored minority groups, and censor teaching, research and publication on important historical and social subjects.

The preamble to the Universal Declaration of Human Rights declares that "every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for [human rights]." To this end, the declaration specifically provides for the right to education, mandates that access to educational institutions and to the cultural and scientific resources of society shall be available to all, and provides that "education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms." Human Rights Watch believes that educational institutions cannot fulfill their mission of strengthening respect for human rights when the basic rights of educators and students themselves are not respected.

In 1997, Human Rights Watch gave particular attention to government attacks on the civil and political rights of university faculty and students, and to the devastating impact such attacks often have on the academic community and on freedom of inquiry, expression and association in society at large. The evidence was not encouraging. As described below, although governments increasingly recognize the importance of higher education in promoting technological and economic progress, many sought to assert rigid control over the speech and activities of members of the university community and greeted perceived noncompliance with force.

Ideological Pressure and Censorship

Prior to 1989, communist governments from the Soviet Union to Czechoslovakia notoriously made affirmation of party loyalty an explicit precondition of scholarship and routinely punished perceived deviations from state ideology with imprisonment and exile. In the 1950s in the United States, requirements in states such as California and New York that faculty take oaths of national loyalty and Congressional investigations of alleged communist "sympathizers" on campus cast a similar pall of orthodoxy over the university.

Ideological litmus tests did not end with the Cold War. In 1997, Indonesia and China were prominent examples of their continued currency. In Indonesia, all applicants for teaching positions were required to pass a background screening to determine whether or not they had what the government called a "clean environment." Those who previously had been imprisoned for political crimes, including hundreds of thousands of people imprisoned without charge following an attempted coup over thirty years ago, were forbidden from teaching. All relatives of

such people, including siblings, children, grandchildren, aunts, uncles and in-laws, were considered suspect and were allowed to teach only if the government was satisfied that their records were clear of any evidence of opposition to the government or *Pancasila*, the official state ideology. In addition, all new students and teachers were required to undergo a government-sponsored training program in Pancasila as a condition of entry to the university, and all organizations in society, including student groups and faculty associations, were required to expressly adopt Pancasila as their "sole basis."

Although Pancasila itself literally means "five principles," and consists of vague invocations of monotheism, humanitarianism, national unity, democracy and social justice, the Indonesian government in 1997 continued to use alleged deviations from Pancasila to justify wide-ranging censorship and attacks on critical faculty and student activists. As one researcher told Human Rights Watch, "Critical thinking alone makes you suspect."

During the run-up to elections held in May, numerous student rallies calling for political reforms or advocating a boycott of the elections were dispersed by the military and police, and students routinely were held overnight for questioning. In April, the government sentenced a group of twelve students activists to jail terms ranging from eighteen months to thirteen years in prison. The students initially were accused of having masterminded political riots in Jakarta in July 1996. When the government could come up with no evidence to substantiate such charges, they instead were charged with and convicted of subversion. The first ground for conviction specified in the Indonesian subversion law, punishable with the death penalty, is "distorting, stirring up trouble or deviating from Pancasila." At trial, the prosecution repeatedly accused the activists of endorsing ideas contrary to Pancasila (*see* Indonesia section).

In 1997, four prominent professors, Sri Bintang Pamungkas, Mulyana W. Kusumah, Arief Budiman and George Aditjondro, were among the targets of an ideological smear campaign initiated by a high-ranking military officer. In interviews with the Jakarta press in 1995, Lieutenant General Soeyono, who at the time was chief of staff of the Indonesian armed forces, named the academics as among fifteen individuals who use "communist methods" to spread their ideas, echoing accusations made by President Soeharto that certain "formless organizations" were using democracy and human rights as a ruse to propagate ideas contrary to Pancasila. After riots in Jakarta in July 1996, Lieutenant General Soeyono asserted that the unrest had proven his point, and his list of ideologically suspect individuals gained renewed currency, appearing in press accounts into the early months of 1997. Two of the professors previously had been brought up on charges of insulting the government. Dr. Aditjondro, formerly a professor at Satyawacana Christian University in Java, was charged based on a political joke he had told while serving as a discussant at a university symposium in 1994. He now lives and teaches in exile at Newcastle University in Australia, and faces arrest should he return to Indonesia. Dr. Pamungkas, an economist at the University of Indonesia, an opposition member of Indonesia's parliament and an outspoken critic of President Soeharto, was sentenced to thirty-four months in prison in 1996 for critical remarks about the president made during a presentation at the Berlin Technological University in Germany. The conviction of Dr. Pamungkas demonstrated the government's willingness to apply its repressive laws even to academic speech by Indonesians overseas. Dr. Pamungkas subsequently lost his seat in parliament, and in May 1997, he learned that he had been dismissed from the teaching position at the University of Indonesia he had held for twenty-seven years.

In its attacks on alleged ideological deviation, the Indonesian government also targeted books and academic publications, depriving social science and humanities faculty of important resource materials for classroom study and impoverishing intellectual life throughout Indonesian society. According to one study, over 2,000 books have been banned by the Soeharto government, including a wide range of prominent works by both foreign and domestic scholars, dissertations prepared by Indonesian scholars abroad, and works of fiction regarded as among Indonesia's finest. The Attorney General's office is given wide discretion to ban books, and has been especially aggressive in targeting works of history that challenge the accounts given in books sponsored by the government or army. Titles added to the list in recent years include works by Japanese, American, Australian and Dutch scholars on Indonesia's independence struggle and on the development of a capitalist economy in the Southeast Asia region.

Other works that have been banned recently include a political memoir by Oei Tjoe Tat, Indonesia's first minister of state of Chinese ancestry and assistant to former President Sukarno, and a collection of essays aimed at stimulating further academic inquiry into the events in Indonesia in 1965–66 that led to the assumption of power by President Soeharto.

In China, all universities have been under close ideological surveillance since the student uprising at Tienanmen Square was brutally suppressed by government authorities in 1989. In 1997, the government introduced a host of new regulations and restrictions expressly aimed at strengthening ideological training and Communist Party control over universities throughout China.

In January, the government announced new censorship regulations, effective February 1, banning all publications that questioned the legitimacy of communist rule or failed to go along with "socialist morality." In April, the government announced new government restrictions on public opinion research, household surveys and studies of demographics, important tools for understanding citizens' attitudes toward economic reform and other social and political issues. A memo from the Propaganda Ministry, the Office of the Secretary of the Politburo, and the Office of the State Council, also made public in April, announced that all social science projects involving foreign funding henceforth would require approval from the Public Security Bureau and National Security and Foreign ministries. The new restrictions coincided with a campaign at the Chinese Academy of Social Sciences against "theories and opinions that are against Marxism, the leadership of the Party and the people's democratic dictatorship." In June, the well-publicized Sixth National Conference on Party Building in Institutions of Higher Education called on all members of the academic community to firmly pursue the party's line, principles and policies, echoing a government decree issued in October 1996 ordering university administrators to consult campus-based Communist Party representatives on all major decisions.

In recent years, numerous Chinese academics and students have been imprisoned for alleged "counterrevolutionary" crimes. Although the China National People's Congress in 1997 removed the counterrevolutionary acts provision from the criminal code and replaced it with "endangering state security," a number of leading proponents of democratic reforms, including former student leader Wang Dan and marine biology student Chen Lantao, remained behind bars. In December 1996, U.S.-based Tibetan ethnomusicologist Ngawang Choephel and former Beijing University philosophy student Li Hai, accused of political crimes, were sentenced to jail terms of eighteen and nine years, respectively (*see* China section).

Although Human Rights Watch is unaware of evidence directly linking the announcements of renewed restrictions on scholarship to the growing contacts between scholars at mainland and Hong Kong universities, the timing of the announcements made clear that the resumption of Chinese sovereignty in Hong Kong would be accompanied by tightening rather than relaxation of ideological controls on mainland campuses. In Hong Kong itself, new threats to academic freedom emerged both before and after the handover. Early in the year, government-sponsored revisions to school textbooks to reflect Hong Kong's new status went beyond deleting references to Hong Kong as a colony and included censorship of accounts of the Tienanmen massacre and its aftermath. In August, Hong Kong textbook publishers revised modern history texts for primary and secondary schools, removing references to the Cultural Revolution, the "anti-rightist campaign," 1976 dissident protests, and the Tibet conflict, and in some cases reducing texts to one-quarter their pre-handover length.

A number of prominent Hong Kong faculty members also were denied reappointment, and local and Hong Kong-based foreign scholars reported growing ideological tensions on campus. Among the Hong Kong academics ousted from their positions was Prof. Nihal Jayawickarama, an internationally respected legal scholar at Hong Kong University who also served as chairman of the Hong Kong section of the International Commission of Jurists. Dr. Jayawickarama had criticized China's human rights policies and questioned the legal status of the provisional legislature. Although a university spokesperson defended the decision saying that Dr. Jayawickarama reached the retirement age of sixty in 1996, university procedures provided for an additional five-year contract for valued faculty members, and Dr. Jayawickarama had been expressly invited to apply for an extension of his appointment by

officers of the university. As Dr. Jayawickarama explained in an interview with the Hong Kong press, "I think the university feels it might be better off without me because I'm not likely to become politically correct after July 1." In a separate incident in August, Hong Kong provisional legislator David Chu Yu-lin sent letters to two universities in an effort to have academic critics fired. The targeted individuals were Prof. Richard Baum, a visiting scholar at Chinese University who had criticized Mr. Chu's proposals for a program of patriotic education, and Tim Hamlett, a lecturer at Baptist University's Department of Journalism, who had disputed Mr. Chu's account of the Hong Kong public's enthusiastic embrace of the handover. In a positive development, administrators at both Chinese University and Baptist University defended the scholars in interviews with the Hong Kong press. Such public defense of academic freedom was particularly important given the perception by many Hong Kong scholars that political and ideological considerations were increasingly displacing academic standards.

Reprisals against Dissenting Professors

As centers of learning and research, universities play a critical role in shaping and informing debate on a wide range of social, scientific and moral issues. In many countries, however, professors who peacefully express ideas or views that government does not want to hear are subject to intimidation, arrest and loss of livelihood. Professors singled out for such strong-arm tactics typically are highly regarded academics who openly spoke their minds on controversial subjects. Reprisals against such individuals are significant not only for their impact on individual lives and careers, but also, given the high profile of universities in most countries, for their effectiveness in chilling political criticism and stifling intellectual debate more generally. Prominent examples in 1997 included attacks on professors in Egypt, Gaza and Cuba.

In Egypt, Dr. Ahmed al-Ahwany, assistant professor of engineering at Cairo University, was arrested by state security forces in April and subsequently imprisoned for nearly a month merely for possessing and seeking to make copies of a paper critical of a controversial new agrarian law due to take effect in September. The government's arrest of Dr. Ahwany proved to be the first shot in what was to become a concerted government barrage against discussion and criticism of the new law.

Palestinian Authority security forces arrested Dr. Ahmed Subuh, a professor of education at al-Azhar University in Gaza, at his home in July. The arrest came shortly after Dr. Subuh had administered an examination to students in which, among nine short essay questions asking students to analyze the interplay between social and educational problems, he included a question asking students to address the impact of corruption in either the university administration or the Palestinian Authority. Security forces subsequently raided Dr. Subuh's home and seized the exam papers of the students. Dr. Subuh, who has been critical of the leadership of al-Azhar University installed by the government, was also director of the Touffah Educational Development Center, an autonomous non-profit organization widely respected for its innovative community education programs. At the time of this writing, Dr. Subuh remains in custody.

In Cuba, two academics, Dr. Felix A. Bonne Carcasses and Dr. Marta B. Roque Cabello, were among four leaders of a pro-democracy group arrested during a government crackdown in July. Prior to the arrests, the group, called the Internal Dissidents' Working Group for the Analysis of the Cuban Socioeconomic Situation, had publicly urged Cubans to abstain from voting in the upcoming elections and had issued a paper titled "The Homeland Belongs to Everyone," in which they criticized an official Communist Party discussion paper on the Cuban economy and asserted their own view that greater democratization is a prerequisite to effective economic liberalization. Dr. Cabello, economist and director of the Cuban Institute of Independent Economists, was also reported to have angered government officials by criticizing government economic forecasts. The four activists, who remain in prison at the time of this writing, were charged with plotting to disturb the upcoming national election, misrepresenting the condition of Cuba's economy, and threatening foreign investors.

Suppression of Student Protest

Political turmoil in society inevitably finds an important outlet on college campuses, particularly among student groups. Although the university typically is home to advocates of ideas and views across the political spectrum, the most active student groups in times of political upheaval tend to be vocal critics of the political status quo and proponents of reform. Important characteristics of the university facilitate such student activism, including an intellectual climate relatively open to debate and expression of controversial ideas, the ease of organizing group activity in the typically close-knit campus environment and the availability of public spaces suited for assemblies. Unfortunately, those same characteristics make it easy for intolerant government authorities to identify student critics and to intervene to silence dissent. Although campus unrest at times is instigated by student groups who engage in unilateral acts of violence that cannot be condoned, the evidence in 1997 again demonstrated that a far more common source of campus violence is government use of armed force and coercion to suppress student dissent.

Numerous governments mobilized armed security forces to quell student protests in 1997. Prominent examples included Burma, Indonesia, Israel, Kenya, Nigeria, South Korea and Zambia. In most cases, tens if not hundreds of students were seriously injured in the crackdowns, and, in Burma, Kenya and Nigeria, students were killed. The situation in Kenya, in which repeated campus crackdowns claimed the lives of at least six students and led to the closure of leading Kenyan public universities for extended periods of time, illustrated the often tragic consequences of government failure to respect basic civil and political rights on campus.

The recent outbreak of violence on Kenya's campuses began at the end of 1996. On December 17, 1996, Festus Okong'o Etaba, an unarmed first-year student at Egerton University, was shot and killed by police during a student demonstration demanding a partial refund of fees allegedly owed students by the university. The following day, police shot and killed Kenneth Makokha Mutabi and Eric Kamundi, both unarmed, who were among a group of students at Kenyatta University who had gathered peacefully to mourn the death of Mr. Etaba and to protest the use of lethal force by police against student protesters.

On February 23, 1997, Solomon Muruli, a student leader at Nairobi University, was killed after a suspicious early morning explosion and fire in his dormitory room. Muruli, who had helped organize a series of campus demonstrations protesting government neglect of the universities and favoritism in the award of student loans, previously reported having been abducted and tortured by police in November 1996 and had identified a senior police officer as one of his abductors. Less than two weeks before his death, Muruli reported having received death threats. Nairobi University was closed for over a month following students protests over the failure of the authorities to protect him.

On July 7, 1997, at least two students were among nine or more individuals killed in a violent government crackdown on opposition groups seeking constitutional reform. On the morning of July 7 police raided the campuses of Kenyatta and Nairobi universities, tracking down dozens of students who supported the reform movement and attacking them in dormitory rooms and classrooms where year-end exams were being held. Numerous students, several bystanders, and at least one professor were hospitalized, some with gunshot wounds. Campus rallies to protest the violence the subsequent day were again violently disrupted by the police, leading to a series of running battles between police and students and to closure of Kenyatta University and all four campuses of Nairobi University on July 9.

The events in Kenya reflected a vicious cycle of student protest, violent government crackdown and angry student counter-response. At the root of the problem has been pervasive government interference in campus affairs, repeated attacks on the right of students and faculty to express their views and grievances, and failure of government security forces to comply with international standards regarding the use of force. The Kenyan government, moreover, repeatedly closed universities in the face of political turmoil, depriving students of their right to further their education, forcing all teaching and research to come to a halt and seriously compromising the ability of the academic community to provide the training and knowledge that the Kenyan government elsewhere

said was essential to Kenya's future.

Restrictions on Travel and Exchange

Student and information flows across borders have been essential to the academic enterprise since its inception. Today, such international contacts are more common and more central than ever before, a reflection of the increasing internationalization of scholarship that has accompanied the end of the Cold War, the development of new technologies, most notably the Internet, that facilitate international communication, and the rapid growth in collaboration between academics from different countries who share a range of social and scientific commitments, including the environment, women's issues and human rights. Governments suspicious of ideas that circulate beyond the reach of the state, or fearful that critical domestic scholars will find support for their views among their counterparts in other countries, often deny such scholars travel permits and Internet access. Other governments use travel restrictions on scholars to punish foreign governments, denying their scientists and scholars entry to attend international conferences or to engage in collaborative research. Both forms of abuse continued in 1997.

In the United States, the government in March denied visas to five Cuban scientists who had been invited to present their work at a conference on quantum chemistry in Florida and to working visits to Cornell University and Clark Atlanta University. Although a contingent of prominent United States scientists organized by the New York Academy of Sciences volunteered to attest to the credentials of the Cuban scientists, the visas were not issued. The U.S. government based its denials on the claim that "entry [was] detrimental to the interests of the U.S." The refusal of the U.S. government to issue the visas was particularly troubling in view of long-term U.S. support for the right of scientists to travel freely, including its willingness during the Cold War to issue visas to scientists from the Soviet Union and the nations of eastern Europe.

In Iran, the Ministry of Information seized the passport of prominent scholar Dr. Abdol Karim Sorousb, preventing him from attending academic seminars to which he was invited in Germany, Malaysia and England, where the British Society for Middle Eastern Studies had invited him to give a plenary address at a conference held July 6-9, 1997. Dr. Sorousb, a philosopher and leading proponent of religious and governmental reform in Iran, was also effectively banned from teaching and warned by a government official that he faced possible imprisonment if he continued to speak his mind.

In Tunisia, two academics were among a group of government critics denied passports. Dr. Moncef Ben Salem, founder of the mathematics department at the University of Sfax and a former visiting scholar at universities in the United States, had been denied permission to travel abroad since 1990 and was banned from teaching in retaliation for his steadfast criticism of the secular orientation of the current government. Dr. Moncef Marzouki, a physician and professor of neurology and preventive medicine at the University of Sousse and an advocate of democratic reform and human rights in Tunisia, was denied a passport and prevented from accepting an invitation to travel to Strasbourg in June to attend European Parliament hearings on human rights in Tunisia.

As the preceding discussion demonstrates, attacks on the civil and political rights of faculty and students were commonplace in 1997. In many cases, the attacks were significant not only for their impact on academic communities but also for their serious and far-reaching impact on citizens' basic rights to freedom of inquiry, expression and association. Because the great majority of universities around the world are public institutions or are dependent on government funding, and because such institutions typically are viewed by governments as "prime instruments of national purpose," governments have considerable power to influence what takes place on campus and an incentive to wield that power. A wide range of governments abused their power in 1997, engaging in arbitrary arrests of critical scholars, censorship of research and publication on matters of public concern, and violent crackdowns on campus protests. Due to the high public profile of universities and, in many cases, of the academics who were targeted, such attacks often played an exemplary role, serving as a warning to individuals throughout society that dissent and political opposition would not be tolerated.

LESBIAN AND GAY RIGHTS

Lesbians and gay men in countries throughout the world continued to face discrimination, harassment, arbitrary arrests and torture in 1997, due to their sexual orientation. They were subjected to discriminatory legislation as well as violent treatment and persecution by police. The year also saw some positive developments in lesbian and gay rights. A decision by the European Court of Justice supported more equitable employment rights for homosexuals, encouraging gay rights groups in their campaign for non-discriminatory treatment in European Union member states. In some other countries, laws criminalizing sodomy—traditionally enforced only against homosexuals—were repealed.

Discrimination and Violence

The following were some instances of discrimination and violence reported and protested by nongovernmental organizations and the press.

Europe

Article 200 of Romania's penal code, which had previously outlawed all homosexual acts, was amended slightly in September 1996 to punish only homosexual acts "committed in public, or which cause public scandal." The improvement was largely illusory, however. In a number of cases reported to Human Rights Watch during 1997, private conduct was made "public" by an informant—an individual who witnessed or participated in a private homosexual act— who gave this information to the state. Critics of the law noted that the key article's wording might also be employed to limit free expression, assembly, and association. Meanwhile, gays and lesbians in Romania continued to be frequent victims of police brutality. Three men from Constanta were arrested in June on charges of having sex in a deserted storage cabin; all three reported of being beaten by civil guards and by a major in the municipal police, one was not been allowed to see his family after his arrest. Another told Human Rights Watch that, under threat of further beatings, he was coerced into signing three statements, the contents of which were unknown to him. Gay men also reported that police often waited in known "cruising areas" in order to extort money in return for not arresting them.

In Bulgaria, gay men were targets of police harassment, even for associating with one another. On March 5, police raided the Flamingo gay bar in Sofia, beating up and harassing several people, some of whom were taken to the police station and handcuffed for as long as twenty hours. According to the Bulgarian Helsinki Committee, on August 29, police raided another gay bar in Sofia and assaulted its patrons, On July 12, Demet Demir, a Turkish transvestite, was reportedly severely beaten and illegally detained by police when she intervened against their assault on a young Kurdish girl selling handkerchiefs in Istanbul. The incident, reported to the U.S.–based International Gay and Lesbian Human Rights Commission (IGLHRC), occurred as Demir emerged from a workshop organized to promote employment skills of members of the transvestite and transsexual community. Demir had previously been imprisoned by the police in the Beyoglu district of Istanbul for her political activities on behalf of transvestites and transsexuals in Turkey.

Africa

In Zimbabwe, virulent anti-homosexual statements made in recent years by President Robert Mugabe, church leaders and various political figures had created a hostile environment for gay men and lesbians. Similarly, in March, while speaking to the Irish press President Mugabe denounced homosexuality and said, "Gays can never be something we

can accept in Zimbabwe." Some church leaders have called for the lynching of homosexuals. Although homosexuality is not illegal in Zimbabwe, sodomy remained a criminal offense during 1997. A bill introduced in 1996, and at this writing being debated in Parliament, would make HIV exposure through sodomy an aggravated offense—whether the act was consensual or forced—punishable by up to fifteen years in prison, and would allow for the involuntary HIV testing of alleged sexual offenders

The Zimbabwean government also employed censorship laws to suppress gay-oriented literature, including homosexual-produced material on HIV/AIDS prevention. Gays and Lesbians of Zimbabwe (GALZ), which in 1995 and 1996 was banned from participating in the Zimbabwe International Book Fair, returned to the event in 1997, as the ban had been overturned in court. However, GALZ did not hold an official exhibition for fear of government reprisal, opting instead to distribute materials on the association and its counseling services. The government continued to cut funding for Centre—the only organization in Zimbabwe offering HIV/AIDS counseling— on the basis that the director of the organization was affiliated with GALZ.

At a ruling-party women's congress in December 1996, President Samuel Nujoma of Namibia encouraged discrimination and hostility against gays and lesbians, stating, "Homosexuals must be condemned and rejected in our society."

Asia and the Pacific

In December 1996, the Rajabhat Institute Council—the collective governing body of all of Thailand's teachers colleges—declared that it would bar homosexuals from enrolling in any of its colleges nationwide. The announcement brought strong criticism from human rights and lesbian and gay rights groups in Thailand. The organizations urged that the ban be dropped and that an anti-discrimination clause be added to the charter of the colleges. The Rajabhat Institute later lifted the ban but proposed a new rule to keep out what it described as "sexually abnormal" people: applicants would be required to take a test, which would be prepared by the World Health Organization. If approved by the Rajabhat Council, the new rule would take effect in the 1998 academic year.

In Singapore, the government refused to register the grassroots gay and lesbian organization People Like Us (PLU). The PLU was required to cease activity or face heavy penalties on organizers and members, and its leadership was forbidden to meet the press or give interviews regarding the decision.

In China, lesbians and gays were, as previously, harassed by police and jailed or fined. They continued to be unable to organize, meet, or obtain information about HIV/AIDS prevention in order to protect themselves.

South Korean censorship laws prohibit the screening of any films about homosexuality. Therefore, local government officials declared the first Seoul International Queer Film and Video Festival illegal. The festival was due to open on September 19. Authorities threatened to seize screening equipment and materials and warned the organizers of a possible twenty-million Korean won (U.S.$22,000) fine and a three-year jail sentence if they proceeded with the event.

The Australian Human Rights and Equal Opportunity Commission continued to criticize Western Australia as the worst-performing state in the nation on gay issues. Western Australia has the highest age of consent for male homosexuals at twenty-one years, compared with sixteen to eighteen years in the rest of Australia. Same-sex couples in Western Australia also continued to be denied legal entitlement available to heterosexual couples, such as bereavement, career leave, compensation rights, tax concessions, and property rights.

Latin America

On June 14 police arrested fourteen gay men during a raid on a gay bar in Cuenca, Ecuador. According to local gay and lesbian organizations, and IGLHRC, one of the men was raped twice by other inmates while in police custody, and another suffered epileptic seizure but was offered no medical assistance. The men were reportedly released after being charged with intention to commit crimes against morality. Article 516 of the Ecuadorian penal code criminalizes consensual sex between adult men, with sentences of four to eight years in prison. The article violates article 2 (equal protection) and article 17 (right to privacy) of the International Covenant on Civil and

Political Rights (ICCPR) as affirmed by the United Nations Human Rights Committee in its 1995 decision *Toonen v. Australia*, which condemned anti-sodomy legislation. The ICCPR has been ratified by Ecuador.

The rights group Collectivo Arco Iris on September 24 released a report that criticized the Morality Brigade of the Police and the 2nd Commissary in Rosario, Sante Fe province, for discriminatory treatment of gay, lesbian, bisexual and transgendered persons. According to the report, despite the anti-discrimination clause adopted by the Rosario town council in December 1996, which covered discrimination based on sexual orientation, transvestites were routinely arrested on charges of prostitution and for cross-dressing, and were forced to undergo HIV testing under threat of accusation of the crime of homicidal intent. The arrests were made on the basis of article 78 (offenses against decency), article 81 (prostitution) and article 87 (cross-dressing) of the penal code of the province of Santa Fe.

In Brazil, a relatively tolerant society, there was growing violence against homosexuals. According to the Gay Group of Bahia (GGB), a monitoring organization, 119 homosexuals and transvestites were murdered in Brazil during 1996 and sixty in the first five months of 1997. There have been a total of 1,528 violent deaths of homosexuals and transvestites since 1980, according to GGB.

On December 16, 1996, following months of threatening phone calls, pranks and minor acts of vandalism, the office of Triangulo Rosa, a gay and lesbian organization in Costa Rica, was forced to close down. IGLHRC received reports that the local police refused to accept Triangulo Rosa's complaints, claiming that the case was not within their jurisdiction.

Middle East

In December 1996, according to Amnesty International, twenty-three Filipino workers in Saudi Arabia were flogged in installments of fifty lashes over a period of four weeks following their arrest for homosexual behavior. Following the punishment, the Filipinos were to be deported.

Twenty Filipinos in Doha, Qatar suspected of engaging in homosexual acts were deported in October 1997, according to press reports. At this writing, sixteen more Filipinos are awaiting deportation on the same charges. The police arrested all the defendants on October 1 in a raid on clothing and barber shops that had been under surveillance. Foreigners convicted of homosexual acts in Qatar are usually sentenced to five years in prison, followed by deportation.

Anti-homosexual remarks were made at a high school on December 20, 1996 by Israeli President Ezer Weizmen, who said gays and lesbians "disgusted" him and called for legal steps to determine the status of homosexuals. Gay and lesbian organizations in Israel and members of the Knesset condemned the president's remarks. The president later apologized.

United States

At this writing, thirty-nine states in the U.S. lack anti-discrimination laws that would protect gays and lesbians for being dismissed from their jobs because of their sexual orientation. In response to this lack of protection, the EmploymentNon-Discrimination Act (ENDA) was reintroduced in the U.S. Congress in June. The bill would have extended federal employment anti-discrimination protections—currently provided based on race, religion, gender, national origin, age and disability—to sexual orientation. In various parts of the U.S., discrimination against gay and lesbian employees has been justified, in some cases, by noting "anti-sodomy" laws that criminalize many sexual practices. In May 1997, an appellate court upheld the Georgia attorney general on his decision to rescind a job offer made to Robin Shahar, a lesbian; the attorney general's argument had been that a lesbian would confront an inherent conflict of interest in enforcing the laws of Georgia, which include a felony sodomy law.

ENDA did not require an employer to provide benefits for same-sex partners of employees and did not apply to members of the armed forces, thereby having no impact on the "don't ask, don't tell, don't pursue" policy, under which gay service members are not asked about or required to admit their sexual orientation. The policy is designed

to keep sexual orientation a "personal and private" matter and prohibits commanders from inquiring about the sexual orientation of their troops. At this writing, no court of appeals actions challenging the constitutionality of the policy have been upheld, although a New York district court judge in June ruled that the policy denied equal treatment under guarantees of due process because only gays and lesbians were subject to separate, discriminatory regulations. Two years earlier, the same judge had ruled that the policy violated the free-speech rights of gay and lesbian troops. The 1997 decision was appealed. According to the Servicemembers Legal Defense Network (SLDN), a legal advocacy group for gay rights, in 1996 there were 443 specific violations of the policy where suspected gay servicemembers were asked, pursued, and harassed; figures for 1997 are not yet available at this writing.

In the state of Hawaii, the state Supreme Court was due to make a decision in early 1998 on the constitutionality of a state law allowing same-sex marriages. Under the Defense of Marriage Act (DOMA), which became national law in 1996, marriage in the United States was defined as a union between a man and woman, and same-sex marriages legal in one state could not be recognized in other states. At this writing, twenty-six states have passed laws prohibiting same-sex marriages.

In recent years there has been growing trend toward more frequent, more violent hate crimes against gay, lesbian, bisexual and transgendered persons in the U.S. At this writing, final figures for 1997 are not yet available. However, 1995 figure compiled by the Federal Bureau of Investigation (FBI) revealed an increase of 12 percent in reported hate crimes against gays and lesbians. In 1996, according to the National Coalition of Anti-Violence Program (NCAVP), there was a 6 percent increase in reported hate crimes, with an overwhelming majority directed not at property but at individuals. The NCAVP also noted that the intensity and viciousness of attacks against gays and lesbians intensified in 1996. Of those injured, 35 percent suffered physical injury or death. Assaults resulted in injury or death to 967 victims. NCAVP further reported that when victims of violence sought police assistance, 37 percent were met with police indifference and 12 percent were physically abused.

In research on U.S. prison conditions, Human Rights Watch noted that prison guards and officials continued to be indifferent to the sexual abuse of gay prisoners. One gay inmate in Texas told Human Rights Watch that, when he tried to report his abuse to a guard, he met with open hostility and reluctance to intervene. Another prisoner, describing a similar experience, told us that guards' hostility towards gays gave the abusive inmates a sense of "approval to beat, rape and extort gay men in prison."

Positive Developments

In a victory for gay rights in Britain, the European Court of Justice in August ruled that it was a breach of European Union (E.U.) law for an employer to deny the same employment rights to lesbian couples that are extended to unmarried couples. The court ruled that it was wrong for South West Trains to deny a lesbian employee's live-in lover travel concessions that were available for workers' husbands, wives, and common-law spouses of the opposite sex. Gay rights groups described the ruling as a vital change for the estimated thirty-five million gay and lesbian people in the E.U. as opening the way for measures to outlaw discrimination against homosexuals at work. At this writing, following a ruling by the European Commission of Human Rights, the British parliament is also considering at "the earliest opportunity" lowering the age of consent for homosexuals from eighteen years to the age of sixteen that applies to heterosexuals.

After nine years of community organizing to repeal anti-homosexual laws in Tasmania, Australia, which carried jail terms of twenty-one years, the Tasmanian legislature finalized a vote to repeal the statute on May 1, according to IGLHRC.

In another landmark judgment, the Cape High Court of South Africa on August 4 declared the criminalization of same-sex sodomy unconstitutional under the new South African constitution. In *State v. Kampher*, the court overturned the conviction and suspended sentence of a Knysna Correctional Services prisoner for having consensual sex with another prisoner while awaiting trial. This decision, however, does not apply to the other

eight provinces, where prisoners are still charged each year.

Access to political asylum for people fleeing persecution based on their sexual orientation became more common in North America and Western Europe. Canada continued to accept more gay and lesbian refugees than any other country. In June, the U.S. Ninth Circuit Court of Appeals reversed a 1995 Board of Immigration Appeals ruling against a Russian lesbian activist seeking asylum on grounds of persecution because of her sexual orientation. The ruling sent *Pitcherskaia v. INS* back to the Board of Immigration Appeals for a new hearing on whether Alla Pitcherskaia had a credible fear of persecution if forced back to Russia. According to Pitcherskaia, she had been arrested and beaten by police several times because of her sexual orientation, was forced to undergo state medical "treatment" as a lesbian, and was threatened with long-term institutionalization, medication, and electric shock therapy.

INTERNATIONAL CRIMINAL COURT

The growing case load at the two ad hoc U.N. tribunals, the fervent but dashed hopes for a genuine trial of Pol Pot, and serious violations of humanitarian law occurring in the Republic of the Congo set the context for the movement towards a permanent International Criminal Court (ICC) in 1997. Most importantly, the 1998 date for a diplomatic conference of plenipotentiaries to finalize the court's statute propelled increased state participation in the negotiations and pushed the process to a new critical stage. During the year civil society groups from around the world became engaged as more and more attended and influenced the Preparatory Committee sessions debating the power of the court to try cases of genocide, crimes against humanity and serious war crimes.

By the end of 1997, the question was no longer whether there would be a permanent court but whether the court that emerged from the negotiations would have the independence and credibility to carry out its crucial tasks. At the August Preparatory Committee session it was clear that there was no advantage to sacrificing principle to conciliate members of the five permanent members of the Security Council (P5), who would not ratify the ICC statute at an early date, and that insistence on points of principle for an effective court was essential. The expected confrontation between the P5 and the "like-minded" states, which would test the latter's commitment and determination, will decide whether the ICC becomes an international criminal court in name only or a great step forward for the rule of law and protection of human rights that deserves the support of civil society worldwide.

The Work of the Preparatory Committee in 1997

In December 1996, the U.N. General Assembly adopted a resolution setting April 1998 as the completion date for the work of the Preparatory Committee and calling for a diplomatic conference in mid-1998 to finalize the ICC's draft statute. This was a milestone in the negotiations. With an end in sight, a larger number of states, including governments from Africa, Asia and Latin America that had made the transition from dictatorship and had attempted to account for abuses committed under previous regimes, brought their perspective to the debate. By the August 1997 session, approximately one hundred states were sending delegations to the Preparatory Committee session.

The Preparatory Committee moved to fulfill its mandate during 1997. At its February session, delegates made considerable headway in shaping a consolidated text on the definitions of crimes within the court's jurisdiction as well as the accompanying general principles of criminal law. The great majority of delegations agreed that the definition of genocide codified in the 1948 Genocide Convention should be reproduced in the ICC's Statute. While

there was overwhelming agreement that crimes against humanity did not require a nexus with armed conflict, the U.S. and U.K. delegations insisted on a limited definition of the acts which would be deemed to constitute these crimes.

The definition of the war crimes committed in internal armed conflict coming within the jurisdiction of the ICC generated intense controversy. The U.S., U.K. and France, insisting that the PrepCom had no mandate to codify new law, argued that the court's jurisdiction must be restricted to a narrow list of crimes under customary international law. Other states, refusing to accept customary international law as the parameter of offenses, proposed a broader list of crimes for the purposes of the court's jurisdiction. In advance of the December Preparatory Committee session several governments met to strike a compromise that would broaden the court's jurisdiction in internal armed conflicts. An important product of discussions at the February meeting conferences was the explicit inclusion in these proposals of rape and other sexual violence as crimes, addressing women's human rights concerns as an issue for the first time.

At intercessional meetings, further progress was made. In June, delegates from forty countries, appearing in their individual capacity, attended a conference at the International Institute of Higher Studies in Criminal Sciences in Siracusa, Sicily. They prepared a consolidated compilation of proposals on the technically complex issue of criminal procedure, including provisions on the rights of suspects, the accused, victims and witnesses. This text became an essential document for the working group at the August Preparatory Committee that was charged with drafting the procedural aspects of the court's statute. Another session at Siracusa was scheduled for mid-November to prepare an abbreviated document on the issues of state cooperation and mutual assistance.

The August PrepCom dealt with the key political issues that would ultimately determine the court's ability to function effectively, independent of political interference. Unfortunately, the permanent members of the Security Council championed proposals that, if adopted, would seriously weaken the court. On complementarity, or the relationship between national courts and the ICC, a consolidated text without brackets emerged, promoted by the U.S., the U.K. and France. The text limited ICC jurisdiction to cases where the national authorities are "unable" or "unwilling" to investigate or prosecute. This draft, if codified, would raise the threshold for the exercise of jurisdiction by the ICC. It put the burden on the court to demonstrate not only the factual situation--that there has been no effective prosecution at the national level--but also the underlying motivation for the state's failure to prosecute or its inability in that respect.

The role of the Security Council remained a point of contention. The permanent members supported its power to prevent the exercise of ICC jurisdiction by veto in cases relating to a matter that the Security Council is considering under its powers to maintain international peace and security. Other delegations vehemently opposed such a potential politicization of the court's docket. Certain delegates, in a compromise effort, expressed a willingness to acknowledge the prerogatives of the Security Council by proposing a provision that would empower it to prevent the ICC from exercising jurisdiction, but only after a majority decision by the Security Council to do so. The U.S. delegation's refusal to consider anything but a right of the Security Council to veto cases represented a major obstruction.

Delegates also debated the power of the prosecutor to initiate an investigation *ex officio,* as opposed to having to wait on a referral from the Security Council or a state party complaint. The majority supported such broad powers as well as ICC authority to determine jurisdiction itself without first obtaining the consent of several state parties. The U.S. and U.K., however, reserved their position on these key questions pending resolution of the complementarity question.

In addition to these more political questions, considerable progress was made in the area of criminal procedure. The willingness of states with common law traditions, such as the U.S. and U.K., to compromise and accept the incorporation of certain procedural features typical of civil law systems, such as a pre-trial chamber and continued proceedings following an admission of guilt, was commendable. Furthermore, significant developments occurred during the course of the August PrepCom with respect to victim and witness protection,

and the investigation of gender-related crimes. A witness protection unit was included with the draft text to ensure the adoption of measures necessary for the protection of victims and witnesses. The text that emerged from this session also contained language explicitly calling for the effective and sensitive investigation of crimes of gender and sexual violence.

The Role of Various States

The intransigence of the French delegation—on procedural and other issues and notwith-standing compromises on the part of others—was disturbing. In 1997, France played an especially obstructionist role, and there was no difference in the French position after the change in government in Paris. While the U.K.'s position changed measurably after Labour's electoral victory, and the British delegates were genuinely more accessible and open, substantive changes lagged behind the Labour Party's professions of support for the ICC. The U.S., while supportive of the establishment of a court, pressed for an ICC that it, as a global military power, would be able to call on at its will, or not, more like a permanent ad hoc tribunal than a genuine international criminal court.

The like-minded states, an increasingly diverse group from Africa, the Americas, Europe, and Asia committed to an effective ICC, continued to push the process ahead during and between the 1997 Preparatory Committee sessions. The forty-member group had succeeded in gaining General Assembly approval for the 1998 conference date. As the negotiations moved into drafting, the like-minded states faced new challenges in managing their differences over substantive issues, but they worked to identify a core of common positions for a principled basis of unity.

In 1997, the hardball negotiating strategies of the five permanent Security Council members underscored the need for a cohesive like-minded strategy. The ICC, like so many human rights treaties before it, seemed likely to be established without the P5, whose ratification would be expected to come in time and with the court's growing prestige.

Nongovernmental Organizations and Civil Society

During 1997 the numbers of nongovernmental organizations (NGOs)and individuals playing an active part in the movement for a strong and effective ICC grew dramatically. The Coalition for an International Criminal Court (CICC), with many international human rights groups on its steering committee, continued to facilitate this participation and disseminate information internationally. In 1997, the coalition took significant steps to bring NGOs into the campaign. First, more representatives from around the world attended and lobbied delegates at the 1997 Preparatory Committee sessions. In February, there were representatives from Africa, the Americas, Asia and the Middle East. In August, there was even a larger turnout from Africa, the Americas, the Middle East and Europe. The presence of these international representatives had a pronounced effect on delegates, who understood that their governments' role in the negotiations was being monitored by interested domestic constituencies.

At the same time, there were several important organizational meetings around the world. The Coalition for the International Criminal Court, working with domestic groups, helped to set up national coalitions in France, Italy and the United Kingdom. In Brussels a coalition focusing on the European Union's institutions was launched. Working with national and international human rights groups as well as civil society organizations, these coalitions planned to publicize the need for an effective ICC and the status of the debate, as well as to lobby their respective governments. In February, a nascent women's caucus emerged as a member of the coalition and a dynamic force in its own right. By the August session, the caucus had expanded, with its lobbying efforts reflected in the texts that emerged from both sessions. Meetings were held simultaneously with the August session among advocates of children's' rights to review issues of importance to them and discuss the possibility of working together to press children's issues.

No Peace Without Justice, a group launched by the Europe-based Transnational Radical Party, sponsored meetings for the political leaders in Paris, Montevideo and Atlanta. NPWJ planned similar meeting in Africa and possibly Asia.

The Work of Human Rights Watch

In the face of numerous proposals to weaken the court, in 1997 Human Rights Watch pursued a two-fold strategy. First, Human Rights Watch concentrated on forging a principled partnership with states committed to the establishment of an effective ICC, assisting the like-minded group while working to make it more diverse geographically and politically. In building support leading up to the Diplomatic Conference, Human Rights Watch emphasized the importance of regional events of governments and nongovernmental organizations. We also helped to facilitate a September meeting of member states of the Southern African Development Community (SADC), where representatives of the justice ministries of ten SADC states met in South Africa to discuss the key issues arising from the ICC draft statute. After three days of discussion these representatives agreed to ten basic principles of consensus critical to an effective ICC. In October, during the General Assembly's Sixth Committee debate of the ICC resolution, South Africa's ambassador, speaking on behalf of SADC, cited these same ten principles as "essential to the effective establishment and functioning of such an international criminal court."

Simultaneously, Human Rights Watch approached intergovernmental organizations like the European Union and the African Commission of Human and People's Rights. Our office in Brussels helped launch the Brussels coalition and worked to form a Friends of the ICC group in the European Parliament. The Parliament was scheduled to hold a hearing on ICC in late November.

Secondly, Human Rights Watch began reaching out to other concerned organizations to build a constituency in civil society that would both support like-minded states and pressure more obstructive governments, including permanent members of the Security Council. In April, Human Rights Watch prepared a four-page action alert, translated into six languages, in advance of the August Preparatory Committee session for distribution to NGOs throughout the world. Human Rights Watch staff members made the ICC an important item in their various missions, pursuing support for the ICC at conferences in the Middle East, Latin America, and Africa. In advance of the formation of a French national coalition we engaged in discussions with major human rights organizations in France, and staff raised the ICC among nongovernmental organizations attending the meeting of Commonwealth states in Edinburgh.

Human Rights Watch also raised the issues in bilateral meetings with government officials—Diet members and Foreign Ministry officials in Japan, the foreign ministers of Brazil, the president of Venezuela, and senior officials in Bonn and Paris, among others. By actively taking the substantive issues raised by the ICC out to counterpart groups and officials internationally, Human Rights Watch added its support to promote a worldwide discussion of the search for justice and the need for accountability.

FREEDOM OF EXPRESSION ON THE INTERNET

On June 26,1997, the United States Supreme Court struck down the Communications Decency Act (CDA), which had become national law in February 1996. The CDA was an attempt by Congress to criminalize online communications that were legal in other media, specifically communications that might be deemed "indecent" or "patently offensive" to minors. Because the U.S. remained overwhelmingly the world's largest national market for Internet use and communications, the outcome on the CDA had been closely watched by both governments elsewhere and

cyberliberties groups worldwide.

The decision established a fundamental position as articulated by the court that on the Internet, citizens are not mere consumers of content but also creators of content. The court also recognized that content on the Internet is as diverse as human thought. Human Rights Watch had opposed the Communications Decency Act since its inception and, together with nineteen other organizations led by the American Civil Liberties Union, was a plaintiff in the suit that led to Supreme Court decision.

Despite growing acknowledgment during 1997 among regulators around the world that the Internet undermines their control of the free flow of information, governments continued their rush to restrict expression on the Internet. For example:

* Internet access in Singapore remained curtailed, although the National Internet Advisory Committee, which counsels the Singapore Broadcasting Authority on the regulation and development of its computer network, recommended abolition of the ban on "anti-government propaganda" on the Internet.

* In January, the United Arab Emirates' monopoly Internet provider, the state telecommunications company Etisalat, launched a program to censor web sites.

* In March, a decree was issued by government of Vietnam which established strict controls over Internet use: the decree restricted domestic use of the Internet, supervised all Internet content, and controlled international links between Vietnamese users and the global World Wide Web.

* In July, Australia and Ireland announced proposals for Internet regulation that would threaten free expression and make service providers liable for the content on their sites.

* Also in July, the German Parliament approved similar legislation which made Internet service providers liable for offering a venue for "illegal content" if they do so knowingly and it is "technically possible and reasonable" to prevent it.

* Declaring the Internet as "the end of civilizations, cultures, interests and ethics", the Iraqi government announced a total ban on Internet access.

In the United States, meanwhile, legislative proposals contemplated establishing controls on the access to and use of cryptography, or data-scrambling technology, which is used to protect the privacy of communications online. Encryption software and anonymous way-stations for messages—called "remailers" because, after erasing the identity of the originator, they pass messages on to the destination—came under scrutiny. The U.S. government argued for official access to encryption keys to avert terrorism and other crime that might be planned on the Internet; civil libertarians and human rights organizations argued that privacy rights took precedence and that speech, even when encoded using encryption software and expressed through the use of a medium such as the Internet, is no less speech and deserves the full protection of both international and constitutional law. Of particular concern to Human Rights Watch and others was the need to maintain secure communication on the Internet for human rights activists in countries where authorities routinely monitor and control all forms of communication and take reprisals against unauthorized speech.

Recognizing that the Internet can be a democratizing force and a useful tool for the advocacy of human rights, Human Rights Watch undertook research on how the use of the Internet had already had a positive impact in several campaigns for protection of human rights. While continuing to document and protest attempts to silence the Internet, we began working in coalition with civil liberties, labor, journalists' and other groups internationally in an effort to develop coordinated approaches to defending individuals' access to the Internet and to making their online communications private and secure.

As part of this effort, Human Rights Watch and other organizations filed an amicus brief in the case of *Bernstein v. U.S. Department of Commerce.* The case emerged from the U.S. government's refusal to accept the findings of a court that favored protection of speech over the administration's economic and political agenda. Professor Daniel Bernstein had challenged government export controls that restricted his ability to publish on the Internet an encryption program he called "Snuffle." A federal district court in California had upheld

Bernstein's claim that the controls were an impermissible prior restraint on protected speech, but following the judgment, the Clinton administration had transferred authority for such controls from the State Department to the Commerce Department and had reinstituted virtually the same set of controls the court had struck down. This litigation is to enjoin enforcement of the latest set of controls.