# ACADEMIC FREEDOM

Academics in dozens of countries in 1998 were harassed, censored, dismissed, beaten, or imprisoned for peacefully expressing their ideas. Although governments increasingly recognized the importance of universities in promoting technological and economic progress, many continued to take aggressive measures to restrict the scope of expression and inquiry on campus. Respect for academic freedom and the basic civil and political rights of academics thus continued to be a sensitive barometer of free expression worldwide.

International human rights standards offer academics a principled basis for resisting authoritarian political pressures and defending the institutional autonomy necessary for academic excellence. Freedom of expression, defined in international treaties as "freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers," is a precondition of academic freedom. A university fulfills its mission when academics are not forced to support an official line, an economic agenda, or a political ideology, but rather are free to use their talents to advance human knowledge and understanding. Although international attention to the right to free expression understandably has emphasized artistic freedom and freedom of the press, essential attributes of an open, democratic society, institutions of higher education have played a critical role in preserving and giving meaning to the right. Abuses tracked by Human Rights Watch in 1998 illustrated the often fragile status of the right to free expression on university campuses. Academics were most often targeted when they publicly criticized government authorities, were active in opposition movements or citizens groups, or investigated subjects deemed "politically sensitive" by the authorities. Reprisals against such professors, researchers, and students included harassment, censorship, arbitrary dismissal and expulsion, and, in the worst cases, imprisonment and torture. Although such reprisals most obviously violated the civil and political rights of the academics concerned, they also directly undermined academic freedom. Academics do not exist in a social or political vacuum, and participation in public affairs and contributions to public debate are important aspects of the academic mission.

The most dramatic campus developments took place in Serbia, where universities were subjected to de facto takeover by the ruling parties, and in Indonesia, where students and faculty, defying decades-old restrictions on the campus community, emerged at the forefront of a nationwide movement for political reform. Developments in Belarus, Burma, China, Cuba, Egypt, Ethiopia, Jordan, Malaysia, and Uzbekistan further demonstrated the range and continued prevalence of government efforts to rein in critical inquiry and expression by academics in 1998.

## Serbia

On May 26, 1998, under pressure from Yugoslav President Milosevic, the Serbian parliament passed a law that deprived faculty members throughout Serbia of their longstanding right to participate in the selection of rectors, faculty deans, and governing boards, and that effectively canceled—subject to renegotiation—the contracts of all professors and other teaching staff. Because the assault on the universities coincided with a crackdown on the independent media, coalitions of faculty that formed to protest the law had difficulty getting their message to the Serbian public. Demonstrations opposing the new law were violently suppressed. As the conflict in Kosovo intensified and Serbian nationalist rhetoric grew more strident, the pressures on critics of the new university law mounted.

The most dramatic changes under the new law took place at the University of Belgrade, which had long been a center of student protest and continued to be home to a number of prominent faculty critics of the government. At least sixteen faculty deans there were replaced shortly after the law took effect. Twelve were forcibly removed and four resigned in protest. Fifteen of the sixteen newly appointed deans were members of the ruling parties. None of the replaced deans were members of political parties.

At least thirteen influential politicians in Serbia's ruling coalition—comprised of Milosevic's Socialist Party of Serbia (SPS), the Yugoslav Left (JUL, a party led by Mira Markovic, Milosevic's wife), and the Serbian Radical Party (SRS, led by Serbian Deputy Prime Minister and ultranationalist Vojislav Seselj)—were named to the governing and supervisory boards of the University of Belgrade and its component faculties. Another high-ranking member of JUL, Jagos Puric, was appointed rector.

The first professor to be fired under the new law was Dr. Vladimir Vodinelic, a law professor and one of Yugoslavia's leading civil law theorists and one of sixteen professors in the Faculty of Law who had signed a declaration opposing the new law. Two weeks later, twelve law professors who had protested Vodinelic's firing were suspended. In the Faculty of Philology, the new dean, Radmilo Marojevic (a member of the SRS), declared that his faculty was not doing "useful work," announced his intention to close the World Literature Department, and moved to transfer thirty academics who had refused to sign new contracts to lower paying positions. Professors in other faculties, including philosophy and electrical engineering, also came under assault from the politically appointed deans.

One of the stated aims of the drafters of the law was the "depoliticization" of the universities. At the time the new law was enacted, officials emphasized that higher education in Serbia had become inefficient because faculty were spending too much of their time engaging in opposition political activities. A more ominous rationale for the new law was articulated by new Philology dean Marojevic: "Sadly, our country and our culture are somehow under occupation from within. We have a fifth column in scholarship, in culture, everywhere." Marojevic praised the law as a "good attempt to return to Serbian character, [to bring] a national, cultural, and authentic character to this university."

Academic excellence requires that decisions affecting teaching, scholarship, and research be made on the basis of academic merit, not political favoritism or ideological litmus tests. The danger of the new law was that such decisions were put into the hands of government-appointed officials, with no participation by independent faculty members. The new law removed existing safeguards for academic autonomy, opening the door to political meddling in academic affairs by both present and future governments of Serbia. In principle, the university should be an institution open to all on the basis of merit, an important intellectual resource not only to governments and industry, but also to individuals and interests independent of the state. The University Act, however, appeared to be turning universities in Serbia into institutions that exclusively served the interests of Serbian state authorities.

## Indonesia

Developments in Indonesia in 1998 contrasted sharply with those in Serbia. In Indonesia, a nationwide student protest movement played an instrumental role in forcing the resignation of President Soeharto and in opening the door to democratic reform. Students and faculty emerged at the forefront of the reform movement in large measure because they publicly spoke their minds, courageously and consistently ignoring regulations banning campus political expression and activity, as well as other laws, regulations, decrees, and abusive practices that had long limited political and intellectual freedom on Indonesia's campuses and in Indonesian society.

The transformation began in January 1998, when the collapse of Indonesia's currency was greeted by an outpouring of demands for an end to Soeharto's thirty-two-year rule. In early March, when opposition leaders failed to mount any significant challenge to Soeharto and Indonesia's compliant and largely hand-picked parliament unanimously elected Soeharto for a seventh five-year term, the student protest movement became the nationwide focus of opposition to Soeharto.

The movement was not confined to campus radicals, but involved literally hundreds of thousands of students from hundreds of institutions, including private universities, academies, and institutes as well as leading public universities and state teacher training and Islamic institutes. The students were actively supported by many faculty, alumni, and university administrators. At a rally held during the last week in April at Dr. Soetomo University in Surabaya, for example, Poncol Marjada, the university rector, read a statement formally calling on students to participate in the demonstrations to express their concerns. At a rally at Gadjah Mada University in Yogyakarta the same week, senior professor Dr. Loekman Soetrisno declared to the crowd of students: "If Martin Luther King could trigger the birth of a new America, you, too, the young people, can create a new Indonesia." The protests reached a climax in May, when students increasingly were joined by non-academics at rallies. Soeharto resigned on May 21 after security forces shot and killed four student protesters at Trisakti University in Jakarta on May 12, and in the wake of mass rioting in several cities which followed the killings and left more than 1,000 people dead.

President Soeharto's "New Order" government had not been uniformly hostile to the academic community. Many academics and students backed Soeharto when he first assumed power, and the government's emphasis on rapid economic growth created opportunities for a range of academic specialists. As Soeharto consolidated his power, however, he eventually turned his attention on the universities, which were emerging as a leading source of opposition to the policies of the new government. By the early 1990s, political controls over academic life in Indonesia were among the most intrusive in the world. Incoming academics were subjected to mandatory political background checks, students were subjected to compulsory on-campus ideological indoctrination sessions, students and academics who directly challenged the government were prominent among Indonesian dissidents imprisoned for exercising their basic rights, and political expression and activity were expressly outlawed on campus through a policy that the government called "Normalization of Campus Life." In addition, a wide range of publications was censored, speakers were barred from campus by police and military authorities, seminars were monitored and subject to cancellation at the discretion of the authorities, and academic research was stymied by labyrinthine state research permit issuance procedures.

In the last years of Soeharto's rule, mounting pressures for greater political openness and respect for citizen's rights in Indonesia led to a number of concessions by the government. The government's relaxation of controls, where it occurred, however, was not accompanied by formal repeal of regulations legitimating the government's intrusive policies or by the implementation of institutional protections for basic rights. The result was continuing uncertainty about the boundaries of the permissible. This uncertainty, together with periodic government crackdowns on dissent and intimidation of those who delved into matters that the government viewed as sensitive, created a climate hostile to intellectual innovation and vigorous debate. The lack of clear boundaries also created a black market in ideas, a continued gap between what people said in private and what they were willing to say in public, depriving the society of the intellectual dynamism that results from open expression of competing viewpoints.

Although significant institutional and legal barriers to freedom of expression remained in place in Indonesia after Soeharto's resignation, the reform movement opened the door to more wide-ranging public debate in Indonesia. The changed climate was evident as early as April 1998 when Soeharto's minister of education, Wiranto Arismunandar, invoked the twenty-year-old "Normalization of Campus Life" regulations in an effort to quell the mounting campus protest movement. Arismunandar's remarks immediately became the subject of heated media debate. His invocation of the repressive campus regulations was roundly criticized in the press and his warning was completely ignored in practice by students and their faculty supporters. Subsequent efforts to control the protests—including attempts to portray the student movement as infiltrated by communist agitators, the abduction and forced disappearance of more than two dozen political organizers by groups within the military, and a nationwide ban on public protest marches by students—did nothing to stop the protests and indeed sparked an indignant counterresponse.

After Soeharto's ouster, the country continued to face daunting challenges, including government corruption and nepotism, social unrest fueled by a steadily worsening economic crisis, an entrenched military with a prominent role in politics, a history of military atrocities in such places as East Timor, Aceh, and Irian Jaya, and deep-rooted ethnic hostility directed against Indonesians of Chinese ancestry. For the first time, however, these issues were being discussed openly. Scholars and students, well-situated to explore the social and political realities that underlie such problems and help in the search for solutions, were prominent among those participating in the discussions.

## Reprisals against Dissenting Academics

Although developments in Serbia and Indonesia provided the most dramatic illustrations of the intimate connection between academic freedom and protections for basic rights, activist professors, researchers, and students were targets of government repression in a wide range of countries. Due to the high public profile of universities and of the academics who were involved, such attacks often played an exemplary role, serving as a warning to individuals throughout society that dissent and political opposition would not be tolerated.

In Cuba, professor Felix A. Bonne Carcasses, economists Marta B. Roque Cabello and Vladimiro Roca Antunez, and attorney Rene Gomez Manzano were imprisoned throughout 1998 for their membership in an opposition group and for publicly insisting that greater democratization was a prerequisite to effective economic liberalization. In Ethiopia, the government continued to imprison Dr. Taye Wolde Semayet, a former professor and president of the Ethiopian Teachers' Association (ETA), which had emerged as a leading critic of the government's policies. From July to September, Dr. Taye was shackled twenty-four hours a day. Although the government initially had alleged that Dr. Taye was involved with terrorist attacks on the government, the most serious charges against him were dropped for lack of evidence and the remaining charges related solely to Dr. Taye's alleged association with a proscribed organization, charges which he vehemently denies.

In Malaysia, students at a number of universities were harassed and some were suspended in September 1998 for joining peaceful rallies in support

of deposed Deputy Prime Minister Anwar Ibrahim. The Malaysian University Act forbids students from participating in opposition politics. In September, Education Minister Datuk Seri Najibtun Razak announced that the ministry was monitoring students involved in Anwar's "reformasi" or reform movement, the general objective of which was to reduce corruption in government. Student supporters from the Mara Institute of Technology (ITM) were threatened with expulsion and blacklisting from government educational institutions for being involved in Anwar's campaigns. Six students of Universiti Utara Malaysia were arrested and subsequently suspended for involvement in political activity related to a September parliamentary by-election.

In Uzbekistan, dozens of students were expelled from state institutions of higher education for wearing Islamic attire. In May, the government adopted a repressive law on religious organizations that, among its provisions, prohibited the wearing of "ritual" dress in public. Under the law, viewed by critics as an attempt to marginalize religious groups perceived as a potential source of political opposition to President Islam Karimov, female students who wore the *hijab* (Muslim clothing usually including a head scarf and a long robe) were expelled and male students with beards were subjected to pressure to shave or else were expelled. The National Security Service (SNB) followed several expelled university students who had met with Human Rights Watch and warned them not to speak with foreigners. The expulsion of students for religious dress in Uzbekistan was the mirror image of policies pursued in Iran after the 1979 revolution and in Sudan in the early 1990s, where students and professors have been expelled or dismissed for failing to demonstrate "proper" religious comportment.

In Belarus, Human Rights Watch documented seven cases of politically motivated dismissals, warnings, and expulsions of academics that formed part of a broader government crackdown on independent political expression. One case was that of Liubov Lunyova, a human rights activist who prior to her dismissal had worked as a lecturer on a fixed-term contract in the history department at the Belarusian State University (BGU) in Minsk. Although Lunyova was told by university officials that she was let go because of lack of funds, she was fired shortly after Belarussian President Lukashenka had publicly berated the university rector for keeping activist teachers on staff. Lunyova told Human Rights Watch, moreover, that despite the alleged lack of funds, new lecturers had been hired after her dismissal. When Lunyova sought a job at another school, the director of the school told her that he "would be fired within half an hour" if he gave her a job.

## Censorship and Ideological Controls

In China, continuing Communist Party control of the universities was strengthened with new legislation in August 1998 giving campus-based party officers the power to override administrative decisions made by university presidents. Scheduled to take effect in January 1999, the law also gave campus-based party committees responsibility for "enforcing the policies and guidelines of the Communist Party and...work related to political, ideological and moral education."

In Malaysia, after reports began circulating in late 1997 of the adverse public health consequences of the dense haze that was then enveloping much of the country from uncontrolled forest fires in Indonesia, the government issued a decree requiring that all researchers investigating the subject have their work screened and preapproved by "higher authorities." In Egypt, the government successfully pressured officials at the American University (AU) in Cairo to censor the book *Muhammad*, a classic text by the internationally renowned scholar, Maxime Rodinson. The book had been available in Egypt since the 1970s and was included on a course syllabus in 1998. After a prominent Cairo journalist published an article alleging that the book contained passages that insulted Islamic beliefs, President Mubarek, through the minister of education, ordered AU to ban the book. In response to the president's order AU administrators informed professors that they could no longer include the book in their reading lists and ordered it removed from the library and the campus bookstore.

In Jordan, the government enacted a broad new press and publications law giving government authorities broad powers of censorship. Among the requirements of the law was that universities and scientific research centers obtain prior permission from the Ministry of Information before importing potentially controversial books and writings. The new law also imposed onerous requirements on independent research centers, including a provision forbidding such institutes and their employees from "receiving any financial assistance or support from any non-Jordanian party" and providing for steep fines and closure for up to six months of any institute that violated the policy.

## Crackdowns on Student Protest

In many countries, governments responded to student protests with violent crackdowns and at times the indiscriminate use of force against protesters. In Indonesia, the Soeharto government's nationwide ban on public marches by students early in the year backfired when violent clashes between students and hundreds of police and troops massed at campus gates added fuel to an already developing, nationwide political crisis. In countries including Kenya, Zimbabwe, and Nigeria, governments used school closures as a weapon to stop demonstrations and penalize students for expression of their political views.

Government suppression of student protest continued to be extreme in Burma, where most universities remained closed throughout 1998, the country's intellectual resources and institutions paralyzed. Universities in Burma had been closed for seven of the ten years since the 1988 pro-democracy uprising was crushed by the army. The closures in 1998 dated from December 1996, when the government shut down the universities following major campus rallies protesting police violence against students.

### Relevant Human Rights Watch reports:

*Academic Freedom in Indonesia: Dismantling Soeharto Era Barriers*, 9/98
*Republic of Belarus: Turning Back the Clock*, 7/98
*Republic of Uzbekistan: Crackdown in the Farghona Valley: Arbitrary Arrests and Religious Discrimination*, 5/98
"*Prohibited Persons*," *Abuse of Undocumented Migrants, Asylum Seekers, and Refugees in South Africa*, 3/98
*Ethiopia: The Curtailment of Rights*, 12/97

# CHILD SOLDIERS

A new international campaign emerged in 1998 to stop the global use of children as soldiers, whose numbers grew to more than 300,000. The campaign sought to overcome the diplomatic deadlock that had stymied efforts to establish adequate standards prohibiting the recruitment and use of children in armed conflict.

Existing international law allowed children as young as fifteen to be legally recruited and sent into combat. While the existing standard was nearly universally recognized as inadequate, efforts through the United Nations to raise this age to eighteen remained unsuccessful. Despite four years of negotiations, a working group established by the Commission on Human Rights failed to reach agreement in 1998 on a text, largely due to a small number of states which resisted any measure that exceeded their existing national standards. The United States mounted the strongest opposition, despite the fact that as one of only two countries that has failed to ratify the Convention on the Rights of the Child, it would not even be eligible to join the optional protocol.

Growing frustration with this diplomatic stalemate led Human Rights Watch and other international non-governmental organizations to form the Coalition to Stop the Use of Child Soldiers. Believing that public pressure and nongovernmental action could generate the political will for change, the coalition began to organize a major international campaign to highlight the urgency of stronger protection for children against military recruitment. Reflecting the "straight-eighteen" position adopted by virtually every nongovernmental and international agency actively involved in work on children and armed conflict, the coalition began an intensive educational and lobbying effort to establish eighteen as the minimum age for any form of military recruitment or participation in armed conflict. The goal was for this standard, to be adopted through an optional protocol to the Convention on the Rights of the Child and to be recognized and enforced by all armed forces and groups, governmental and non-governmental.

The coalition was formally launched through press conferences in New York and Geneva on June 30, with the participation of UNICEF, UNHCR, and the special representative to the secretary-general on children and armed conflict. The preceding day, the Security Council engaged in a landmark special debate on children and armed conflict, where the speeches of several ambassadors supported the emerging campaign.

The coalition, which was chaired by Human Rights Watch, quickly established an international secretariat near Geneva and generated publications in five languages which were broadly disseminated among governments, nongovernmental organizations, and the press. Within six months, contact was established with national networks or coalitions in more than twenty countries. These networks worked to lobby their own governments on behalf of an international standard restricting military service to those aged eighteen or over, and where necessary, to push for national legislation to raise their country's domestic recruitment age to eighteen. Denmark announced a change to this effect in its own domestic policy in June, and by year's end, several other governments were actively considering such a move. [In October, Secretary-General Kofi Annan announced that the United Nations peacekeeping forces would adopt a new policy consistent with the "straight-eighteen" position, setting a minimum age for U.N. peacekeepers of eighteen, and recommending that they be at least twenty-one.]

In addition to its public education and media effort, the coalition met with key governments, and began preparations for a series of regional conferences in 1999, intended to bring together governments and nongovernmental organizations in Africa, Latin America, and Asia, to discuss stronger prohibitions against the recruitment of children and their participation in armed conflict.

In the United States, Human Rights Watch gave leadership to efforts to shift the U.S. position on international standards related to child soldiers. Despite the small number of under-eighteens in the U.S. armed forces—less than one-half of 1 percent—the U.S. vigorously opposed an optional protocol setting eighteen as the minimum age for either recruitment or participation in armed conflict. U.S. officials stated that recruitment of seventeen-year-olds represented an "edge" that the Defense Department was not willing to give up, and argued that given the lack of compliance with existing standards prohibiting the use of under-fifteens, emphasis should be placed on enforcing current prohibitions rather than raising the relevant age. However, given a powerful opportunity to strengthen enforcement mechanisms by including the recruitment and use of under-fifteens as a war crime under the statute of the International Criminal Court, the U.S. chose to oppose this measure as well. Human Rights Watch advocated strongly for the provision, which was ultimately included in the final statute, despite U.S. opposition.

Human Rights Watch met with Defense Department, State Department, and National Security Council officials regarding the U.S. position on the optional protocol, participated in a series of congressional briefings on child soldiers, and helped influence the introduction of House of Representatives and Senate resolutions on child soldiers. A sign-on letter addressed to President Clinton initiated by Human Rights Watch garnered the signatures of over sixty members of the House of Representatives.

An advocacy visit to the United States in March by Angelina Acheng Atyam, mother of a fourteen-year-old girl abducted by rebels in northern Uganda, further raised the profile of child recruitment in the U.S. media, and led U.S. First Lady Hillary Clinton to strongly condemn the practice during a trip to Africa with President Clinton.

Seeking to broaden the effort to shift the U.S. position, a U.S. Campaign to Stop the Use of Child Soldiers was established with the goals of securing U.S. support of an international "straight-eighteen" ban, raising the U.S. recruitment age to eighteen, and eliminating U.S. military aid which facilitates the use of child soldiers by other governments or armed groups. Human Rights Watch joined religious, peace, youth advocacy and other human rights groups as part of the campaign's steering committee.

# Corporations and Human Rights

In 1998, the debate on the relationship between corporate conduct and human rights evolved from questioning whether corporations should respect human rights to a recognition that corporations must implement credible human rights policies and practices and ensure compliance to these standards. At the center of this debate were the apparel and extractive industries. Both industries faced severe economic pressures due to the global economic crisis and increased scrutiny of their human rights records. Some transnational corporations attempted to address human rights; others chose to ignore the issue. However, events in 1998 strongly suggested that without an explicit and programmatic commitment to respect and promote human rights companies

risked complicity and, in some cases, jeopardized their projects altogether.

## The Apparel Industry

The effort to improve labor rights practices by corporations in the apparel and textile industries focused on programs to ensure respect for workers. Corporations such as Gap Incorporated and Nike, earlier criticized for labor rights violations in overseas plants, retreated in 1998 from previous hostility to rights-oriented criticism and worked to improve global practices through programs in partnership with nongovernmental organizations and trade unions. Among other initiatives in the United States, President Clinton's Apparel Industry Partnership (AIP) and the Council on Economic Priorities' Social Accountability 8000 (SA-8000) program, were two that promoted global codes of conduct on fair labor practices and credible independent monitoring with those codes.

In part, the shift was a response to economic considerations. Apparel companies had expected that Asian markets would be the source of new revenue and growth as demand flattened in the United States. But the Asian economic crisis—particularly due to mismanagement by corrupt and abusive governments—stifled the new demand. Reliant on image, faced with shrinking revenues and public scrutiny of their treatment of workers, companies could ill-afford to drive consumers away because of poor human rights records. However, most corporate initiatives on human rights were not independently assessed, and their effectiveness could not be measured.

## The Oil and Gas Industry

The programs to address labor rights in the apparel industry coincided with a recognition that the oil and gas industry—also faced with severe financial pressures—was at the center of controversy in many operations throughout the world. Because of these companies' importance to national, regional, and international economies; their contracts with abusive governments; their ties to state and private security forces; their effect on local communities; their influence on governments, and a reputation of complicity in human rights violations, the oil industry needed to improve its human rights record throughout the world. In 1998, Human Rights Watch documented human rights violations related to oil and gas projects in Colombia and closely monitored developments in Burma, Cameroon, China, Chad, Thailand, and Turkmenistan.

### Colombia

In two open letters released in April, Human Rights Watch criticized the contractual relationship between Colombian security forces and two international consortia of oil companies operating the principal oil fields and pipelines in the nation. The letters detailed terms of the multimillion-dollar security contracts and reports of killings, beatings, and arrests committed by those forces responsible for protecting the companies' installations. Human Rights Watch called on the companies to implement contractual and procedural structures to ensure respect for human rights as a result of their security arrangements.

A consortium composed of Occidental Petroleum, Royal Dutch/Shell, and the national oil company, ECOPETROL, which operates the Caño-Limón oil field in Arauca department, took no action to address reports of extrajudicial executions and a massacre committed by the state forces assigned to protect the consortium's facilities. The companies' response was that human rights violations were the responsibility of governments, and they did not announce any programs to ensure that their security providers do not commit human rights violations. Royal Dutch/Shell, the only member of the consortium with human rights policies, announced its intent to sell its share of this project as part of an overall divestiture of its Colombian holdings.

In Casanare department, the location of the Cusiana-Cupiagua oil fields developed by British Petroleum, ECOPETROL, Total, and Triton, contracts came up for renewal in June, as military, paramilitary, guerrilla, and criminal activity increased in the area. The renegotiated contracts between the companies and the Ministry of Defense restructured the flow of funds to avoid direct company payments to state security forces. Payments for security were to be made to the state-owned ECOPETROL as a conduit to the Defense Ministry instead of directly from the companies to the army. At the time of this writing, the oil companies still made direct payments to the National Police.

There were also some substantive changes in the contracts. BP, the only consortium member with a human rights policy, reported that human rights clauses were included in the new contract; an auditing mechanism was implemented to monitor the flow of funds; and a committee was established to monitor the performance of the military units providing security for the companies. Human Rights Watch could not assess the effectiveness of these programs because the contract was still not available to third parties. There was apparently no mechanism to ensure that the personnel guarding these installations would be screened for human rights violations.

The conduct of private security providers for the BP-led consortium continued to be a problem in 1998. Following allegations in 1997 that the consortium's private security firm, Defense Systems Colombia (DSC), a subsidiary of the U.K.-based Defense Systems Limited (DSL), had imported arms into the country and trained Colombian National Police (PONAL) in counterinsurgency techniques, a government inquiry was launched to determine the role of this company and the police. DSC refused to cooperate with the investigation. In September 1998, BP reported that it had formed an oversight committee to monitor its private security providers, was developing a code of conduct for DSC, and had urged the company to cooperate fully with the government. At this writing, DSC remained uncooperative. Despite the allegations against DSC and its refusal to cooperate with the government investigation, BP renewed its contract with DSC for one more year.

In October, new allegations that DSC and a Israeli private security firm, Silver Shadow, had contemplated providing arms and intelligence services for the Colombian military while they were security contractors for the Ocensa pipeline. Reports alleged that DSC had set up intelligence networks to monitor individuals opposed to the company. BP steadfastly denied these claims and suspended a senior security official while investigating these allegations. The day after these allegations were published, the ELN reportedly blew up the Ocensa pipeline, killing sixty civilians and injuring dozens more. The act of targeting pipelines has been condemned by Human Rights Watch as a violation of the Geneva Conventions and causing unacceptable hardships on civilian populations caught in the middle of Colombia's decades-old internal conflict.

### Burma-Thailand

The $1.2 billion Yadana gas pipeline from Burma to Thailand, developed by the United States–based Unocal, the French company Total, the state-owned Petroleum Authority of Thailand (PTT), and the Burmese government's Myanmar Oil and Gas Enterprise (MOGE), continued to generate human rights controversy. Press accounts reported that the Burmese forces providing security for the project continued to commit violations against villagers along the pipeline route, including killings, torture, rape, displacement of entire villages, and forced labor.

In Thailand, environmentalists' opposition to the pipeline grew as construction crossed the border from Burma, and the Thai government's response was to suppress protest. In one extreme incident, the Thai government dispatched approximately 200 army troops to the site of an environmental protest in Kanchanaburi and arbitrarily arrested approximately one hundred peaceful demonstrators in April.

Despite severe international criticism of the project and decisions by other oil majors such as Texaco and Atlantic Richfield to leave Burma, Unocal and Total defended their presence and argued that the pipeline would result in sustainable, long-term economic and social benefits to the 35,000 villagers living near the pipeline and lasting benefits to Burmese generally.

But international economic experts believed otherwise. For example, according to the International Monetary Fund (IMF), revenues from the pipeline were supposed to bolster and support the weak Burmese economy by mid-1999. In a later review the IMF, commenting on the project, reported that the "junta has already mortgaged its projected revenues of $200 million a year to repay new loans and finance its 15 percent stake in the project," which would delay any profits to the government until 2002. The Thai government attempted to renegotiate its contract with Burma because, given a lack of demand and funding shortfalls due to the economic crisis, it could not pay for the natural gas.

Unocal's financial situation was precarious as well. On April 30, Standard & Poor, the international investment rating service, downgraded Unocal's corporate outlook from "stable" to "negative." The decision was based on low oil prices, a "somewhat weak financial profile," and "the company's exposure to political risk" due to controversies surrounding its operations in Burma and Afghanistan, as well as political and economic turmoil in Thailand and Indonesia.

## Chad-Cameroon

The joint venture of the United States–based Exxon, the French Elf Aquitaine, and Netherlands–based Royal Dutch/Shell which is constructing the $4 billion Chad–Cameroon oil pipeline was criticized throughout the year because of allegations of corruption and its detrimental effects on the environment and human rights.

On April 24, a coalition of European and African environmental groups and members of the German parliament announced fears of the displacement of inhabitants along the pipeline route and potential environmental damage. They also cited noticeable increase in human rights violations in the area surrounding the pipeline, in particular a massacre of twenty civilians in the oil-producing area. Reports of increased conflict and killings of civilians by government forces persisted through the first eight months of the year.

The pipeline also emerged as an internal issue in debates about corruption. For example, in a May interview with the N'Djamena–based newspaper *L'Observateur*, Yorongar Ngarléjy, an opposition party member of the Chadian National Assembly, accused presidential candidate Wadal Abdelkader Kamougué of accepting bribes from Elf Aquitaine to finance his campaign. In June, Ngarléjy accused Chadian President Idriss Déby of nepotism because of senior appointments in the country's oil industry. His accusations led to the National Assembly's rescinding his parliamentary immunity; and he was arrested on June 3 for defamation, then convicted and sentenced to three years' imprisonment, one year more than the maximum sentence stipulated by law. In addition, Mme. Sy Koumbo Singa Gali, the director of *L'Observateur*, and Polycarpe Togamissi, the journalist who conducted the interview of Ngarléjy, were arrested and convicted as accessories to the defamation. They received two-year suspended sentences and were fined 1 million Communauté Financière Africaine francs (CFA) each, twice the legal maximum.

In late August, eighty-six Northern and Southern environmental organizations called on the World Bank, which had extended a $340 million loan for the pipeline project, to suspend its funding on grounds of widespread human rights violations in oil-producing regions and the lack of adequate environmental safeguards. On September 1, the World Bank's spokesperson, George Mina, said, "If security problems prevent adequate information gathering, the project is probably not ready to be implemented...This is not a good sign."

Although Royal Dutch/Shell has a global human rights policy, at the time of this writing none of the consortium members had articulated a policy to ensure respect for human rights in the course of this operation.

## Corporate Initiatives to Address Human Rights

Three companies responded to broad-based criticism of their operations: Norway's state-owned Statoil, Royal Dutch/Shell, and British Petroleum.

In December 1997, the Norwegian government announced that oil revenues generated by Statoil would be invested in an ethical manner consistent with human rights. The government awarded the assignment to the United States–based Chase Manhattan Bank. On July 7, Statoil signed a global collective bargaining agreement with the International Federation of Chemical, Energy, Mine and General Workers' Unions (ICEM), in part, to "affirm their support for fundamental human rights in the community and in the place of work." After ratifying the agreement, Statoil's Jostein Gåsemyr said, "This is an important step for Statoil, because we see the implementation of human rights as a crucial challenge in some of the environments in which we do business."

The agreement contained several concrete provisions to respect human rights, including adherence to International Labour Organisation (ILO) standards by recognizing the rights to freedom of association and collective bargaining; prohibitions on forced, bonded, and child labor; and nondiscrimination policies.

Royal Dutch/Shell responded to criticism by unveiling programs to highlight its performance on human rights. To further enhance its new corporate image, the company reportedly planned to spend $200 million on a public relations campaign designed by the transnational advertising agency M&C Saatchi, which led to scathing criticism by the press and NGOs. After presenting its first social audit highlighting its social policies, including an emphasis on human rights, Shell continued its dialogue with NGOs and spread the message that it had embraced the concept of human rights. However, the company was enmeshed in controversies in Chad, Colombia, Nigeria, and Peru while conducting feasibility studies for projects in Turkmenistan.

British Petroleum adopted an approach similar to Shell's: the company revamped its business principles to include explicit references to human rights and released a social audit to highlight its human rights policies. The long-term implications of the new policy were still unclear at this

writing. A well-implemented policy could have far-reaching effects, since BP merged with the U.S. oil major, Amoco, to form the third-largest oil company in the world (behind Shell and Exxon), with operations in countries with poor human rights records such as Algeria and Colombia, and operating in alliance with Statoil—which also has a human rights policy— in Angola and Azerbaijan.

### The Role of Governments

Governments that discounted human rights in favor of promoting commercial and strategic interests remained another focus of the effort to promote corporate responsibility. Actions of the Dutch government towards China and the U.S.'s policy towards Turkmenistan illustrated the problem.

In 1998, the Dutch government, long a critic of China's human rights record, followed the European Union's lead and refused to sponsor a human rights resolution on China at the United Nations Human Rights Commission. Apparently linked to this silence on human rights, in February the Chinese government awarded Royal Dutch/Shell the largest single foreign investment in Chinese history—a $U.S.4.5 billion contract to build an ethylene plant with the government's China national Offshore Oil Corporation. The deal was supposed to have been signed in early 1997 but had been canceled when the Dutch broke ranks with other E.U. members and sponsored an April 1997 human rights resolution against China at the United nations Human Rights Commission.

U.S. dealings with Turkmenistan from March through July involved paying lip service to human rights while securing lucrative energy contracts from President Saparmurat Niyazov. Human Rights Watch has called Niyazov's government one of the most repressive and abusive governments in the world and throughout 1998 urged the U.S. government not to ignore human rights in favor of oil and gas interests.

On March 10, preceding Niyazov's visit to the United States, the Export-Import Bank awarded U.S.$96 million to Bateman Engineering, Dresser Rand, Corning, and General Electric to sell natural gas compression equipment and other services to Turkmenistan. During his April visit, government officials reported having raised human rights issues privately with Niyazov while awarding U.S. companies public funds for coveted oil and gas projects in Turkmenistan. The U.S. and Turkmen governments played the game of "hostage politik"—where repressive governments release political prisoners to gain political and commercial favor with Washington—during Niyazov's visit to the U.S. The Department of State lobbied for and secured the release of ten political prisoners which the U.S. government then cited an example of improvement in human rights, in justification of its commercial interests.

At the same time, the U.S. awarded companies grants—using public funds—to get a foothold in Turkmenistan. During a meeting between Presidents Clinton and Niyazov on April 23, the U.S. government's Trade and Development Administration (U.S.T.D.A.) awarded Exxon a $750,000 grant to conduct a pipeline feasibility study for a proposed $2.8 billion pipeline in Turkmenistan. After the deal was signed, the White House issued a press release stating, "Turkmenistan is committed to strengthening the rule of law and political pluralism, including free and fair elections for parliament and the presidency in accordance with international standards...." But when reporters asked Niyazov about the government's attitude toward opposition parties, he said, "We do not have any opposition parties—you are ill-informed. We have none."

Mobil Oil became the first U.S.-based energy company to sign a production-sharing agreement with the Turkmen government on July 10. On July 31, the State Department spokesperson James P. Rubin congratulated the Turkmen government for awarding the Enron Corporation a contract for another $750,000 pipeline feasibility study—paid for with a grant by the U.S.T.D.A. During the same month, the U.S. government announced its intention to triple U.S. aid to Turkmenistan without placing any conditionality on funding to ensure respect for human rights.

In August and September three more domestic critics of the Turkmen government were beaten and detained. Widespread abuses such as torture, arbitrary detention, and press censorship continued.

# DRUGS AND HUMAN RIGHTS

Efforts to curtail the trafficking, sale and consumption of illegal drugs continued to rely on excessive punishment, exacerbate prison overcrowding, distort criminal justice systems, and weaken protection of civil liberties. In countries with vastly different political, social and economic systems and traditions, anti-narcotic strategies included tactics inconsistent with human rights principles.

Drug offenders continued to face the death penalty. According to Amnesty International, China sentenced 662 people to death in 1997 for drug offenses and executed at least 437. The quantities of drugs triggering the death penalty can be small: in June, a Malaysian court sentenced a man to death for trafficking in a pound and a half of marijuana. In Vietnam, possession with intent to sell a mere 3.6 ounces of heroin is punishable by death. More than thirty drug traffickers were sentenced to death in Vietnam during 1998. In Singapore, two men were executed in September for offenses involving cannabis and morphine. Singapore imposes the death penalty on adults trafficking in as little as one-half ounce of heroin, one ounce of morphine or eighteen ounces of marijuana. Since 1975, it has executed more than 300 people, mostly for drug-related offenses. In July, two drug offenders were hanged in Kuwait, the first to be executed under a new law extending the death penalty to traffickers, repeat drug offenders and offences involving minors. In Singapore, a new law made death mandatory for trafficking in 250 grams (8.8 ounces) of methamphetamine. In Iran, a new law imposed the death sentence on individuals possessing as little as 1.05 ounces of heroin and criminalized addiction.

Egregious punishments short of the death penalty were also meted out to drug offenders. In Thailand, couriers transporting small quantities of drugs faced life or fifty-year sentences (often following commutation of a death sentence). In the state of New York in the U.S., a single sale of two ounces of cocaine was punishable with a maximum sentence of life imprisonment. Working with an array of public interest groups and activists, Human Rights Watch continued to press the New York Governor and legislature to reform the state's mandatory minimum sentencing drug laws to bring them into conformity with international requirements of fairness and proportionality. Partisan politics prevailed, however, and the 1998 legislative session ended without any drug law reform. During 1997, 11,614 people were sentenced to prison under the state's draconian drug laws, most of them low-level offenders. Almost 90 percent of them had no prior convictions for violent felonies, and over 50 percent had no prior drug convictions.

Prison conditions deteriorated markedly as hundreds of thousands of drug offenders pushed prison populations far beyond capacity. In Ecuador, nearly 50 percent of those incarcerated were being held for drug offenses. The proportion of drug offenders in Malaysia's prison population was 40

percent, 47 percent in Singapore and more than 50 percent in Taiwan. In many countries, drug laws offenses accounted for the preponderance of incarcerated women. In Ecuador, 72 percent of incarcerated women were charged with drug offenses: in Peru, 60 percent and in Venezuela, 73.4 percent. Most had been jailed for selling or carrying small quantities of drugs. In the United States, nearly 29,000 women were incarcerated in state prisons for drug offenses, more than for any other category of crime.

The adverse human rights effects of current drug control strategies, including excessively aggressive criminal drug law enforcement, were most starkly displayed in the United States, the world's capital of drug consumption. Privacy rights in the U.S. continued to be eroded: the use of undercover agents and wiretapping was routine and widespread; growing numbers of school districts required students involved in extracurricular activities to submit to random drug testing. In South Carolina, the state Supreme Court upheld a law that allows pregnant drug users to be arrested for potential harm to their fetuses. Helicopters with heat detection capabilities explored the interiors of people's homes in Indiana. In Louisiana a new law required all residents receiving state funds to pass a urine test, including elected officials, welfare recipients, state contractors and students on financial aid; elected officials were to be selected at random for drug testing. In June, African-American drivers in Maryland filed an anti-discrimination lawsuit claiming that state troopers pulled them over and searched them because they fit drug courier profiles that included racial characteristics. Using numbers from the state troopers' own records, the plaintiffs in the case asserted that although only 17 percent of the drivers on the major interstate highway were black, they constituted 70 percent of the drivers the police pulled over.

In New York City, aggressive drug law enforcement included searches undertaken by busting into homes with battering rams. In May, acting on a tip from a confidential informant, officers with drawn guns broke down the door of an apartment at 6:15 a.m., tossed a stun grenade inside and then handcuffed the terrified family, including a mentally retarded eighteen-year-old girl who had been taking a shower. No drugs or guns were found. In March, police without a search warrant, battered their way into a home with their guns drawn seeking drug dealers. They found a grandmother, her daughter, a six-year-old watching television, and no drugs. The police had gone to the wrong apartment. In another botched raid, a woman eight months pregnant and her fifteen-year-old sister were handcuffed while a dozen police turned their apartment upside down in a futile search for marijuana. According to press reports, the pregnant woman urinated from fear and was forced to sit in her wet underwear for two hours because the police refused her plea to be allowed to put on dry clothes.

The arrest and conviction of drug offenders continued to swell the U.S. prison population: the number of people incarcerated for nonviolent drug offenses increased tenfold between 1980 and 1996 and continued to grow in 1998. Twenty-three percent of all state inmates and 60 percent of all federal inmates held in prisons in 1997 were sentenced for drug offenses. Drug offenders accounted for 25 percent of the total growth in state prison populations between 1990 and 1996. Drug control policies that emphasize law enforcement and the arrest of street-level dealers in low-income urban areas contributed significantly to the growing number of black Americans in U.S. prisons.

The international community continued to ignore the conflict between respect for human rights and certain drug control tactics. In June, the member states of the United Nations gathered at a special session of the General Assembly to consider measures to strengthen drug control efforts. Human Rights Watch urged the General Assembly to acknowledge the human rights violations that occur in many countries in the context of anti-drug efforts and to affirm unequivocally that human rights must not be sacrificed in the pursuit of counternarcotic goals. Unfortunately, the special session concluded without any action addressing human rights. The 1997 annual report of the International Narcotics Control Board endorsed and encouraged efforts to suppress and punish speech deemed favorable to the use of illicit drugs. In a letter to INCB members, Human Rights Watch criticized this view as demonstrating a troubling disregard for the internationally recognized right of free speech.

In Bolivia, 1998 saw a new hard-line approach to the cultivation of drug crops by the new administration of Banzer with the support of the U.S. resistance by coca growers to crop eradication has led to greater levels of violence. Bolivian human rights groups reported fifteen deaths, dozens of injuries from bullets and a couple of hundred people detained in confrontations between coca growers and the police and army. The government placed several thousand members of the army in the coca-producing Chapare region to support the police in anti-drug activities. Increased militarization of drug control activities in the Chapare was not accompanied by any strengthening of efforts to prevent human rights abuses or to hold accountable those who engaged in them.

# FREEDOM OF EXPRESSION ON THE INTERNET

Despite growing acknowledgment during 1998 among governments around the world that the Internet promotes participation in civil and political life within countries and beyond, legislative proposals continued to threaten free speech on the Internet. While dissidents in authoritarian countries continued to take risks using the Internet to seek help and information, regulators in these parts of the world were quick to refine screening and other controlling technologies. As a result, in a half-dozen countries, Internet access providers (including public libraries) were implementing filtering technologies and other voluntary measures to make prior censorship of on-line communications a reality. The trend is towards extending these technologies more broadly, with global implications for free expression. On-line content providers may soon be forced to start rating their content; those failing to rate their content may find their material blocked from public access. As local rating criteria are used to define ratings, the danger is that these restrictive criteria will limit the diversity of expression on the Internet, where content is as diverse as human thought.

In October 1997 the European Parliament had consented, in principle, to the use of filtering and screening devices. Subsequently the European Commission requested to the European Parliament to foster research into technical issues, in particular filtering, rating, and tracing techniques, taking into account Europe's cultural and linguistic diversity. Ironically, authoritarian regimes around the world were soon to implement these techniques and principles to restrict free expression on the Internet.

For example, Singapore's National Internet Advisory Committee (NIAC) in its September 1998 report recommended that the local industry be required to label Web sites using PICS (Platform for Internet Content Selection)- compliant content rating classification systems, such as that developed by the Recreational Software Advisory Council (RSAC). Implementing this would mean that unrated sites would be automatically blocked. Even if this system were only adopted in Singapore, all unrated Web sites around the world would be blocked when the system was used.

Saudis expected to get local access to the Internet by the end of 1998. But the King Abdulaziz City for Science and Technology (KACST), which was

to act as the kingdom's gateway to the Internet, set up firewalls that would block access to sites considered sensitive. In anticipation of the new service, Council of Ministers Decision 163 required parties using the Internet to refrain from "any activities violating the social, cultural, political, media, economic, and religious values of the Kingdom" and prohibited sending or receiving coded information without prior authorization.

Bahraini authorities apparently continued to block access to some Web sites, including that of the London-based Bahrain Freedom Movement, and to seek ways to improve the government's capacity to monitor political speech on the Internet. Jalal Alawi Sharif, a Batelco engineer who was arrested in March 1997 reportedly on the grounds that he was transmitting information to the BFM via the Internet, remained in detention without charge or trial as of September 1998.

In mid-January, public hearings were held on a draft Thai Internet Law. Its submission to Cabinet was then delayed due to a lack of "public acceptance" arising out of its potential impact on freedom of expression. During August the Royal Thai Police department's "Internet Police" proposal demanded that the Telephone Organization of Thailand (TOT) implement caller-ID features for all local Internet Service Providers. Caller-ID would be used to gather information about each user logging onto the network, including the telephone numbers they used, their login names and the times of the day they connected and disconnected.

During 1998 China encouraged Internet use while restricting the flow of overseas information. The new Internet regulations (adopted on December 30, 1997) replaced interim regulations restricting the free flow of information. The regulations spelled out in greater detail the responsibilities, procedures and penalties for various players involved in Internet communication. During July, China arrested and charged a software engineer with subversion for supplying e-mail addresses to a U.S.-based pro-democracy magazine and Web site known as "Big Reference". According to the Information Center of Human Rights and Democratic Movement in China, Shanghai's cyber-police force was reinforced with 150 additional computer experts. An example of the activism that would be affected by such controls was the September 2nd issuance, by a small group of dissidents, of a challenge to the government in the form of two manifestos on freedom and social justice. The two declarations in English translation were posted on the sites of a group in New York, Human Rights in China (http://www.hrichina.org/pr/english/980902.html) and an international group, the Digital Freedom Network (http://www.dfn.org/asia/declare.html) and in faxed copies.

On August 11, Malaysian police arrested a man and a woman and accused them of false reporting about riots in the capital, spread by an Internet newsgroup. They were tracked down with the help of Malaysian Institute of Microelectronic Systems (MIMOS), which provides sole access to the Internet in that country. On August 13 Malaysian police detained a third suspect. All three were held under the Internal Security Act (ISA), which allows detention without trial for sixty days. On September 24, the suspects were charged in the magistrate's court under Section 505 (b) of the penal code, which carries face a maximum sentence of two years in prison. On September 28 Tengku Azman, chairman and chief executive officer of MIMOS, was quoted by the government news agency Bernama saying that the government had no intention of practicing Internet censorship.

In October 1997 the South Korean government blocked access to the GeoCities on-line community (based in the U.S.) because of a site that espouses North Korean beliefs.

In June 1998 a Turkish court sentenced a teenager, Emre Ersoz, to ten months suspended jail time for making comments about the police while participating in a daily on-line forum, hosted on local Internet provider Turknet. He reportedly had criticized rough police treatment of a group of blind people who were protesting against potholes in pavement in the nation's capital, Ankara.

Even G-7 governments were found rushing to regulate the Internet before people understand its full potential as a tool of citizen participation.

For example, during 1998 Britain continued its attempts to persuade the other E.U. countries to adopt an e-mail interception system providing unconditional government access to e-mails, arguing that this was essential to fight cross-border crime. A September 1998 report by the U.K. Department of Trade and Industry acknowledged the need for radical rethinking while developing regulation for the information age. Despite such announcements, however, the government continued working on plans to allow the police to tap electronic communications to combat on-line crime. British law enforcement agencies continued to demand that Internet Service Providers (ISPs) reveal all sorts of information about users. Such disclosure had the potential to include interception of e-mail messages without legal due process, a serious violation of privacy.

The Russian state police proposed a plan to monitor every piece of data sent over the Internet within Russia's boundaries. Proposed amendments to the mass media law which were discussed in the Russian Duma in March 1998 included a clause suggesting that any publisher of electronic information should register with and obtain a license from the government.

A Bavarian court convicted Felix Somm, former head of the German division of the U.S. on-line service provider Compuserve, in May 1998, of spreading child pornography and other illegal material by providing access to such information on the Internet. Germany's new multimedia law stipulated that access providers are not generally liable for Internet content, although they are required to take reasonable measures to block access to banned material. In June, a twenty-five-year-old university student in Berlin was charged for maintaining an Internet home page that provided an electronic link the left-wing newspaper Radikal.

In the United States, Australia, France, Spain and the U.K, legislative proposals contemplated establishing controls on access to and use of cryptography, or data-scrambling technology, which is used to protect the privacy of communications on-line. The insistence of Britain and France forced the European Commission, in September 1998, to water down its plan to protectInternet privacy using the encryption software.

Countries like Australia and the U.S. led an international push to restrict access and use of encryption software. Human Rights Watch, along with other members of the Global Internet Liberty Campaign (GILC), attempted to counter this effort through defining standards for on-line privacy protection and cryptography based on international human rights law. The current push for restricted access to cryptography may make the use of freely available software like PGP illegal or impossible for human rights groups from developing countries and in the long term even by nongovernmental groups in the most developed countries.

Recognizing that the Internet can be a democratizing force and a useful tool for the advocacy of human rights, during 1998 Human Rights Watch extensively used its World Wide Web site for campaigns on human rights violations in several regions and promoted other global issues including campaigns to end recruitment of child soldiers, to establish the International Criminal Court, and for ratification of the 1997 treaty banning landmines.

While continuing to document and protest attempts to silence the Internet, we expanded our on-line advocacy and campaigning work in coalition with civil liberties, women's, labor, journalists' and other groups internationally to promote participation in civil and political life.

A website which contains a host of important and relevant information on the subject of freedom of expression on the internet is the Global

Internet Liberty Campaign (GILC) website at http://www.gilc.org.

# HUMAN RIGHTS WATCH INTERNATIONAL FILM FESTIVAL

The Human Rights Watch International Film Festival was created in 1998 to advance public education on human rights issues and concerns using the unique medium of film. Each year, the festival exhibits the finest human rights films and videos in theaters and on cable television throughout the United States and elsewhere—a reflection of both the scope of the festival and the increasingly global appeal that the project has generated. The 1998 festival featured thirty-three films ( twenty-four of which were premieres), from nineteen countries.

In 1998, selections of the festival were presented in four countries in addition to the U.S., where selected films showcased in nine cities. *Time Out* magazine remains the principal sponsor of the festival in New York and London. New initiatives with television partners led to cable and public television airings of selected documentary films to a projected audience of more than seven million in the United States.

In selecting films for the festival, Human Rights Watch concentrates equally on artistic merit and human rights content. The festival encourages filmmakers around the world to address human rights subject matter in their work and presents films and videos from both new and established international filmmakers. Each year, the festival's programming committee screens more than 600 films and videos to create a program that represents a range of countries and issues. Once a film is nominated for a place in the program, staff of the relevant division of Human Rights Watch also view the work to confirm its accuracy in the portrayal of human rights concerns. Though the festival rules out films that contain unacceptable inaccuracies of fact, we do not rule out any films on the basis of a particular point of view.

The 1998 festival was first presented over a two-week period in New York, as a collaborative venture with the Film Society of Lincoln Center, and then a selection of the festival was presented in Los Angeles at the Museum of Tolerance. 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 films, documentaries and animated and experimental works. The 1998 festival further broadened its outreach and co-presented selected films with three important New York festivals: the African Film Festival, the Margaret Mead Film Festival, and The New Festival/New York Lesbian and Gay Film Festival.

The festival's opening night centerpiece for 1998 was "Blind Faith", by American cinematographer and director Ernest Dickerson. Set in New York in the 1950s, the film shows the disintegration of a thriving middle-class African-American family after a promising son is accused of murdering an Irish boy. In "Blind Faith," Ernest Dickerson explores various kinds of bigotry, challenging assumptions about race, sexual identity and social injustice.

In conjunction with the opening night, the festival annually awards a prize in the name of the late 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 and courageous filmmaker in recognition of his or her contributions to human rights through film. The 1998 recipient of the Nestor Almendros Award was filmmaker Yuri Khashchevatsky from Belarus, for his daring satire "An Ordinary President." Khashchevatsky shot this witty "political pamphlet" to document the dictatorship that President Alexander Lukaschenka, an admirer of Hitler, has imposed on his country. Immediately after this program aired on French television in 1997 Khashchevatsky was beaten unconscious by a group of unidentified men. To date the perpetrators have not been found. Despite this intimidating setback, the film has gone on to be screened around the world to much acclaim and Yuri Khashchevatsky continues to produce films.

In 1995, in honor of Irene Diamond, a longtime board member and supporter of Human Rights Watch, the festival launched the Irene Diamond Lifetime Achievement Award, which is presented annually to a director whose life's work illuminates an outstanding commitment to human rights and film. The 1998 award went to two-time Oscar-winning American director Barbara Kopple, for her leadership in introducing mainstream audiences to controversial human rights issues through film. "Harlan County U.S.A." and "American Dream," two outstanding documentaries on labor organizing struggles in the United States, are among the films through which Kopple has demonstrated her lifelong dedication to the cause of human rights.

Highlights of the 1998 festival included a retrospective of the work of one of Iran's most acclaimed directors, Darius Mehrjui. Mehrjui's groundbreaking film "The Cow" signaled the emergence of the new Iranian Cinema in the late 1960s. "Leila", Mehrjui's most recent film, exposes the contradictions faced by a happily married woman who cannot bear a child in contemporary Iran. Each year the festival holds a series of special film screenings for high school students and their teachers in an effort to encourage dialogue about human rights in the classroom. Daytime screenings are followed by discussions among the students, their teachers, visiting filmmakers, and Human Rights Watch staff. In 1998 the program included collaborative screenings with the New York African Film Festival, the Margaret Mead Film Festival, and the Center for Children and Technology.

In conjunction with the worldwide celebration of the fiftieth anniversary of the Universal Declaration of Human Rights, the festival co-curated an eighteen-hour documentary television series, "Just Solutions: Campaigning for Human Rights", with Free Speech Television, a Colorado-based progressive cable network. Free Speech Television, which reaches seven million homes in the U.S., planned to air the series in December 1998 and January 1999. Four of the selected documentaries were to be highlighted and aired on Public Broadcasting System affiliates as well.

In an effort to reach the broadest possible constituency the festival expanded, in its entirety, to London in 1996 and also offers the Global Showcase, a touring program of selected films and videos to cities throughout the U.S. and abroad. The London festival will next run in February 1999 in a new partnership with the Ritzy Theater. Screenings will be held at both the Ritzy Theater in Brixton and the Phoenix Theater in North London with a gala opening night on February 25.

The Global Showcase package of film and video programs is presented annually in a growing number of sites and cities around the world. In 1998 the showcase traveled internationally to Minsk, Belarus; Moscow, Russia; and Buenos Aires, Argentina. The Global Showcase was also featured as part of the second annual Human Rights Film Festival held in Seoul, South Korea. The showcase was also presented in nine U.S. cities: Los Angeles, Columbus, Wilkes-Barre, Huntington, St. Louis, Portland, Baltimore, Austin, and Columbia. In previous years, the showcase has been featured in festivals in Bogotà, Colombia; San José, Costa Rica; and Gent, Belgium.

Human Rights Watch/Film Watch, an association of the film festival and a group of internationally known filmmakers, was created to monitor and protect the human rights of filmmakers who are threatened or censored or otherwise abused for their expression through film. This year Film Watch focused on securing the release of Korean film festival organizer and human rights activist Suh Joon-sik, who was arrested in Seoul for publicly screening the documentary "Red Hunt" as part of the Korean Human Rights Film Festival. "Red Hunt" details government collusion in a 1948 massacre of suspected pro-communist sympathizers on Cheju island, off South Korea. Mr. Suh was arrested under the National Security Law, which penalizes anyone who "benefits North Korea" by allegedly praising, encouraging, propagandizing for, or siding with the activities of an anti-state organization, or importing or disseminating materials in support of such an organization. Film Watch spearheaded an extensive letter-writing campaign on Suh Joon-sik's behalf to the South Korean government and secured the support of three major world film festivals—Sundance, Rotterdam and Berlin—to come together and publicly demand his release.

This effort was part of a letter-writing campaign from the filmmaking and festival communities worldwide. On February 5, 1999, Mr. Suh was released on bail, rarely an option for political prisoners. However, as of this writing the charges against him had not been dropped.

# THE INTERNATIONAL CRIMINAL COURT

The treaty agreed upon in Rome on July 17 establishing a permanent International Criminal Court (ICC) marked an historic development in the enforcement of international humanitarian law and the advancement of human rights. The court was to be set up when sixty states ratified the treaty, with enormous potential to limit impunity for the most serious international crimes, provide justice for victims, and deter future atrocities. A coalition of more than sixty "like-minded" states from Africa, North and South America, Asia, western and eastern Europe, and Oceania drove the ICC negotiating process to its successful conclusion. The negotiators rejected a consent regime (additional approval by a state for prosecutions after it had ratified the treaty); they limited the possibilities for political interference by a permanent member of the Security Council; they established a prosecutor empowered to initiate investigations on his or her own; and they gave the court future authority over war crimes committed in both international and internal armed conflicts to reflect the reality of contemporary armed conflict. The coalition's efforts, reinforced by a unique partnership with nongovernmental organizations, represented a major achievement for the international human rights movement as a whole.

## The Months Before the Rome Conference

The Rome Conference culminated a four-year high-stakes negotiation characterized by sharp polarization between the United States and a handful of other states on the one side and the diverse group of like-minded states committed to a court with an ex officio prosecutor and the competence to decide, without additional state consent, its jurisdiction over a case. The U.S. government publicly supported the establishment of an ICC and on procedural issues the U.S. delegation made important contributions. However, the Clinton Administration categorically opposed a court that could indict U.S. citizens without prior U.S. approval and its representatives insisted on ironclad guarantees to preclude that possibility regardless of the impact on the ICC's effectiveness and credibility.

Delegates met in New York for the year's third and final Preparatory Committee session in early December, 1997. This negotiation was marked by sharp disagreement over the range of war crimes the court would be empowered to prosecute in internal armed conflicts. A determined group of delegates from smaller states successfully resisted efforts to approve a draft that omitted serious violations of the laws of war in these conflicts. The proposed agreement would have sealed the deletion of these crimes from the final text. Given the prevalence of noninternational warfare in the world, the court's relevance hinged on its ability to prosecute these war crimes. Similarly, there were sharp differences over the nature of a state party's obligation to comply with a court request for arrest and transfer of those accused or to provide other forms of cooperation with the court, such as surrendering documents. Progress was made in codifying the general obligation to comply fully and without delay. The like-minded, with strong urging from nongovernmental organizations, formulated six broad principles of unity and organized working groups on particularly contentious issues. The political highpoint of the December session, and an important overall turning point, was the announcement by the United Kingdom's delegation that London was breaking ranks with the other four permanent members of the Security Council to oppose a single permanent member's ability to veto the investigation of any situation by the court. This break created new strategic possibilities that bore fruit at the Rome Diplomatic Conference.

There was an intense effort to generate a manageable draft text for the Diplomatic Conference in early 1998. Members of the Preparatory Committee Bureau met for two weeks in the Netherlands at the end of January to prepare an accessible draft text and facilitate the work of the March Preparatory Committee session. The meeting in Zutphen produced a greatly streamlined document which formed the basis of the March Preparatory Committee's negotiations.

Nongovernmental organizations, intergovernmental organizations, and governments sponsored a series of regional conferences that became valuable training sessions on the substantive issues raised by the draft text. In early February, over sixty Senegalese lawyers, human rights activists, academics, and civil servants met for a two day conference in Dakar, Senegal. The session was convened by the African Network for the Defense of Human Rights (RADDHO) in conjunction with the Inter-African Union for Human Rights (UIDH). The participants discussed the need for and the essential features of the proposed ICC. They adopted a strong resolution calling for the establishment of an effective and independent court. The following day Senegal's President Diop opened a conference in Dakar, cosponsored with the Brussels-based No Peace Without Justice, for representatives of twenty African governments. Ministers of justice, legal advisors, ambassadors, and representatives of domestic, regional, and international nongovernmental organizations attended. This discussion and the accompanying excitement about the court spurred awareness and commitment in the ICC negotiations among governments across Africa and in West Africa especially. The growing African interest in the ICC was reflected in the high level and quality of participation of African delegations at the March 1998 Preparatory Commission the following month.

Two weeks after the Dakar conference, in mid-February, representatives from twenty Latin American states and a number of domestic, regional, and international nongovernmental organizations met in Guatemala City to discuss the draft text. This meeting was convened jointly by the Human Rights

Ombudsman of Guatemala and the Inter-American Institute for Human Rights (IIDH). The discussion generated sharp questions over the effect of a court that is unable to examine crimes committed in the past and the possibility of establishing a court independent of United States domination. This meeting, together with the imminence of the Diplomatic Conference spurred awareness and interest on the part of governments throughout the Americas.

Many delegates hoped the March-April Preparatory Committee, as the final session before the Rome conference, would significantly reduce the number of disputed provisions in the text. Unfortunately, however, rather than reducing options and consolidating text, delegates added new proposals and brackets. The session ended with heightened apprehension over the difficulties of completing the statute in the five weeks allotted in Rome.

The pace of regional meetings further intensified in the period between the end of the final Preparatory Committee session and the start of the conference. In early May, the Australian government convened a meeting in Canberra for states from throughout Asia. The German Foreign Ministry sponsored a session with representatives of twelve eastern and central European states. Simultaneously, Bonn had made demarches through its embassies in virtually every capital in the world. Representatives from a number of former Soviet Republics met for two days at the Central European University in Budapest. Nongovernmental organizations worked to reinforce the commitment and strengthen the organization of the like-minded states for the challenges in Rome.

## The Rome Diplomatic Conference

The Diplomatic Conference began on June 15 amid great uncertainty. Given the large number of disputed provisions throughout the "consolidated" draft text, there was widespread concern that the delegates would be unable to finish the work in the five weeks allocated. It was clear that a court "worth having" would depend on the firm commitment of the like-minded states to a court with the competence to decide its own cases, independence from Security Council control, an independent prosecutor, and authority over a list of relevant war crimes. It was also clear that commitment would be tested to the maximum by strong opposition from a few large powerful states seeking to reduce the effectiveness of the ICC and another small group wanting to derail the process entirely.

While they never functioned as a coherent group unified by a common plan, the like-minded group had a decisive impact at the conference. By announcing new additions to their ranks from Africa and eastern Europe during the first few weeks of the conference, they projected a sense of growth and initiative. The diverse nature of the group made clear that support for and opposition to an effective ICC could not be depicted as a North-South dispute. Most important, the like-minded group's existence served to generate and legitimize support for a strong ICC. The group was a rallying point for previously undecided states whose delegates were drawn to the need for an effective ICC. This "magnet" effect on a crucial bloc of swing states tilted the balance of forces at the crucial moments.

While the U.S. delegation played a constructive role on a number of issues, specifically relating to the rights of the defendants, criminal procedure, and the definition of crimes, the extent of U.S. inflexibility and heavy-handedness on the key political issues surprised many delegates and ultimately backfired. In the run-up to the conference, Washington had made clear its abhorrence of universal jurisdiction (the right of any state, regardless of a direct nexus to the crime, to prosecute accused perpetrators), which it identified with a proposal circulated by the German delegation at the March 1998 Preparatory Committee meeting. The depth of U.S. opposition was underscored in a key speech to the Diplomatic Conference threatening "active opposition" by the U.S. if any "variant of universal jurisdiction" was codified in the statute.

Washington engaged in tactics to exert maximum pressure. In early April officials from the Pentagon convened a meeting with military attaches from embassies in Washington to sound an alarm about the ICC. This had the dual effect of angering and raising concern among delegates. The fact that meetings occurred with the military representatives of governments that had made recent transitions to civilian rule, whose militaries were responsible for widespread violations in the past, was particularly galling. During the Rome Conference, Reuter reported that Secretary of Defense William Cohen had linked the codification of any aspect of universal jurisdiction, by then identified by the U.S. delegation as any jurisdictional proposal but its own, with the viability of U.S. troop deployment in Germany during a meeting with the German minister of defense. Similar linkages were reportedly made in meetings with South Korean officials.

Despite the resentment engendered by its tactics, the U.S. delegation succeeded in securing many concessions to its positions, including a very high degree of deference to national prosecutions, the reformulation of the definition of certain crimes, national security as a ground for refusal to cooperate with the court, superior orders as a defense, diminished powers of the independent prosecutor, and two opportunities for states to challenge and appeal the court's jurisdiction. In the final hours of the conference, the U.S. delegation sought a special exemption for nationals of non-state parties who were carrying out official duties. This was a proposal that even those states most concerned with mollifying United States hostility could not accept because it would have gutted the ICC's credibility. It was impossible to accommodate Washington's demand that a government retain the option to block prosecution of its citizens at will and maintain the appearance of an effective court. In an effort to placate the United States, aspects of the proposal advanced by South Korea, which would have allowed a state with custody of a suspect or whose nationals were victims to empower ICC jurisdiction, were deleted to the detriment of the ultimate effectiveness of the court.

The U.S. delegation was not the only force playing an obstructive role during the conference. At the outset, the member states of the Arab League adopted a coordinated position that sought to limit the court's ability to prosecute war crimes and crimes against humanity committed in internal armed conflicts, opposed the inclusion of provisions concerning gender-related crimes and their effective prosecution, and insisted on the inclusion of the death penalty. Over the course of the conference their opposition diminished, in line with a global swing toward support for an effective ICC.

The member states of the European Union, with all but France a member of the like-minded group, played an essential role in the face of concerted pressure by the U.S. to compromise on basic principles. A number of eastern European states similarly joined the like-minded forces and provided solid, if less vocal, support. At the start of the Diplomatic Conference France announced its support for an ex officio prosecutor and a position similar to that of the United Kingdom on the Security Council's ability to control the court's docket. With the approval of a non-renewable seven-year period during which states could opt out of ICC jurisdiction over war crimes, France felt that its concerns were sufficiently addressed and decided to join the overwhelming majority of states supporting the treaty. This, coupled with the Russian Federation's vote in support of the Statute of the ICC, created a three-two split among the five permanent members of the Security Council. Latin American states emerged more strongly as supporters of the court, and the Southern African Development Community countries remained true to the commitment they had expressed in the pre-Rome phase. Despite wavering under intense pressure to reverse their progressive stand by the end of the conference, west African states had also played a

positive role.

## The Treaty

The final treaty fell short of what many supporters of a strong court had hoped, but provided a solid basis for a court that could make a real and lasting difference. The ICC was to be able to investigate and prosecute genocide, crimes against humanity, and war crimes (whether committed in international or noninternational conflicts) where national authorities fail to do so. The prosecutor was, despite much controversy, to be able to take the initiative to investigate allegations ex officio upon receiving information from victims and other reliable sources, without requiring state or Security Council referral. Proposals to require the consent of state parties or of the Security Council before the ICC could proceed with an investigation, which would have crippled the court, were ultimately rejected. Similarly, proposals to give the five Security Council permanent members a veto over the court's docket did not prevail. The rights of suspects and accused persons were unequivocally guaranteed and appropriate provision made for the protection of witnesses and their role in ICC proceedings.

The treaty's principal weakness lay in the jurisdictional regime which required, in the absence of a Security Council referral, that either the state of territory (in which the crime occurred) or nationality (of the accused) be a party or consent to its jurisdiction. While this requirement was not fatal to the court, it limited its potential effectiveness. A myriad of other provisions, which checked the exercise of prosecutorial discretion, restricted the prosecutor's powers, and qualified the obligations of states were sufficient to appease states concerned about an all-powerful or overreaching prosecutor. The final balance, while not perfect, managed to garner almost universal support from states and the NGO community alike.

The closing moments of the Committee of the Whole and the subsequent Conference Plenary provided an intense and highly emotional conclusion. Hundreds of delegates were on their feet, clapping rhythmically when first the Indian and then the U.S. amendments, which would have reopened the approved "package" and jeopardized the possibility of concluding the conference, were voted down in "no action" motions in the Committee of the Whole. In the plenary a little later pandemonium erupted when the tally in the final vote, called for by the U.S., was tabulated: 120 in favor, seven against and twenty-one abstaining. Delegates who had poured themselves into this effort for nearly four years were hugging, crying, and applauding, relieved that the court they believed in was to become a reality.

## The Role of NGOs

The nongovernmental Coalition for the International Criminal court (CICC) played an extraordinary role, coordinating the 200 plus nongovernmental organizations that attended the conference. Thematic caucuses, such the women's and children's caucuses, played a vital role, among other things in ensuring that gender crimes and crimes against children were appropriately addressed in the treaty and that adequate provision was made for victim and witness protection. Every region was represented and regional caucuses, in particular the "Three Continents Alliance" of Latin American, African, and Asian NGO representatives, developed and had a positive influence.

Prior to and throughout the conference, NGOs developed substantive positions and strategic assessments that they shared with delegations. Position papers were well received and quoted in open debate. NGOs also had a great deal of access to delegations during the conference: while not allowed into the closed "informal" negotiating sessions, it was possible to do a tremendous amount of advocacy around these sessions. This positive role was noted and reinforced by numerous speakers—from Kofi Annan to foreign ministers. The press likened NGO influence to that of a major government and, in general, the NGOs were seen as an important contributing force in the negotiations. The extent of "partnering" with governments and the degree of consultation with the U.N. Secretariat provided a model for future multilateral negotiations. In the critical moments, the major international human rights organizations met almost as one, enabling the human rights community to analyze developments and maximize impact with key delegations. The Statute was in part a reflection of the growing strength of an international human rights movement which conducted itself with coordination and skill.

## The Road Ahead

The overwhelming support for the treaty demonstrated in the final conference vote was greatly encouraging. Special efforts were, however, necessary to maintain the momentum generated by the conference's dramatic conclusion and to ensure that the treaty led to the establishment of an effective ICC with the most universal support possible, as quickly as possible. The 1999 session of the General Assembly debated a resolution to convene the Preparatory Commission to deal with matters such as the court's Rules of Evidence and Procedure. As this work would influence ratification in certain states, it was critically important to begin and schedule the completion of the Preparatory Commission. The struggle continued over the mandate of the Preparatory Commission enumerated by the treaty's Final Act. At the General Assembly's Sixth Committee session in October the U.S. delegation circulated language calling for a much broader mandate that would reopen discussion on the most contentious issues settled in the final moments of the Rome Conference. Washington pressed hard for reconsideration of its concerns. This agenda could have a seriously weakening and delaying effect on the ratification effort.

While it was appropriate that Washington participate in the ongoing work of the Preparatory Commission, the United States' effort to revise the treaty outside of its amendment procedures, or to pressure others states not to sign or ratify the treaty, required firm opposition. A coordinated, multilateral effort in support of the court—involving an expanded like-minded group, regional coordination, and NGO activism—was essential to ensure early and widespread ratification and the treaty's entry into force. A regional approach would not only enhance ratification but also defuse potential pressure on any one government.

The experience leading up to and during the Rome conference indicated that reaching the threshold of sixty ratifications and going beyond was an achievable objective. The diverse range of states which, within three months of the conclusion of the treaty conference, had already expressed their intention to ratify through signature—including Angola, Chile, France, Georgia, Honduras, the Netherlands, Uganda, Zimbabwe—provided a positive launching point for a successful campaign for urgent global ratification. The people at greatest risk from the crimes, whose fate Human Rights Watch had documented in all too many countries, needed this court to be operational and effective without further delay.

## Relevant Human Rights Watch report:

# LESBIAN AND GAY RIGHTS

Discrimination against gays and lesbians continued in countries throughout the world in 1998, often resulting in the arrest and imprisonment of homosexuals on charges relating directly or indirectly to their sexual orientation. In several cases, charges of sodomy were employed to discredit a political figure or organization. It is irrelevant whether such charges are real or fabricated: to persecute or discriminate on the basis of sexual orientation is a violation of human rights.

In a positive development, the 1996 South African constitution specifically outlawed discrimination on the grounds of sexual orientation, the only constitution in the world to do so, according to South African jurists. On October 9, 1998, the Constitutional Court confirmed a May High Court ruling that criminalization of sodomy was unconstitutional and ordered the removal of such provisions from the statute books. Although discrimination against gays and lesbians continued in practice, and many discriminatory laws remained, activists in South Africa successfully challenged discriminatory laws in the courts. The Department of Home Affairs continued to deny rights of residence to foreign same-sex partners of South African couples, but this was challenged in court, and the government was reported to be planning legislation to legalize same-sex marriages, which would give gay couples the same legal rights as heterosexual ones, including equal rights under immigration law.

International human rights bodies have also declared discrimination and violence based on sexual orientation or identity to violate human rights. The European Court on Human Rights has repeatedly cited the right to privacy in condemning laws criminalizing same-sex acts between consenting adults. The U.N. Human Rights Committee considers sexual orientation to be protected from discrimination under international law.

According to the International Gay and Lesbian Human Rights Commission (IGLHRC), in 1998 more than eighty-five countries maintained laws that criminalize sexual activity between consenting adults of the same sex. In some countries the statutes regulated specific sexual acts regardless of the gender of the people involved, whereas other countries maintained laws that prohibit a wide range of same-sex practices. Many laws are broad in scope, dealing with "unnatural acts," "immoral acts," or acts causing "public scandal." In some countries general laws against "loitering" or "hooliganism" are used to arrest or persecute homosexuals. In some countries, laws discriminating against homosexuals are not enforced: some of the former Soviet republics, for example, which had provisions in their penal codes outlawing homosexual activity, removed these provisions without debate when the penal codes were revised.

In Romania, the only country in Western Europe that actively punishes homosexuality, Article 200 of the penal code, though hotly debated, remained on the books: paragraphs 1 and 5 of the article each provide for punishment of one to five years of imprisonment: under paragraph 1, for behavior that causes "public scandal"; under paragraph 5, for any action that might be construed as encouraging or inciting homosexual behavior.

In 1998 Human Rights Watch worked to improve the situation of gays and lesbians in Romania. A report on sexual orientation and criminal law in Romania, published jointly by Human Right Watch and IGLHRC, was released in January at a press conference in Bucharest by representatives of both organizations. The representatives met with many nongovernmental organizations and with government officials, including President Constantinescu, who promised to release "three or four" homosexuals currently serving time for nonviolent activities. In May Mariana Cetiner, a lesbian who was sentenced to three years in prison for propositioning another woman, was released, but no further releases were confirmed. The president also expressed his opposition to Article 200 of the penal code, but his attitude, and pressure from the Council of Europe, of which Romania is now a member, were not enough to convince the Romanian parliament to repeal Article 200. Indeed, in June 1998, almost immediately after the Council of Europe voted to stop monitoring human rights abuses in Romania, the Romanian parliament voted against any amendments to Article 200.

Gays and lesbians can be legally dismissed from their jobs because of their sexual orientation in forty states of the United States. The Employment Non-Discrimination Act, a bill that would protect workers in every state from discrimination based on sexual orientation, had not been acted on by the U.S. Congress at the time of this writing. In May 1998, however, President Clinton signed an executive order uniformly protecting federal workers from discrimination based on sexual orientation, and the House of Representatives voted to uphold the order in August. The Clinton administration also called for an expansion of the definition of hate crimes in the federal hate-crime statute to include violence based on sexual orientation. Forty states in the U.S. have passed hate-crime laws, but only eleven specifically cover anti-gay hate crimes. Wyoming is one of ten states that do not have hate-crime laws. In October, twenty-one-year-old Matthew Shepard, an openly gay freshman at the University of Wyoming, was tortured and murdered by two men who picked him up in a bar; despite the extreme brutality of the crime, police initially claimed the motive was robbery.

Gays and lesbians serving in the U.S. military continued to face discrimination under the "don't ask, don't tell" policy which was violated hundreds of times in 1998 by military personnel who continued to question servicemembers and then to discharge them for their sexual orientation. According to the *New York Times*, a Defense Department draft report revealed that the number of homosexuals being forced out of the military was 67 percent higher than when the policy was adopted in 1993. The *Times* claimed that the Defense Department "was resistant to examining the ... obvious possibility, which is that base and unit commanders are subverting a policy that was intended to stop witch hunts...."

Gay educators in the United States faced discrimination and job dismissals if school officials, parents, or students learned that a teacher was gay. In Salt Lake City, Utah, a high-school student asked a teacher whether she was a lesbian, and the teacher answered affirmatively. She was instructed not to speak about her personal life in school or elsewhere and was dismissed from her volleyball coaching job. She filed a federal lawsuit alleging an infringement upon her free speech rights, and the suit was still pending at the time of this writing. In San Leandro, California, a heterosexual high-school teacher spoke out in favor of the students' gay-straight alliance group. In response to his support for the group, parents

tried to have him dismissed, and an official reprimand was placed in his file. The teacher explained that his main goal in supporting the group was to create a safe environment for gay and lesbian students who suffered from harassment in school.

Gay male inmates in U.S. prisons gave testimonies to Human Rights Watch indicating that they were frequently targeted for rape by other prisoners and that prison officials were indifferent to such abuse or in some instances actually encouraged it. Gay male prisoners reported verbal harassment by openly homophobic guards.

Gay and transsexual prisoners in Brazil faced particularly degrading and discriminatory treatment in the hierarchical society of the men's prisons, according to a Human Rights Watch report. Many were confined in São Paulo's Casa de Detencao, most of them in a group of cells in Pavilion Five. A despised minority, they were forced by other inmates to remain in their cells on visiting days and to do "women's work" for the other prisoners, such as washing their clothes and serving as "sex slaves." Prison officials did nothing to intervene.

Police violence against and detention of gay and lesbians in Argentina continued in 1998, and Human Rights Watch representatives met with Argentinian government officials in October to discuss such abuses. According to a Human Rights Watch report, released in Buenos Aires in October, homosexuals were subjected to frequent arbitrary detentions, followed by police abuses that included extortion, verbal and physical violence, torture, inhuman and degrading detention conditions, robbery, compulsory HIV testing, sexual harassment and rape, false criminal accusations and death threats. Police in Argentina conducted *razzias* (raids) against members of homosexual communities, raiding bars, discos, and other meetings places and often detaining large groups at a time. Individuals were searched and detained for no apparent reason, according to the discretion of the police conducting the raid. Some transgender women in Mendoza, Argentina, were arrested and assaulted by police in 1998 and kept in basement cells with inadequate ventilation where they were sexually assaulted and denied access to medical treatment.

In Malaysia, the arrest in September of the former deputy prime minister, Anwar Ibrahim, caused an international outcry, especially when evidence and testimony indicated that he had been beaten by police, denied sleep, and subjected to threats and psychological abuse. Authorities planned to try Mr. Anwar for sodomy, which is illegal under Malaysian law. Although sodomy is a bailable offense, at the time of this writing he was being detained under the Internal Security Act which allows a person to be held indefinitely without charges or trial. Human Rights Watch called for an independent investigation into the treatment of Mr. Anwar, and, among other things, protested that laws criminalizing consensual private sexual acts between adults are a flagrant violation of human rights protections. Observers believed that Mr. Anwar was being punished for his increasingly critical comments about official corruption, cronyism, and Prime Minister Mahathir's management of the national economy. Human Rights Watch planned to send observers to his trial.

In Tunisia, similar tactics were used against the pre-eminent independent women's organization, the Tunisian Association of Democratic Women (ATFD). The organization was attacked in the government-influenced *al-Hadath* on March 11 in an article hinting that it was a vehicle for promoting lesbian sex.

President Robert Mugabe of Zimbabwe had been especially outspoken in recent years in vilifying homosexuals and blaming them for his country's ills. According to Mugabe, "Homosexuals have no rights whatsoever." He was quoted as having said, "If pigs and dogs don't do it, why must human beings?" At this writing, Mugabe was trying to block a local gay organization from joining a human rights session at the World Council of Churches meeting scheduled for December 1998 in Harare.

Keith Goddard, a Zimbabwean gay activist, was arraigned in June 1998 on sodomy charges after he complained to police about an attempt to blackmail him. At this writing, he was free, pending trial. Activists believed his arrest was part of Mugabe's campaign against the organization, Gays and Lesbians of Zimbabwe (GALZ), of which Goddard was the programs manager. As of this writing, judgment was indefinitely postponed by the judge in the trial of Zimbabwe's former president, Canaan Banana, on eleven charges of sodomy, attempted sodomy, and illegal assault. Banana, who was president from 1980 to 1987, had pleaded not guilty to all charges.

In neighboring Zambia, the Zambia Independent Monitoring Team (ZIMT), a nongovernmental human rights organization, began campaigning for gay and lesbian rights and gave its support to a new gay and lesbian association, despite hostile press coverage and threats from the government. The new group, which calls itself the Lesbians, Gays and Transgender Persons Association, applied for registration, which provoked Zambia's Vice-President Christon Tembo to declare that "anyone who promotes homosexual practices after today will be arrested." In October, President Frederick Chiluba denounced ZIMT for supporting homosexuality, which he called "unbiblical" and "against human nature." Former President Kenneth Kaunda, however, suggested that homosexuality was "here to stay" and that "we need time to examine it carefully."

**Relevant Human Rights Watch report:**
*Romania -- Public Scandals: Sexual Orientation & Criminal Law*, 1/98

# PRISONS

The number of people incarcerated in prisons, jails, and other places of detention around the world continued to rise during 1998, with few countries reporting decreases in their inmate populations. The resulting high levels of overcrowding—since rarely did new construction keep pace with the growth in inmate numbers—encouraged a range of chronic abuses. In some countries, mass killings, large-scale prisoner protests, or scathing official reports on prison deficiencies drew media attention to these abuses. More commonly, however, human rights violations against prisoners drew little public notice. Particularly in countries plagued by high rates of violent crime, too often reports of violence against prisoners, inhuman prison conditions, and egregious levels of overcrowding met with apathy and indifference. With the public primarily concerned about keeping prisoners locked up rather than about the conditions in which prisoners were confined, little progress was made toward remedying these problems.

In many countries, the public's tendency to ignore prison abuses was reinforced by high levels of official secrecy. By barring human rights groups, journalists, and other outside observers nearly all access to their penal facilities, prison officials sought to keep even egregious abuses hidden from public view. In Brazil, for example, prison authorities in the northeast barred researchers from both Human Rights Watch and Amnesty International

from interviewing prisoners who had witnessed a mass killing. Several countries, moreover, refused to disclose the most basic facts about their prisons—to the extent of keeping inmate numbers secret—while prohibiting all outside scrutiny. In the most extreme cases, including China and Cuba, the International Committee of the Red Cross (ICRC) was barred from providing basic humanitarian relief to prisoners. In September, the ICRC reported difficulties in obtaining access to detainees held by the Taliban in Afghanistan.

## Conditions of Confinement

Unchecked outbursts of violence continued to violate prisoners' right to life. In Colombia, an April riot at La Picota prison left fifteen inmates dead. The following month, at least twenty-two inmates were killed in a gang clash at the Professor Barreto Campelo prison in Pernambuco, Brazil. The failure of prison authorities to take reasonable measures to prevent or control such outbreaks violated international human rights norms.

Inadequate supervision by guards, easy access to weapons and drugs, failure to separate different categories of prisoners, and fierce competition for basic necessities encouraged inmate-on-inmate abuses in many penal facilities. Inmates at the bottom of the prison hierarchy frequently fell victim to extortion, intimidation, rape, and other forms of violence. In extreme cases—as in certain Venezuelan prisons, with one guard for every 150 prisoners and an underground trade in dangerous weapons—prisoners killed other prisoners with impunity. Among the weapons discovered in a late September series of searches of Caracas prisons, for example, were 115 firearms, three fragmentation grenades, and six Molotov cocktails. Murders, sometimes of more than one inmate, occurred with almost motonous regularity in the prisons of Venezuela. Six inmates were killed in a February incident there; four were killed in a March incident; another four were killed in an April incident; seven were killed in a May incident, and five were killed in a July incident.

Prison death rates were often far higher than corresponding numbers from outside the prison context, and in some instances were shockingly high. A human rights organization in Burundi reported in May, for example, that some 10 percent of inmates in Muyinga and Ngozi prisons had died during the first four months of the year. While violence was a factor in some penal facilities, disease—often the predictable result of severe overcrowding, malnutrition, unhygienic conditions, and lack of medical care—remained the most common cause of death in prison. Food shortages in Zambian prisons in July, for example, combined with terrible overcrowding, created ideal conditions for the spread of communicable diseases such as tuberculosis.

Tuberculosis, in particular, continued to ravage prison populations around the world. According to India's National Human Rights Commission, 70 percent of the country's inmate deaths were attributable to the disease. The spread of TB was especially worrisome in Russia, in light of the country's enormous prison population and the increasing prevalence of multi-drug resistant (MDR) strains of the disease. One of out every hundred inmates was reported to have active tuberculosis, with some 12 percent of sick inmates being affected by MDR strains, constituting a serious threat to public health. The epidemic of MDR strains was not confined to Russia but instead swept through prisons all over the former Soviet Union. In March, the ICRC announced that among the prisons of the Commonwealth of Independent States (CIS) the incidence of this serious infectious disease was five to fifty times greater than their national averages.

The HIV/AIDS epidemic also struck prison populations with particular severity, with penal facilities around the world reporting grossly disproportionate rates of HIV infection and of confirmed AIDS cases. In Brazil, for example, a late 1997 study concluded that some 20 percent of the country's inmate population was HIV-positive. Because the onset of AIDS left prisoners more vulnerable to tuberculosis, the two diseases often occurred together. To raise awareness of the epidemic and of how to respond to it in an effective way, the first-ever International Conference on HIV/AIDS in African Prisons was held in Senegal in February; prison authorities and nongovernmental organizations from around the continent attended.

Physical abuse by guards remained another chronic problem. Some countries continued to permit corporal punishment and the routine use of leg irons, fetters, shackles, and chains. The heavy bar fetters used in Pakistani prisons, for example, turned simple movements such as walking into painful ordeals. In many prison systems, unwarranted beatings were so common as to be an integral part of prison life. Women prisoners were particularly vulnerable to custodial sexual abuse (*see* section on Women's Human Rights.) In the aftermath of prison riots or escapes, physical abuse was especially predictable, and typically much more severe. After a December 1997 rebellion in a northeastern Brazilian prison, for example, seven of twenty-three escaping prisoners were killed by military police, at least two of them having been deliberately executed.

Extortion by prison staff, or its less aggressive corollary, guard corruption, was common in prisons around the world. Given the substantial power that guards exercised over inmates, these problems were predictable, but the low salaries that guards were generally paid severely aggravated the situation. Frequently, therefore, inmates resorted to bribes in exchange for contraband or special treatment. Powerful inmates in some facilities in Colombia, India, and Mexico, among others, enjoyed cellular phones, rich diets, and comfortable lodgings. Such advantages were often matched by the disadvantages accruing to their less fortunate brethren, who were, for example, provided poorer quality food and more cramped living conditions than they would otherwise have received.

Overcrowding—prevalent in almost every country for which information was available—was at the root of many of the worst abuses. In Honduras, for example, some 10,000 inmates were squeezed into prisons whose total capacity was reported to be 3,900. 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 130,000 detainees were held, overcrowding was so acute as to be life-threatening. In Rwanda, as in many other countries, inmates suffered long stays in these dreadful conditions. Human Rights Watch visited jammed police lockups in São Paulo, Brazil, designed for extremely short periods of detention, where inmates had been held for up to six years.

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

A different set of concerns was raised by the spread of ultra-modern "super-maximum" security prisons. Originally prevalent in the United States, where politicians and state corrections authorities persisted in their politically popular quest for more "austere" prison conditions, the supermax model was increasingly copied in other countries in 1998. Prisoners confined in such facilities spent an average of twenty-three hours a day in their cells, enduring extreme social isolation, enforced idleness, and extraordinarily limited recreational and educational opportunities. While prison authorities defended the use of super-maximum security facilities by asserting that they held only the most dangerous, disruptive, or escape-prone inmates, few safeguards existed to prevent other prisoners from being arbitrarily or discriminatorily transferred to such facilities. In Britain,

recognizing these concerns, the High Court agreed to hear a legal challenge to the selection procedures employed in sending prisoners to these high-security units. In South Africa, similarly, the harsh conditions and malleable transfer criteria of the notorious C-May prison received critical scrutiny from human rights advocates.

Fiscal constraints and competing budget priorities were to blame for prison deficiencies in some countries, but, as the supermay example suggests, harsh prison conditions were sometimes purposefully imposed. In Peru, notably, confinement at the recently constructed Challapalca prison, located at more than 14,000 feet above sea level, needlessly endangered inmates' health.

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.

Aging penal facilities were, in some countries, matched by old and outdated prison laws. In India as well as Trinidad and Tobago, for example, the prisons continued to be administered under nineteenth-century legal rules originally established by colonial governments. Such antiquated prison rules frequently embodied obsolete notions of the way in which prisoners ought to be treated. Japan's prison law exemplified this problem. Adopted in 1908, the law contained little acknowledgment of prisoners' claim to rights.

## Unsentenced Prisoners

Even those unsympathetic to convicted criminals and entirely skeptical of the idea of rehabilitation had reason to be concerned about the inhumane treatment of prisoners. Although comprehensive figures were impossible to obtain, the available statistics showed that an impressive numbers of the world's prisoners had not been convicted of any crime, but were instead being preventively detained at some stage of the trial process. In countries as varied as Bangladesh, Burundi, Chad, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, India, Mali, Nigeria, Pakistan, Peru, Rwanda, Uganda, and Venezuela, unsentenced prisoners made up the majority of the prison population. Indeed, some 90 percent of Honduran, Paraguayan, and Uruguayan inmates were unsentenced.

Worse, such detainees were in many instances held for years before being judged not guilty of the crime with which they were charged. In Venezuela, for example, the Ministry of Justice reported in May that the prison system held 1,531 unsentenced inmates who had each spent more than three years in confinement. In March, the Ugandan Human Rights Commission documented the cases of three prisoners preventively detained since 1991 without trial. Such prisoners were, in some countries, even incarcerated for periods longer than the sentences they would have served had they been found guilty of the crime for which they were held. In August, for example, an Indian newspaper ran a story tracing the case histories of several such inmates, including one who had spent eight years detained on charges of forging bail applications, an offense punishable by a maximum seven-year sentence.

With few means to draw public attention to violations of their rights, prisoners around the world frequently resorted to hunger strikes, self-mutilation, rioting, and other forms of protest. In Ecuador, a number of prisoners sewed their lips together in September to call attention to the inefficiency of the country's justice system, claiming that they had spent more than a year in prison awaiting trial. A similar protest broke out in Kenya's Shimo la Tewa prison in April as prisoners, some of whom had been held from two to five years awaiting trial, called a hunger strike to denounce the courts' chronic delays. That same month, hundreds of inmates in Roumieh prison in Lebanon rioted, protesting what they claimed were terrible conditions, torture by guards—including the intentional burning of one inmate—and a stalled justice system that left some prisoners detained for up to five years without trial. Other outbreaks of prison unrest were reported in Albania, Australia, Brazil, Canada, Colombia, the Dominican Republic, El Salvador, Honduras, Hong Kong, Mexico, New Zealand, Pakistan, Peru, Turkey, and Venezuela.

## Defending Prisoners' Human Rights

By struggling against the natural tendency toward secrecy and silence on prison abuses, 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 1999, as in the past. In Egypt, both the Human Rights Center for the Assistance of Prisoners and the Egyptian Organization of Human Rights released reports describing inmate deaths resulting from mistreatment and the denial of medical care. Exemplifying the dangers inherent in such vigorous advocacy, Abbas Amir-Entezam, Iran's former deputy prime minister who was once himself incarcerated, faced defamation charges in September for his statements exposing that country's harsh prison conditions.

In some countries, moreover, government human rights ombudspersons, parliamentary commissions, and other official monitors helped call attention to abuses. In the United Kingdom, notably, the chief inspector of prisons continued his vigorous investigations of the country's penal facilities, despite reported pressure from prison authorities to tone down his criticisms. Similarly, Argentina's prison ombudsman monitored and reported on prison abuses in the country's federal prisons, visiting numerous facilities. In May, the Inspectorate of Prisons in Malawi released a forceful report on prison abuses, revealing the prisons' high death rate, shocking levels of overcrowding, and appalling lack of medical care.

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 some eleven countries in 1999, including those of Andorra, Finland, Iceland, Ireland, Sweden, Macedonia, and the Ukraine. In May, Russia, which confined one of the world's largest prisoner populations, ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the treaty authorizing the CPT's monitoring. As of September 1999, a total of forty countries were party to the convention.

In Africa, the special rapporteur on prisons and conditions of detention, an adjunct to the African Commission on Human and Peoples' Rights, completed his second year. In November 1997, he delivered a report on prison conditions in Mali, the fruit of an August mission to the country. Among his most notable findings, the special rapporteur documented long terms of pretrial detention—lasting up to six years in some cases—widespread mixing of juvenile and adult prisoners, the use of chains and leg irons, severe beatings of prisoners, dilapidated prison facilities, and custodial sexual misconduct. His 1998 visits included prisons in Mozambique and Madagascar.

### U.N. Monitoring Efforts

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 regular and *ad hoc* visits to places of detention in states party to the treaty, including prisons, jails, and police lockups. As described in the draft treaty—conceived as an optional protocol to the Convention Against Torture—the 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.

In what turned out to be the least productive set of meetings of a nearly decade-long drafting process, the working group opened its seventh two-week session in September 1999. Although most countries active in the deliberations—including Costa Rica, South Africa, Switzerland, Chile, the Netherlands, Sweden, Denmark, and Australia—clearly favored establishing a strong and workable mechanism, a few recalcitrant states such as the United States and Cuba succeeded in hindering 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 were able to have an exaggerated impact on the negotiations. At the end of the session, not only had little progress been made toward finalizing the draft text, but the state representatives in attendance were unable even to agree upon a final report of their deliberations.

Other U.N. bodies aggressively pressed countries to improve their prison conditions. During its sixty-third session, the U.N. Human Rights Committee expressed concern over deficient prison conditions in Italy and Tanzania, two countries whose implementation of the International Covenant on Civil and Political Rights was under periodic review. With regard to Ecuador, the committee was troubled by the long periods of pretrial detention endured by many criminal suspects, caused by the justice system's chronic delays.

For its part, the U.N. Commission on Human Rights adopted a resolution on Nigeria in April, citing the country's "life-threatening prison conditions" and calling on the government to "ensure that the treatment of prisoners and their conditions of detention are in accordance with recognized international standards."

### Relevant Human Rights Watch reports:

*Castigados sin condena: condiciones en las prisiones de Venezuela*, 5/98 (updated Spanish-language edition, *Punishment without Trial: Prison Conditions in Venezuela*, 3/97)
*Nowhere to Hide: Retaliation Against Women in Michigan State Prisons*, 9/98
*Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States*, 10/98
*Behind Bars in Brazil*, 12/98

# Refugees, Displaced Persons, and Asylum Seekers

The link between forced displacement and human rights is a crucial one. Human rights violations are a principal root cause of forcible displacement; the human rights of the displaced—asylum seekers, refugees and internally displaced persons alike—are frequently violated and threatened while they are displaced; and respect for fundamental human rights is a key factor in the search for a durable solution to any situation of displacement.

By the end of 1997 there were an estimated 13.6 million refugees and asylum seekers worldwide and an estimated seventeen million internally displaced persons. While the number of refugees and asylum seekers had dropped from 14.5 million in 1996, the number of internally displaced persons had grown significantly.

This illustrated several inter-connected global trends which continued in 1998. Violent internal conflicts in countries such as Colombia, Sierra Leone, and Kosovo, in which civilians were targeted and forced displacement was a deliberate tactic of warfare, led to an ever-growing number of internally displaced persons. At the same time, countries of asylum throughout the world were becoming increasingly reluctant to host refugee populations. Policies of containment and deterrence had become the norm, and refugees were increasingly barred entry and returned to countries where their lives and liberty were at risk, in clear violation of the international principle of *non-refoulement*. In western Europe and North America, a barrage of restrictive measures made it ever more difficult for asylum seekers to find refuge, while from Malaysia, Tanzania, and a score of other countries, refugees were forcibly returned to countries where their lives were in danger and their human rights could not be guaranteed. Across the globe, states were more preoccupied with protecting themselves *against* refugees than providing protection *to* them.

Furthermore, 1998 witnessed the continuation of an alarming trend away from an equitable and global sharing of responsibility for the world refugee crisis. Through increasingly elaborate strategies the wealthy, industrialized states of the north were shifting the "burden" back onto those

states least able to bear the brunt, and failing to take equal responsibility for what remained a global problem. The desire of west European states to contain potential refugee flows from Kosovo, Turkey, and northern Iraq through "in-country" and regional strategies, and the very slow international response to the major refugee crises in west Africa (Guinea, Liberia, and Guinea Bissau), were but a few examples of failures in international responsibility sharing in 1998. As a result of these trends, people were less likely to be able to find lasting refuge from violence, persecution and discrimination. In the year of the fiftieth anniversary of the Universal Declaration of Human Rights, many states appeared to have forgotten that the right to "seek and enjoy in other countries asylum from persecution" is a fundamental and universal human right and one which cannot be bargained away.

Although both the human rights and humanitarian sectors in the past have tended to work in parallel, without often acting on the fundamental connection between refugee protection and human rights, there has been a growing awareness in recent years of the critical role that human rights monitoring can play in promoting the rights of refugees, asylum seekers, and the displaced—especially with regard to refugee protection, which has come under increasing threat in countries across the world.

Human Rights Watch monitors the entire spectrum of the refugee experience: from the human rights violations that cause refugee flows; to conditions during flight and reception in the country of asylum; to protection of refugees' human rights in countries of asylum; to the search for a durable solution and conditions of return; and finally, to post-return human rights monitoring, rehabilitation, and reintegration.

## Responsibility Sharing

The vast majority of the world's refugees continued in 1998 to seek haven in the poorest states. Countries in the developing world have long offered refuge to thousands of people who flee en masse from persecution, civil conflict, violence, discrimination, and social and economic hardships. Sadly, this tradition of generosity has been changing over recent years, as countries in the developed and developing world alike close their doors to those seeking asylum. This trend has been led largely by the industrialized states of the north, which in proportional terms host very few of the world's refugees.

### Western Europe

Throughout 1998 western European states demonstrated a growing reluctance to provide refuge to asylum seekers. Governments favored "in-country" strategies such as "safe havens", "preventive protection" and "internal flight alternatives" as methods to contain and stem refugee flows from the Balkans, the Middle East and elsewhere. "Safe third country" and "safe country of origin" policies designed to limit states' obligations to asylum seekers continued to be applied. Carrier sanctions, visa restrictions, and widespread use of often lengthy detention were used as deterrent strategies and served to criminalize the act of seeking asylum. Accelerated procedures, limited rights of appeal, and restrictive interpretations of the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol continued to deprive asylum seekers of international protection.

Moreover, the trends in European asylum policy throughout 1998 suggested states' growing unwillingness to adhere to their obligations under the 1951 convention. A demonstration of this attitude was the response of E.U. states to the arrival of several thousand Turkish and Iraqi Kurds in Italy in January. Panic at what was perceived as a "mass influx" prompted the E.U. to adopt an "E.U. Action Plan on the Influx of Migrants from Iraq and the Neighboring Region" of which Human Rights Watch was heavily critical (*see* section on Asylum Policy in Western Europe).

Human Rights Watch has also been very concerned at the trend away from providing full refugee status towards variants of temporary protection. Temporary protection was always intended to be an exceptional measure to deal with mass influxes of refugees, as occurred during the crisis in the former Yugoslavia from 1992 onwards. Government practice and policy debates in 1998 suggested, however, that temporary protection was becoming the norm. In its role as presidency of the E.U., the Austrian government proposed introducing a new temporary protection regime and solidarity scheme for the reception of refugees in Europe which would supplement, amend, or replace the existing 1951convention, arguing that the convention was no longer applicable to most asylum seekers coming to Europe. This shift towards temporary protection may ultimately result in fewer rights for refugees, absolve governments of many of their international obligations, and shift the burden back to poorer developing countries which are least equipped to deal with large population influxes.

### Africa

Countries in Africa continued to offer asylum to some three million refugees in 1998. In west Africa the states of Guinea and Liberia provided refuge to over a quarter-million new refugees fleeing the atrocities committed following a resurgence of violence in Sierra Leone starting in February. In 1998 Guinea proved a generous host to the largest number of refugees in Africa—a total of 430,000. In some parts of Guinea the refugee population actually outnumbered the host area's inhabitants. Despite the enormous burden borne by these countries, however, the international community—with the exception of the U.S. and the E.U.—was slow to respond. By the end of 1998 urgently needed funds and logistical support were still not forthcoming. Some camps in Guinea had been cut off from assistance for several months, and malnutrition and mortality rates remained high. Lack of funds and resources to move camps away from precarious positions on the border with Sierra Leone meant that the security and protection of the refugees was jeopardized.

Elsewhere, countries with a generous record of providing asylum started to shut their doors. Tanzania, for example, which has offered generous and extended asylum to several million refugees over the past thirty years, started to tighten its asylum policies. Concerned about the heavy burden that large refugee populations placed on already over-taxed resources, the severe environmental degradation caused by refugee camps, and the effects of criminal and military elements amongst the refugees on local and national security, Tanzania closed its borders and engaged in roundups and expulsions of refugees living in its territory. At the beginning of 1997 Tanzania forcibly returned 126 Burundian refugees following the outbreak of violence at a refugee camp. Of these refugees, 124 were killed by the Burundian army on arrival. In late 1997, again on grounds of security, the Tanzanian government rounded up close to one hundred thousand Burundian and Congolese migrants and long-term refugees (including an estimated 50,000 children), some of whom had been in the country since the 1972 massacre in Burundi, and forced them into refugee camps.

### Kosovo

The international community's failure to take equitable responsibility for the problem of mass population displacements was vividly demonstrated in the emerging crisis in Kosovo. As of September, conservative estimates suggested that the conflict had created more than 260,000 internally displaced persons and more than 30,000 refugees. At the beginning of the crisis European states made it clear that they favored "in-country" or regional strategies to deal with population displacements resulting from the conflict and provided funds for this purpose to the Office of the United Nations High Commissioner for Refugees (UNHCR). Despite calls from UNHCR to halt deportations, Germany and Switzerland expelled more than a thousand rejected asylum seekers to Kosovo during the first five months of the conflict under the terms of readmission agreements with the Federal Republic of Yugoslavia. Human Rights Watch was able to interview some of these people, who described being handed over to Serb police at the airports in Switzerland and Germany and being detained, interrogated and beaten on return to Kosovo. Switzerland imposed a temporary ban on deportations of non-criminals in June 1999, while Germany maintained a de facto ban due to its inability to carry out deportations on the sanctioned Yugoslav national airline. Human Rights Watch remained concerned about the precarious status of Kosovar Albanians and met with German and Swiss authorities in September 1999 to raise its concerns.

In a further twist to the tragic circumstances in Kosovo, Montenegro closed its border to fleeing Kosovar Albanians in September 1999 and a few days later expelled more than three thousand people to Albania. With Albania in a state of internal turmoil and instability, with no refuge in Montenegro and with west European states unwilling to accept them, it was difficult to know where those fleeing the conflict in Kosovo could go. Human Rights Watch called on Montenegro to provide refuge to those displaced by the conflict and urged the international community to both ensure safe asylum to those fleeing the crisis and to further its relief efforts in Kosovo and neighboring countries.

## Detention of Asylum Seekers

In industrialized and developing countries alike, the detention of asylum seekers has become a common practice often used as a deterrent strategy to stem refugee flows. Asylum seekers are frequently detained, sometimes arbitrarily and indefinitely and without the right to judicial review. The detention of asylum seekers frequently obstructs their access to legal assistance and information and thus the right to a full and fair hearing of their asylum applications. Furthermore, detaining asylum seekers—many of whom may have escaped from countries where they have been imprisoned, tortured, and ill-treated, have fled in fear and are severely disoriented—can have a serious impact on mental health. Incarceration in often inhumane conditions alongside prisoners who are criminally convicted or accused, prolonged confinement in prisons or prison-like conditions, and severe restrictions on freedom of movement is entirely inappropriate treatment for asylum seekers who are not criminally convicted or accused and violates international standards on humane treatment in detention.

### United States

In 1999 Human Rights Watch published the findings of research conducted over eighteen months into detention of immigrants and asylum seekers in jails across the U.S. The U.S. Immigration and Naturalization Service (INS) housed more than half of its 16,000 detainees in local jails throughout the country in 1999. In visits to the jails and interviews with detainees Human Rights Watch found that the INS had failed to ensure that basic national and international standards requiring humane treatment and adequate conditions had been met. INS detainees were treated the same as local inmates, and jail staff were not trained to deal with the special problems of asylum seekers and immigrants. Many INS detainees had been physically abused by jail staff. Medical and dental care was found to be substandard at many of the jails, and access for families, friends, and legal representatives was severely curtailed due to strict jail rules that were inappropriate for immigration detainees. Lack of access to legal representation, information, and assistance often had serious implications for the cases of asylum seekers and immigrants and obstructed their right to a full and fair hearing.

Human Rights Watch recommended that detention conditions reflect the non-accused, non-criminal status of all INS detainees. Immigrant detainees should therefore not be held in local jails, prisons, or any other facility intended to house criminal populations. Asylum seekers should not, as a general rule, be detained. The right to seek and enjoy asylum is a basic human right, and individuals must never be punished for seeking asylum in the United States. Furthermore, the decision to detain an asylum seeker can be justified only when proven to be strictly necessary on a case-by-case basis. In all cases, Human Rights Watch urged that meaningful alternatives to detention should be utilized first before any decision to detain is made. Such alternatives include unsupervised and supervised parole, bail, and reporting systems. In cases where detention of asylum seekers is required, they should never be held in local

jails where necessary access to legal counsel and other resources is severely hindered.

## Repatriation or Refoulement?

As countries continued to favor voluntary repatriation as the preferred solution to refugee situations, debate about the conditions under which refugees return became one of the most controversial issues in refugee policy. The standard of voluntariness had been held up as the cornerstone of international refugee protection and the most important safeguard against the imposed return of refugees to countries where they could face persecution. In 1996 UNHCR published a handbook on voluntary repatriation which reiterated this principle. In practice, however, there were a series of incidents wherein refugees were forced to return to conditions of extreme insecurity where respect for their fundamental rights could not be guaranteed. Unfortunately UNHCR was party to the involuntary return of refugees to unsafe countries such as Burma and Rwanda and failed to provide refugees with adequate protection according to its own principles and guidelines.

As states and UNHCR adhere less and less frequently to the principle of voluntariness, there is an urgent need to re-examine standards to ensure that refugees are not forcibly returned to conditions where their basic rights and security are at risk and to ensure that the fundamental principle of non-refoulement is always upheld . Human Rights Watch is concerned that return should take place only to rights-respecting environments, within a clear human rights framework and according to clearly defined international human rights standards.

### Thailand

Even though it was not a party to the 1951 refugee Convention, Thailand was still bound by the principle of non-refoulement, which has a well-established status under international customary law. Nevertheless, as an October 1998 Human Rights Watch report documenting ten years of Thai policy towards Burmese refugees demonstrated, Thailand had repeatedly violated the principle of non-refoulement. During this period Thailand had on numerous occasions barred entry to refugees coming from Burma, pushed people back at the border, and expelled large numbers of refugees. Refugees were returned to border areas of Burma where their security could not be guaranteed, where serious human rights violations continued to occur, and where their safety and liberty were severely compromised. During 1998, it was reported that Thailand had effectively closed entry to the refugee camps for all new arrivals since June, thereby denying access to safe and secure asylum. Furthermore, in efforts to expel undocumented migrants from Thailand and in the absence of effective refugee status determination procedures, there was a serious fear that many people with a well-founded fear of persecution would be forcibly returned to Burma. Human Rights Watch called on the Thai government to ensure access to asylum to those fleeing Burma, cease rejection at the border, and cease the forced return of those with a well-founded fear of persecution.

## Protection and Security

Unfortunately, when large numbers of people flee situations of conflict and grave human rights violations, their security and protection often remain at risk even when they reach places of refuge. The problem of security in refugee camps has received a great deal of international attention in recent years, largely, but not only, prompted by the ongoing refugee crisis in the Great Lakes region of Africa. The militarization and non-civilian character of refugee camps, the use of camps as military training grounds, cross-border attacks and incursions, the forced conscription and abduction of children into armed forces, and sexual and domestic violence against women are all problems that Human Rights Watch has reported on in the course of monitoring refugee situations in the Great Lakes region, Tanzania, Guinea, Liberia, Thailand and Pakistan.

### Guinea and Liberia

In both Guinea and Liberia the proximity of the refugee camps to the border with Sierra Leone and the presence of former combatants amongst the civilian refugee population in the Liberian camps posed serious security problems in 1998. Plans to relocate the Guinean refugee camps to a safer distance away from the border were hampered by very poor infrastructure, serious logistical problems, and a lack of funds. Cross-border attacks and shooting posed a constant threat for refugees. One camp, Toumandou, located less than ten kilometers from the Sierra Leone border, was attacked in September, and seven refugees were killed.

In Liberia, many former combatants identified themselves in hope of being demobilized and reintegrated into civilian society. Vahun camp, situated several kilometers away from the border, was infiltrated by rebel AFRC/RUF soldiers, some of whom used the camp as a base for recruitment, to sell looted goods from Sierra Leone, and to re-stock on food, supplies, and clothing. The camp's proximity to the border also made it vulnerable to cross-border attacks and looting. In June 1998 plans were underway to relocate the refugees to Kolahun camp, located fifty kilometers from the border. By September, 18,000 refugees had been relocated to Kolahun, while 15,000 remained in Vahun. Unfortunately, ex-combatants remained mixed with the refugee population, and no attempt appeared to have been made to screen or separate civilians from combatants.

The Guinean government, on the other hand, screened out and detained suspected AFRC/ RUF soldiers trying to enter Guinea. Neither UNHCR or the International Committee of the Red Cross (ICRC) were given access to the detainees, and the procedures and criteria used to screen out former combatants were not made public. Concerns were raised that some of those detained may have had a valid claim to international refugee protection and should have been screened according to international standards. In some cases soldiers were returned to the authorities in Freetown and there was little information about their whereabouts and safety. Human Rights Watch voiced concerns that individuals suspected of having committed war crimes should be held accountable for the violations they had committed in accordance with international standards. On October 19 1998, twenty-four AFRC/RUF soldiers were executed in Freetown following hearings in a military court that did not conform with international human rights standards.

Not only did proximity to the border and the presence of former combatants undermine security and protection in the camps, but it also seriously hampered the delivery of humanitarian assistance. In June 1998, the Guinean government closed access to some fifty refugee camps along the border—housing more than 150,000 refugees—due to the escalation of fighting on the Sierra Leone side of the border and cross-border shooting. Although access was resumed a month later, delivery of humanitarian assistance remained sporadic, and many refugees still did not receive adequate food and other supplies. Due to poor coordination among humanitarian agencies, precarious road conditions, and an uncertain security situation, refugees in Vahun camp only received one fourteen-day ration from UNHCR between February and June 1998.

### Thailand

Burmese refugee camps along the Thai-Burmese border housing refugees from different ethnic minority groups were also the target of frequent cross-border attacks and military incursions from 1994 to 1998. Close proximity to the border and the association of the refugees with ethnic minority rebel armies made the camps especially susceptible to cross-border attacks, abductions, and killings by both the Burmese army and splinter groups operating with the tacit consent of the Burmese government. In March 1998, the Democratic Karen Buddhist Army (DKBA) attacked three refugee camps, killing five people and leaving 300 homeless. In one camp, Huay Kaloke, over 95 percent of the dwellings were destroyed. Eight months later, refugees from these camps had still not been relocated or rehoused.

### Women refugees

Women refugees often faced particular protection and security risks in refugee camps. In many situations women made up a high proportion of the refugee population and there were a large number of women-headed households. This could be because male family members were away fighting, farming, working or trading, or because many men had been killed in conflict. Refugee women were subjected to rape, sexual exploitation, sexual abuse, and sexual violence in refugee camps. Levels of domestic violence could also be very high in refugee settings. To respond to some of these very serious protection problems, UNHCR compiled and disseminated guidelines on the protection of refugee women and on sexual violence against refugees.

In a mission to the Burundian refugee camps along the border between Burundi and Tanzania in May 1998, Human Rights Watch identified high rates of sexual and domestic violence against women refugees, perpetrated for the most part by other refugees. In most cases rape occurred either in the camps or outside while the women and girls were collecting firewood. Although the problem had been acknowledged by UNHCR and was beginning to be addressed in some camps through the hiring of a UNHCR consultant and through a sexual and gender violence project run by an implementing partner, the International Rescue Committee (IRC), Human Rights Watch noted a reluctance by UNHCR protection officers and the Tanzanian government to address the matter of sexual violence as a serious protection problem. UNHCR staff were not taking active measures to implement their own guidelines on the protection of refugee women and on the prevention of such violence in order to prevent further sexual violence from occurring in the camps, were not seeking to investigate incidents of sexual violence, and had taken almost no measures to bring the perpetrators to justice. The problem of domestic violence remained largely unrecognized, and the perpetrators enjoyed free movement in the camps.

## Preventive measures

In all the above cases, Human Rights Watch supported various measures to improve protection and security. These included moving camps to a safe distance away from borders to prevent cross-border attacks; thoroughly screening refugee populations to ensure the civilian nature of camps; applying more rigorously the exclusion clauses of the 1951 convention, which exclude certain categories of individuals (such as war criminals) from international protection; strengthening UNHCR's protection mandate; and improving the quality of protection provided in the field through better training of UNHCR field staff, including training in human rights and humanitarian standards. In response to the high incidence of sexual and domestic violence, Human Rights Watch has called for a more proactive implementation of existing guidelines on refugee women and sexual violence and for these matters to be dealt with as serious protection concerns by UNHCR and government staff. There is also an urgent need for UNHCR to more proactively address the problem of domestic violence in refugee camps, through the creation and implementation of guidelines and appropriate training of UNHCR and NGO staff. Greater community education is needed within refugee camps to provide education and awareness-raising around issues of gender-based violence. At the same time, the physical security of women in refugee camps must be enhanced and strong action taken to bring the perpetrators of sexual and domestic violence to justice.

In all these efforts, Human Rights Watch has advocated that protection and security must be provided within a rights-respecting environment. Security interests should not mean that fundamental rights such as freedom of movement are jeopardized. International protection must continue to be provided to all those deserving of it, and camps should not be arbitrarily closed. Concerns about security should not mean that refugee settlements are managed in a non-participatory, authoritarian manner.

## Relevant Human Rights Watch reports:

*"Prohibited Persons": Abuse of Undocumented Migrants, Asylum Seekers, and Refugees*, 3/98
*Sowing Terror: Atrocities against Civilians in Sierra Leone*, 7/98
*Locked Away: Immigration Detainees in Jails in the United States*, 9/98
*Unwanted and Unprotected: Burmese Refugees in Thailand*, 10/98