

## GLOBAL ISSUES

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**T**hroughout the year, Human Rights Watch engaged in a number of major campaigns and advocacy initiatives on issues of global significance and impact. From international justice to economic development, from the counterterrorism agenda to refugee issues, we had a significant impact on a number of critical international debates, either pushing new boundaries for human rights or defending the achievements of recent years in an increasingly difficult world environment.

### INTERNATIONAL JUSTICE

On July 1, the world celebrated a major achievement for international justice and human rights with the entry into force of the treaty establishing a permanent International Criminal Court (ICC). The court will be able to investigate and prosecute those individuals accused of crimes against humanity, genocide, and war crimes when national courts fail to act. At the time of writing, eighty-seven states had become parties to the ICC treaty.

This triumph notwithstanding, Human Rights Watch joined with other supporters of the ICC—governments and nongovernmental organizations (NGOs) alike—in defending the court against systematic attacks by the United States. The U.S. claimed to fear politically motivated investigations and prosecutions of its military and political officials and personnel. But given the safeguards built into the ICC treaty against such a scenario, the U.S. appeared to be more ideologically opposed to being held accountable to international law.

The U.S. was one of only seven states (with China, Iraq, Israel, Libya, Qatar, and Yemen) to vote against the Rome Statute of the International Criminal Court in 1998. But former president Bill Clinton had chosen to sign the Rome Statute on the eve of his departure from office, with a view to maintaining U.S. influence on the establishment of the court. However, in an unprecedented diplomatic maneuver on May 6, 2002, the Bush administration effectively withdrew the U.S. signature of the treaty. While U.S. Ambassador for War Crimes Issues Pierre-Richard Prosper claimed the administration was “not going to war” with the court, this renunciation of the treaty paved the way for a comprehensive U.S. campaign to undermine the ICC.

First, the Bush administration sought a United Nations Security Council reso-

lution providing an exemption for U.S. personnel operating in U.N. peacekeeping operations. After failing in May to obtain a specific exemption for peacekeepers in East Timor, the Bush administration vetoed an extension of the U.N. peacekeeping mission for Bosnia and Herzegovina in June unless the Security Council granted a complete exemption. Human Rights Watch lobbied intensively with Security Council members and ICC supporting states to block the U.S. move, warning not only of the dangers to the court but the dangers of Security Council members effectively using their veto power to rewrite international treaties. Ultimately, the U.S. failed in its bid for an ironclad exemption; instead the Security Council approved a limited, one-year exemption for U.S. personnel participating in U.N. peacekeeping missions or U.N.-authorized operations, albeit with an intention to renew this measure on June 30, 2003.

Second, the Bush administration began to pressure states around the world to enter into bilateral agreements requiring them not to surrender U.S. nationals to the ICC. The goal of these agreements (“impunity agreements,” which the U.S. misrepresents as being consistent with article 98 of the ICC treaty) is to exempt U.S. nationals from ICC jurisdiction. They would lead to a two-tier rule of law for the most serious international crimes: one that applies to U.S. nationals; another that applies to the rest of the world’s citizens. Human Rights Watch campaigned actively for governments to reject this U.S. move, providing legal advice on the incompatibility of such agreements with the ICC treaty and encouraging public and parliamentary debate on the issue. We pressed the European Union (E.U.) to adopt a strong, collective response—but were deeply disappointed when the United Kingdom engineered a compromise whereby individual E.U. members could strike deals with the U.S. so long as they met a vague and unsatisfactory set of criteria. At this writing, however, only fifteen governments had signed such agreements with the United States: Romania, Israel, East Timor, Marshall Islands, Tajikistan, Palau, Mauritania, Dominican Republic, Uzbekistan, Honduras, Afghanistan, Micronesia, Gambia, El Salvador, and Sri Lanka.

Finally, the U.S. Congress backed up the Bush administration’s efforts to undermine the court by passing the American Servicemembers’ Protection Act (ASPA), which was signed into law by President George W. Bush on August 3. The ASPA prohibits U.S. cooperation with the ICC; authorizes the president to “use all means necessary and appropriate” to free U.S. personnel (and certain allied personnel) detained or imprisoned by the ICC (the so-called Hague Invasion provision); refuses military aid to states parties to the treaty (except major U.S. allies); and prohibits U.S. participation in peacekeeping activities unless immunity from the ICC is guaranteed. However, all of these provisions are offset by waiver provisions that allow the president to override ASPA “in the national interest,” rendering its impact discretionary.

Amidst these serious challenges to the fledgling court, the Assembly of States Parties held its historic first meeting from September 3 to 10 to facilitate the prompt establishment of the ICC. One of the most important challenges facing the court is the nomination and election of the first group of judges. Recognizing the crucial role the judges will play in establishing the credibility and impartiality of the court, Human Rights Watch campaigned for the nomination of highly qualified judges

with fair gender and geographical representation. Many civil society groups around the world joined us in the campaign for transparent nomination proceedings at the national level that would produce qualified candidates rather than political appointments. Now that thirty-one nominations have been made public, we have turned our attention to holding civil society interviews with judicial candidates. The judges and prosecutor will be elected in February 2003 and the court will be operational shortly after.

On other fronts, the year saw mixed developments in the work of the various ad hoc international criminal tribunals and other initiatives taken by the international community to ensure justice for the victims of specific human rights crises.

In the course of the year, the International Criminal Tribunal for the former Yugoslavia (ICTY) hit its stride. Trial and appeals chambers issued significant decisions. The three trial chambers conducted as many as six trials simultaneously. The judges continued, through further amendments to the rules of procedure, to expedite proceedings to reduce delays.

In February, prosecutors at the ICTY began to try Slobodan Milosevic on sixty-six counts of genocide, crimes against humanity, and war crimes arising from Croatia, Bosnia, and Kosovo. Indicted when a sitting head of state, Milosevic’s prosecution marked a qualitative step forward against impunity. Fair and orderly trial proceedings were maintained notwithstanding strains caused by Milosevic’s courtroom behavior.

The International Criminal Tribunal for Rwanda (ICTR) faced significant obstruction from the Rwandan government, which reacted to investigations into abuses committed by the Rwandan Patriotic Front (responsible for installing the present government in power) by restricting the travel of witnesses called to testify in the Arusha court. Human Rights Watch urged the Security Council and influential governments to bring pressure to bear on the Rwandan government to renew its cooperation with the ICTR.

In Sierra Leone, the U.N. moved ahead with the establishment of a special court to try those most responsible for the grave abuses that had marked that country’s civil war. As the first mixed national and international tribunal of its kind, operating in conjunction with a Truth and Reconciliation Commission, the Special Court for Sierra Leone represents an important new model for international justice. Human Rights Watch provided active support to the court, drawing upon both our long-term research on Sierra Leone and policy experience with tribunals and truth commissions elsewhere.

In East Timor, however, the victims of grave abuses committed by the Indonesian military and local militias in the lead up to the country’s 1999 independence vote still awaited justice. In August, the first verdicts in cases tried before a specially established human rights court in Jakarta were announced: only one of seven defendants charged with crimes against humanity, former East Timor governor Abilio Soares, was convicted and given an unconscionably light sentence of three years of imprisonment. In late November, another East Timorese, Eurico Guterres, was sentenced to ten years of imprisonment also for crimes against humanity; four other defendants, including three Indonesian military and police, were acquitted. The verdicts exemplified Indonesia’s lack of will to bring its military and police to

account for the violence in East Timor. By contrast, the underresourced and underfunded U.N. Serious Crimes Investigation Unit in East Timor continued to prosecute East Timorese before the Special Panels of the Dili District Court (a mixed national/international justice mechanism). Efforts to prosecute Indonesians there remained almost entirely unsuccessful due to Indonesia's refusal to honor international arrest warrants.

In Afghanistan, sadly, there was almost no progress toward accountability for past abuses. The Bonn peace agreement left open the question of whether and how perpetrators might be brought to justice, but the inclusion of many powerful warlords in the new government created a formidable obstacle. While the newly created Afghan national human rights commission was asked to lead consultations within Afghan society on options for justice, these issues received little support and attention from the U.N.'s own mission in Afghanistan, fearful that they might undermine the fragile peace rather than consolidate it.

In Cambodia, negotiations between the government and U.N. on measures to bring Khmer Rouge leaders to justice stalled. The U.N. legal office announced it was withdrawing from further discussions on the establishment of a special "mixed tribunal" composed of both Cambodian and international judges and prosecutors when the Cambodian National Assembly passed a law setting up such a tribunal with serious shortcomings from a human rights perspective. In late 2002, however, Japan and France sponsored a resolution in the U.N. General Assembly requesting the secretary-general to resume negotiations. However, many governments expressed serious reservations about the lack of assurances of good faith from the Cambodian government.

Human Rights Watch continued to make progress on the case against Chad's exiled former president, Hissène Habré. Habré lives in exile in Senegal, where he was indicted in February 2000 on charges of torture and crimes against humanity before Senegal's highest court ruled a year later that he could not be tried there. Habré's victims are now seeking his extradition to stand trial in Belgium based on that country's model universal jurisdiction law, and Senegal has agreed to hold Habré pending an extradition request. In February and March 2002, a Belgian judge and police team visited Chad with the cooperation of the Chadian government, opening a significant breach in the wall of secrecy and impunity in a country where Habré's most brutal henchmen still occupy many key security posts. The team visited Habré's jails and mass grave sites, took the testimony of a number of Habré's associates, and even allowed former victims to confront their torturers.

Continued progress on the Habré case, as well as on others filed in Belgium, will depend however on the outcome of an ongoing debate over the continuing validity of Belgium's universal jurisdiction law, which came under attack on a number of fronts. A disappointing ruling by the International Court of Justice found that a Belgian arrest warrant against the then-acting foreign minister of the Democratic Republic of Congo (DRC) violated international law by refusing to recognize the minister's immunity from criminal jurisdiction. The ruling ignored a growing trend in international law against immunity for the worst atrocities, but left intact the Belgian law's provisions allowing prosecution of crimes against humanity in Belgium regardless of the crimes' connection to Belgium or the accused's presence

on Belgian soil. Later, however, Belgian appeals courts restricted the law's application to defendants already on Belgian territory, rulings that would effectively bar the prosecution of defendants such as Habré.

Human Rights Watch joined Belgian and international NGOs in a campaign to preserve the law, and helped victims from Chad, Rwanda, Guatemala, and elsewhere make their case. We argued that victims had taken great risks to file cases in Belgium and that it would be irresponsible to curtail the law now and leave the victims exposed. As of July, a political majority had coalesced to retain the law's essential features, but the Belgian Employer's Federation, with U.S. government support, was still lobbying to undermine the law.

In an exercise of universal jurisdiction, a Danish court on November 19 began proceedings against Nizar al-Khazraji, former chief of staff of Iraq's armed forces, for his suspected involvement in war crimes perpetrated in Iraq against Kurdish civilians during the 1980-88 Iran-Iraq war. He was charged with violating articles 146 and 147 of the Fourth Geneva Convention Relative to the Protection of Civilians in Time of War.

## UNITED NATIONS ISSUES

Throughout the year, Human Rights Watch played a frontline role in defending the United Nations' human rights system from attack. The 2002 session of the U.N. Commission on Human Rights proved to be one of the most difficult in memory, with a solid bloc of hostile governments seeking to protect each other from scrutiny and undermine the commission's capacity to spotlight abuse. Procedural motions were used to an unprecedented degree to prevent debate on countries such as Zimbabwe, and the reporting of special rapporteurs was severely curtailed on the basis of time pressures and budget constraints.

The United States, which in 2001 for the first time had not been elected as a member (but was reinstated at the end of the 2002 session), obstructed positive initiatives, such as a Mexican draft resolution on protecting human rights in the fight against terrorism. And European governments spent more time seeking to build consensus, both amongst themselves and with abusive governments, than galvanizing criticism where it was needed. Votes to censure Russia over its conduct in Chechnya and to extend scrutiny of Iran were defeated by narrow margins, and no member of the commission showed the political will to even introduce a resolution critical of China.

In an initiative led by Cuba, some of the most abusive governments launched a review of the commission's procedures, ostensibly to "strengthen and improve the effectiveness of its working methods," but in reality to undermine its ability to subject countries to human rights scrutiny and criticism. Human Rights Watch worked with a coalition of human rights NGOs to influence this process, mobilizing progressive governments from all regions to suggest positive reforms and defend the commission from attack. We lobbied for improved reporting procedures that would ensure better follow up to the findings of different treaty bodies and special rapporteurs and engage countries in more interactive debates.

The African Union's decision to nominate Libya, with its poor record on human rights, as the regional group's candidate to chair the 2003 session galvanized political attention to the crisis at the commission. Human Rights Watch called on African leaders to reconsider their decision and put forward a more positive candidate for the chair's election in January 2003, particularly in light of their commitments to human rights under the New Partnership for African Development (NEPAD). At the same time we engaged in dialogue with Libya and other governments to set clear expectations for the incoming chair. Human Rights Watch campaigned for the adoption of criteria for the election of commission members, particularly for key posts like the chair. These might include ratification of the major human rights treaties, full cooperation with the U.N. treaty bodies, and standing invitations to the U.N.'s special rapporteurs to conduct investigations on the ground.

The year saw another important transition with Mary Robinson stepping down as high commissioner for human rights, to be replaced by Sergio Vieira de Mello. Human Rights Watch encouraged the new high commissioner to use his outstanding diplomatic skills to build on Mrs. Robinson's important legacy, and to be a fearless voice for victims in the face of even the most powerful governments. We had a number of positive discussions and other communications with Mr. Vieira de Mello on priorities for his office, particularly in the light of challenges at the commission and in the context of the global fight against terrorism. U.N. Secretary-General Kofi Annan tasked the high commissioner with a comprehensive review of his office, the treaty bodies, and U.N. special procedures on human rights, which will be a major priority for Human Rights Watch in 2003.

Throughout the year, Human Rights Watch highlighted instances in which the fight against terrorism had been used opportunistically by governments to justify the repression of opponents or new curbs on refugees and foreigners. We urged the United Nations to ensure that human rights were integrated into the international response to terrorism, for instance in the work of the Security Council's counter-terrorism committee. We also encouraged the high commissioner for human rights, the treaty bodies, and special rapporteurs to examine the impacts within their mandates of counter-terrorist measures. Mexico showed positive leadership at the Commission on Human Rights and U.N. General Assembly by tabling resolutions highlighting these issues. While the draft resolution ended up being withdrawn at the commission, another version was passed by the General Assembly, affirming the importance of protecting human rights in the fight against terrorism and requesting the high commissioner for human rights to monitor and make recommendations on the human rights impact of counter-terrorist measures.

One of the most positive achievements of the year was the adoption of an Optional Protocol to the Convention Against Torture, establishing a system of inspection visits to prisons and places of detention worldwide. Human Rights Watch had campaigned tirelessly for the protocol with a coalition of NGOs during long years of difficult negotiations. A breakthrough was achieved at the 2002 session of the commission when Costa Rica presented a composite text which received broad cross-regional support. The text was actively opposed, however, by the United States, Australia, Israel, and Japan—along with more traditionally hostile

governments such as Cuba, China, and Iran. While the United States argued about the system's potential cost and compatibility with its own constitutional requirements, U.S. opposition appeared to reflect a deeper aversion to the development of international law, as seen also in the campaign against the ICC. (See above.) But the momentum behind this important initiative for the prevention of torture proved unstoppable and the protocol was adopted by a large majority at the U.N. General Assembly in November.

The United States also stood out against its allies at the U.N. General Assembly Special Session on Children in May 2002, where it sought to sideline the U.N. Convention on the Rights of the Child (which only the U.S. and Somalia have not ratified), and roll back previous international agreements to provide adolescents with sexual and reproductive health education and services. Human Rights Watch helped to bring together a coalition of more than one hundred national and international NGOs to press a broad range of child rights concerns, particularly the protection of children in armed conflict and from other forms of violence and exploitation. The session adopted a ten-year plan of action for children around issues of health, including HIV/AIDS, education, and ending violence, abuse, and exploitation. The U.N. also initiated a major new study on violence against children to be carried out over the next two years, which will help to open up an important new policy agenda for children's rights.

## HUMANITARIAN ISSUES

### Child Soldiers

The year also saw important developments in the international campaign to stop the use of child soldiers. The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, which prohibits the use of children under the age of eighteen as soldiers, entered into force on February 12, 2002. Human Rights Watch joined the international Coalition to Stop the Use of Child Soldiers in marking this important milestone, including by planting thousands of "red hands" (the symbol of the campaign) around the grounds of the U.N. complex in Geneva. By the time of writing, 111 states had signed the Optional Protocol and forty-two had ratified, laying the foundation for a global ban on the use of child soldiers. As part of the campaign in the U.S. on this issue, Human Rights Watch successfully pushed for Senate approval of the Optional Protocol.

The impact of armed conflict on children, including the recruitment and use of child soldiers, also received renewed attention in the U.N. Security Council. In November 2001, the Security Council passed Resolution 1379, its third major intervention on this issue. Significantly, it called for the secretary-general to present the Council with a list of governments and armed groups using child soldiers in breach of their international obligations. Human Rights Watch worked with the Coalition to Stop the Use of Child Soldiers to present the Council with a comprehensive submission, listing twelve governments and eighty-five armed groups in twenty-five



countries. The Security Council unfortunately confined its scrutiny to situations already on its agenda, and although the secretary-general's report had not been presented at the time of writing, it was expected to name government forces and armed groups in just a handful of countries. Nevertheless, the Council's request set an important new precedent for international censure and sanction on this issue.

During the year, Human Rights Watch undertook in-depth research on two of the world's worst cases of the use of child soldiers: Burma and Colombia. In Burma, the national army was found to systematically and forcibly conscript children as young as eleven, and children were forced to participate in combat and in human rights abuses against civilians. Although evidence suggested that as many as seventy thousand children were part of Burma's army, the government persistently denied its use of child soldiers. Human Rights Watch documented the use of child soldiers also by most of Burma's ethnic armed opposition groups. In Colombia, Human Rights Watch interviewed more than one hundred former child combatants who had fought with left-wing guerrilla and right-wing paramilitary groups. Many were as young as eleven when recruited, and most had participated in combat. Once in the ranks, children who ran away were often killed as suspected informers if they were caught, and some children were forced to carry out executions themselves.

While these situations remained grave, there were notable breakthroughs elsewhere, with significant demobilization of child soldiers in Sierra Leone and southern Sudan, and some progress in Afghanistan and the DRC. In Sri Lanka, the rebel Liberation Tigers of Tamil Eelam committed to ending child recruitment and demobilizing children as part of their peace negotiations with the government.

### **Antipersonnel Landmines**

There were also great strides forward in global efforts to eradicate antipersonnel landmines. The number of states parties to the 1997 Mine Ban Treaty had grown to 130 as of mid-November 2002, and another sixteen countries had signed but not yet ratified. It was particularly notable that Afghanistan, Angola, and the DRC became states parties: all three are heavily mined countries that have recently used antipersonnel mines, only then to reject them in the wake of peace initiatives.

According to the *Landmine Monitor Report 2002*, coordinated by Human Rights Watch for the International Campaign to Ban Landmines (ICBL), the number of governments actively using antipersonnel mines dropped in the past year from thirteen to nine, and a total of seven million stockpiled antipersonnel mines were destroyed by Mine Ban Treaty states parties. In the five years since the treaty was initially signed, the number of new mine victims each year has dropped dramatically, the number of new mine clearance and other mine action programs has increased greatly, mine action funding has totaled over U.S.\$1.4 billion, the number of antipersonnel mine producing nations has dropped from fifty-five to fourteen, and global trade in antipersonnel mines has been reduced to a smattering of illicit or covert transactions.

However, the report also noted that ninety countries are still affected by landmines and/or unexploded ordnance (UXO), and there were new mine/UXO victims in sixty-nine countries. In the first half of 2002, India and Pakistan engaged in

some of the largest mine-laying operations anywhere in the world in many years. And in 2001, global mine action funding stagnated—the first time in a decade that a significant increase had not been registered.

The ICBL worked very closely with key governments to ensure the success of the Mine Ban Treaty's intersessional work program, as well as the Fourth Meeting of States Parties in September 2002, focused on interpretation and implementation of the treaty.

### **Convention on Conventional Weapons and Explosive Remnants of War**

Not unlike landmines, unexploded ordnance left behind after battle poses grave humanitarian risks to civilians. For example, cluster bombs disperse scores of volatile submunitions or bomblets over a wide area, many of which fail to explode on impact and lie in wait until triggered by an unsuspecting victim. International initiatives to tackle the problem of such explosive remnants of war (ERW) picked up momentum in 2002, focused in particular on the 1980 Convention on Conventional Weapons (CCW), which restricts and regulates the use of weapons that are "excessively injurious" or have "indiscriminate effects." In December 2001, at the Second Review Conference of the CCW, states parties formed a Group of Governmental Experts to evaluate ways to deal with ERW, including the possibility of negotiating a new legally binding instrument. The group was due to submit its final report in December 2002. Human Rights Watch has played an active role in advocating for a new protocol, and has encouraged the expert group to focus on ways of minimizing the dangers to civilians of cluster bombs.

### **Weapons Trade**

Following the failure of a 2001 international conference on small arms trafficking, Human Rights Watch worked with its partners to highlight the devastating humanitarian toll caused by the uncontrolled spread of such arms. For example, Human Rights Watch documented the dangerous nexus between small arms proliferation and political violence in a May 2002 report on Kenya. (See Kenya.) Human Rights Watch also contributed to efforts to control the global weapons trade from the supply side, emphasizing research and advocacy with respect to three priority areas: halting arms supplies to human rights abusers; stemming the trade in surplus weapons; and promoting the enforcement of arms embargoes. We also joined with other NGOs to promote the creation of a binding international legal instrument codifying minimum arms export criteria derived from the existing obligations of states under international human rights and humanitarian law.

Irresponsible arms trading by governments received increased attention in 2002, particularly in the context of sanctions busting and the fight against terrorism. For instance, serious allegations that the president of Ukraine approved an illegal arms sale to Iraq capped a long string of cases implicating Ukraine in illicit arms deals. The U.N. continued to monitor and report on violations of international arms embargoes on an ad hoc basis, documenting the ease with which unscrupu-

lous arms brokers, often based in Europe, use forged documents to obtain weapons. Partly in response to such cases, numerous European countries undertook to institute or strengthen controls on arms brokers. While these measures were of uneven scope and effectiveness, they helped contribute to momentum—spurred by non-governmental groups—to negotiate a regional or perhaps even international instrument on arms brokering. In an important development, some countries arrested and opened prosecutions against arms brokers accused of illegal dealing. The most notorious traffickers, however, remained free; some were believed to be protected by national governments.

Central and Eastern European countries that in 2002 were candidates for membership in the E.U. or NATO continued to supply many of the weapons that wound up in the hands of abusers. The prospect of E.U. and NATO enlargement thus offered leverage that both governments and nongovernmental groups like Human Rights Watch used to press for needed reforms, with some success. In 2002, legal controls over the conventional arms trade were tightened in two countries (Bulgaria and Slovakia), a number of countries in the region undertook to improve implementation of existing rules to help combat the diversion of authorized arms deals, and greater efforts were made to investigate possible breaches of arms embargoes and prosecute those responsible. More efforts were needed, particularly as military modernization programs in these countries were likely to exacerbate the flood of surplus weapons to conflict regions. With decisions on enlargement set to be finalized in late 2002, Human Rights Watch sought to ensure that E.U. and NATO member states kept up the pressure for reform and set a positive example with their own arms dealing.

In forging its international coalition against terrorism after the attacks of September 11, 2001, the United States changed its legal regime to facilitate arms transfers, granted military assistance to states involved in the war in Afghanistan, and increased and expedited counter-terrorism and military assistance programs. Some countries that benefited from the U.S. program—such as Uzbekistan, which received U.S.\$16 million in military financing and security assistance—have long histories of serious human rights abuse. Over the past year, Human Rights Watch has monitored and publicized this worrying trend and advocated for better controls on assistance, such as reporting requirements on military aid to Uzbekistan.

## **REFUGEES, MIGRATION, AND TRAFFICKING**

### **Global Backlash against Refugees and Migrants**

Human Rights Watch continued to advocate against the restrictive impact of counter-terrorist measures on migration and asylum policy worldwide. In the wake of the September 11 attacks many governments adopted punitive and restrictive measures against asylum seekers and migrants. In the United Kingdom, a new law authorized the prolonged, arbitrary detention of foreigners suspected of terrorist activity. In the United States, more than twelve hundred foreign nationals were secretly detained, most on immigration charges, and questioned as part of the

criminal investigation of the attacks on September 11. Although none were charged with crimes related to September 11, some were subjected to prolonged detention without charge and to interrogations without access to counsel. In many cases, deportation hearings were closed to the press, the public, and even detainees' family members on national security grounds.

Multilateral efforts also seriously eroded refugees' rights by linking them with terrorism. Ongoing debate among governments on the U.N. Draft Comprehensive Convention Against Terrorism continued to make unwarranted linkages between asylum seekers or refugees and terrorists. Human Rights Watch continued to critique claims that the 1951 Refugee Convention is inadequate for the exclusion of terrorists from refugee status, or that recourse to the protections of the convention somehow offers safe haven to terrorists.

### **Secondary Movement**

Efforts at the international level to stop asylum seekers from making "secondary movements" away from the first countries they reach remained a major policy focus throughout the year. The Australian government continued to promote internationally the draconian measures it has used as penalties against refugees and asylum seekers who make secondary movements toward Australia. These include interdiction of boats at sea; the diversion of intercepted asylum seekers to offshore camps in third countries; mandatory detention of persons applying for asylum from within Australia; and the punitive recourse to granting temporary protection instead of refugee status.

Regrettably, many other governments showed interest in these approaches, rather than rejecting Australia's flagrant breaches of its obligations under refugee law. This was nowhere more apparent than at the 2002 session in Geneva of the Executive Committee (ExCom) of the United Nations High Commissioner for Refugees (UNHCR), which Human Rights Watch attended. Many member states from Europe and other countries of "final destination" echoed the Australian rhetoric and called for greater emphasis on reception of refugees in countries neighboring those from which they flee. In September, hoping to direct such political interest toward constructive rather than deterrent measures, High Commissioner Ruud Lubbers had raised his agency's interest in seeking new agreements to address secondary movements of refugees at an informal meeting of the European Union Justice and Home Affairs Council in Copenhagen. Human Rights Watch plans to monitor the development and impact of this initiative, particularly in relation to the "Bali ministerial process," which aims to tackle secondary movement in the Asia-Pacific region.

During the UNHCR ExCom meeting, Human Rights Watch issued a briefing paper documenting failures of protection that cause secondary movement and the serious difficulties asylum seekers face in accessing organized resettlement programs in the first countries they reach. In an encouraging move during pre-ExCom consultations, the high commissioner called Australia's policy of arbitrary detention of refugees an unacceptable violation of human rights norms. Human Rights Watch's advocacy efforts at ExCom focused on raising these realities with govern-

ments that were showing signs of copying Australia's approach. This was followed by the publication in November of a report examining protection failures in Kenya and Uganda, countries from which some refugees attempt to make secondary movements. In December, Human Rights Watch issued a major report examining Australia's refugee policies.

### **Urban Refugees**

Human Rights Watch also focused advocacy on the plight of refugees living in urban areas rather than camps, especially in the developing world. Refugees living in cities often represent an invisible population whose protection needs are ignored, even under UNHCR's own policies and guidelines. Refugees living in cities face specific risks, including police violence and harassment; sexual exploitation and abuse; and the denial of access to basic services. Human Rights Watch urged UNHCR to review its 1997 Policy on Refugees in Urban Areas and revise other guidelines (for instance on women and children) to address the specific protection and assistance problems facing asylum seekers and refugees in urban areas. These issues were explored in depth in a major report issued in November on the situation of refugees living in the Kenyan and Ugandan capitals.

### **UNHCR Global Consultations: Women and Children**

Human Rights Watch was active at UNHCR's Global Consultations on International Protection, particularly on the protection of women and children. We participated in an expert roundtable in September 2001 to address the question of gender-related persecution and the 1951 Refugee Convention. The meeting affirmed that the refugee definition encompasses gender-related claims and that the Refugee Convention should be interpreted in a gender-inclusive and gender-sensitive manner; it therefore concluded that there was no need to add "sex" or "gender" to the definition of refugee under the Refugee Convention. The roundtable further resolved that the protection of refugee women also requires a gender-sensitive procedure for refugee status determination. As part of the Coalition to Stop the Use of Child Soldiers, Human Rights Watch in addition highlighted the specific protection needs of refugee and internally displaced children, including prevention of their recruitment by militaries and armed groups.

Human Rights Watch also focused on the interface between migration and asylum issues. During the year, we began a critical dialogue with the International Organization for Migration about its lack of human rights policies and accountability under human rights and refugee law standards. The agency's involvement in housing asylum seekers and refugees who required protection in Indonesia, its role in arbitrarily detaining refugees as a part of Australia's refugee policies, and IOM's programs throughout the world for refugees, asylum seekers, and internally displaced persons, all raised serious protection concerns.

### **Sexual Exploitation by Peacekeepers and Humanitarian Workers**

Early in 2002, the international community was rocked by the findings of a study by UNHCR and Save the Children UK which brought to light serious allegations of widespread sexual exploitation and abuse of refugee and internally displaced women and children by humanitarian workers and peacekeepers in Liberia, Sierra Leone and Guinea. Allegations of abuse included agency workers deliberately withholding food and services in order to extort sexual favors from children, and U.N. peacekeepers trading money and food for sex with young girls. The report also documented sexual violence perpetrated against refugee children by soldiers in the United Nations Mission in Sierra Leone (UNAMSIL).

Human Rights Watch joined with other NGOs in calling for a full investigation and action against those involved, as well as comprehensive protection measures to prevent such abuse. Human Rights Watch has conducted extensive research on sexual violence in and around armed conflicts, including the plight of refugees and internally displaced women in Sierra Leone, Kosovo, Bosnia and Herzegovina, Liberia, and Guinea. We have also highlighted cases, for instance in Bosnia, where the presence of the International Police Task Force and Stabilization Force (SFOR) contractors exacerbated the trafficking of women and girls.

In response to the West Africa allegations, the U.N. Inter-Agency Standing Committee established a special task force that developed a plan of action recommending clear codes of conduct for humanitarian staff, and effective enforcement and accountability mechanisms. However, a follow-up investigation by the U.N. Office of Internal Oversight Services that failed to substantiate some of the West Africa allegations was widely criticized as downplaying the problem. And throughout the year, High Commissioner Lubbers made a series of defensive statements that failed to demonstrate political leadership and commitment on the issue. Further allegations in November of sexual abuse by aid workers in Bhutanese refugee camps in Nepal highlighted the dangers to refugee women and children and the importance of avoiding complacency on this issue.

Human Rights Watch and other NGOs successfully lobbied for a "zero tolerance" policy to be incorporated into the mandate of UNAMSIL and other peace operations. The language adopted with regard to UNAMSIL was particularly important, since it required the home government of an accused and repatriated peacekeeper to follow through on prosecution.

### **Migrant Workers**

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which was adopted in 1990 but which governments have been slow to ratify, came closer to entering into force. The Migrant Workers Convention provides a comprehensive framework for the protection of the rights of migrant workers, documented and undocumented, but has been resisted by many industrialized countries because of its extensive social clauses. During 2002, the Migrant Workers Convention was ratified by Ecuador

and Tajikistan, and needed only one more ratification to enter into force. Human Rights Watch wrote to governments that have signed the convention urging the speedy ratification of this important human rights treaty.

## **BUSINESS, TRADE, AND DEVELOPMENT**

Human Rights Watch continued to engage with a number of initiatives to develop standards for the human rights conduct of companies. We lent strong support to efforts by a working group led by Professor David Weissbrodt at the U.N. Sub-Commission on Human Rights to develop a comprehensive set of “Human Rights Principles and Responsibilities for Transnational Corporations and Other Business Enterprises.” The working group’s mandate has been extended for another three years, allowing for further consultations and refinement of the draft principles. Human Rights Watch encouraged the working group to use its mandate in creative ways, including by receiving information on the conduct of companies, and exploring possible monitoring mechanisms to apply sanctions or ensure compensation for infringement of the principles.

At the same time, Human Rights Watch and other NGOs grew increasingly critical of the United Nations Global Compact, a broader initiative launched in July 2000 by Secretary-General Kofi Annan to promote corporate responsibility on human rights, labor standards, and the environment. A progress report issued in July failed to address key NGO concerns, including the need for specific guidelines to clarify the broad standards contained in the compact; a mechanism for standardized, consistent, and public reporting of corporate practice under the compact; a formal structure for stakeholder—particularly civil society—involvement; strong criteria for expelling from the compact companies that fail to meet minimum standards; and a link between the compact and the U.N.’s own procurement and contracting activities. The urgency of these issues was further underscored when a U.N. panel investigating the illicit exploitation of economic resources in the context of the conflict in the DRC named at least three transnational companies that were formally members of the Global Compact who were in violation of Organization for Economic Cooperation and Development (OECD) guidelines.

In August, Human Rights Watch spoke out strongly when the U.S. State Department asked a federal judge to dismiss a lawsuit against the ExxonMobil Corporation for its alleged complicity in human rights violations in Indonesia. The civil suit alleged that the Indonesian military provided “security services” for ExxonMobil’s joint venture in Indonesia’s conflict-ridden Aceh province, and that the Indonesian military committed “genocide, murder, torture, crimes against humanity, sexual violence, and kidnapping” while providing security for the company from 1999 to 2001. The case was filed by the International Labor Rights Fund (ILRF), a U.S. NGO, on behalf of eleven anonymous plaintiffs. The plaintiffs allege that ExxonMobil violated the U.S. Alien Tort Claims Act, the Torture Victims Protection Act, international human rights law, and the statutory and common law of the District of Columbia. The suit claimed that ExxonMobil was liable for the alleged abuses because it provided “logistical and material” support to the military. Similar cases

have been brought in other U.S. courts, for instance with respect to the operations of the energy company UNOCAL in Burma.

ExxonMobil vigorously denied the allegations and petitioned the presiding judge to solicit an opinion from the State Department whether the suit would have an adverse effect on U.S. foreign policy. The State Department sided with ExxonMobil and wrote to the judge asking that the case be dismissed. The State Department argued that the Indonesian government would view judicial scrutiny of the company’s conduct as a referendum on the human rights record of the Indonesian armed forces, and could dissuade it from cooperating with the United States in counter terrorism. It also argued that the litigation’s “potential effects on Indonesia’s economy could . . . adversely affect important United States interests” and could impede further cooperation with U.S. companies. Two weeks earlier, Indonesia’s ambassador to the United States had sent a strongly worded letter to the government objecting to the lawsuit.

Human Rights Watch is not a party to the lawsuit and takes no position on claims regarding ExxonMobil in Indonesia, but was deeply concerned by the State Department’s intervention, warning that it undermined the Bush administration’s commitments to promoting human rights and the rule of law in Indonesia, and corporate accountability more generally.

Human Rights Watch worked with other NGOs to promote increased transparency in the administration of government revenues from major resource projects, in line with the existing International Monetary Fund (IMF) Code of Good Practices on Fiscal Transparency.

Human Rights Watch joined a coalition of some seventy-one NGOs from northern and southern countries in launching the “Publish What You Pay” campaign in June. The campaign aims to counter governments’ misuse of natural resource revenues and promote corporate responsibility, by calling upon governments to enact regulations that would require resource extraction companies to declare all taxes, royalties, bonuses, and other payments to governments in countries where they were operating. While it would not prevent governments from misusing those funds, it would provide some transparency to this revenue stream so that citizens in those countries would have a better idea of the amount of public funds accruing to governments from natural resource revenues. The campaign drew support from the International Finance Corporation, the United Nations Development Programme (UNDP), as well as the government of the United Kingdom. However, it was not clear whether these regulatory measures would be enacted or whether governments and multilateral institutions would pursue a weaker, voluntary approach.

The Angolan government’s relationship with the IMF remained strained throughout 2002 due to the government’s failure to publicly account for its oil revenues and actual expenditures. On February 19, the IMF reaffirmed that in order to qualify for a formal program, the government would have to “record and transfer to the treasury all revenues, including the total amount of signature oil bonuses” and “publish data on oil and other government revenues and expenditures, as well as on external debt; and conduct independent financial audits of the 2001 accounts of Sonangol [the state oil company] and of the central bank.” The government took



one positive step when Oil Minister José Bothelho de Vaconcelos told Parliament in June that the government had received a U.S.\$30 million signature bonus payment from the consortium partners in Block 16. Although the amount was relatively small compared to other bonus payments, it was believed to be the first time that the government had disclosed this type of information publicly; this suggested that there would be greater scrutiny over the government's activities.

However, problems remained. Swiss authorities investigated allegedly irregular transactions involving oil for arms deals during the course of the year, in the context of the renegotiation of Angola's approximately U.S.\$5 billion debt to Russia. Swiss authorities reportedly froze more than \$700 million held in Swiss bank accounts that were part of a complex debt repayment deal, alleging that hundreds of millions of dollars were paid to "Russian and Angolan dignitaries" as part of this deal. After these investigations became public, the Angolan state media reported in June that the government planned to "take legal action" against the Swiss investigating magistrate for "defamation of the image and prestige of Angolan authorities, particularly of the Head of State, José Eduardo dos Santos." President dos Santos also reportedly wrote to Swiss President Kaspar Villiger to protest the investigation, and the government withdrew its ambassador to Switzerland in June.

Nigeria is another egregious example of the problems surrounding lack of transparency in administering oil revenues: An IMF staff-monitored program with the Nigerian Ministry of Finance collapsed in March, leaving spending in Nigeria subject to virtually no controls. Human Rights Watch has followed the situation in the oil producing communities in the Niger Delta in Nigeria since the Ogoni crisis of the mid-1990s. In October, we published an update to our major 1999 report, documenting continuing problems in the Niger Delta, in particular the conflict generated by the oil companies in their dealings with the villages where their facilities are located, and indiscriminate force employed by the security forces in responding to community discontent. Following on from the report, Human Rights Watch had meetings with Shell and ExxonMobil, the two main companies implicated by our findings, to urge greater attention to issues of corporate social responsibility.

The World Bank-funded Chad-Cameroon Petroleum Development and Pipeline project continued to generate controversy throughout the year. In September, the World Bank's Inspection Panel released its report on allegations that the project failed to comply with various World Bank social and environmental policies. The panel concluded in its report that management was in compliance with several aspects of the bank's environmental and social policies such as project categorization for environmental assessment purposes, natural habitats, forests, involuntary resettlement, and pest management. The panel, however, found that the bank did not comply with certain policies on environmental assessment, economic evaluation, and poverty reduction. The bank accepted the findings and pledged to improve compliance.

The Inspection Panel also noted that while the World Bank did not have specific human rights policies, the poor human rights situation in Chad and the possibility of harassment of communities impacted by the project "raises questions about compliance with Bank policies, in particular with those that relate to open and informed consultation, and it warrants renewed monitoring by the Bank." These

issues raised further concerns over the project's ultimate success and did not abate calls from some groups to cancel the project altogether.

On the trade policy front, Human Rights Watch promoted the full integration of labor rights into a series of trade agreements being negotiated by the United States, including the proposed Free Trade Agreement of the Americas. In August, President Bush signed the Trade Act of 2002, which includes Bipartisan Trade Promotion Authority (TPA), granting the president authority to negotiate trade agreements that cannot be amended by Congress, but simply approved or rejected. TPA contains "negotiating objectives" related to workers' rights that have significant shortcomings. For example, they do not seek to ensure that domestic labor laws meet international standards, nor do they include nondiscrimination as one of the labor standards to be "promoted." But Human Rights Watch argued that free trade agreements negotiated under TPA should meet—if not exceed—the standard set forth in the existing U.S.-Jordan Free Trade Agreement. At a minimum, this would require parties to enforce their labor laws, to try to ensure that those laws meet international norms, to try to improve those laws, and to try not to lower labor standards to attract trade. Human Rights Watch argued that labor rights protections should be included in the body of the agreement as opposed to side-deals, and should be enforced with the same penalties as all other provisions—with fines and, as a last resort, trade sanctions.

Human Rights Watch also engaged substantively in the growing international debate about the link between human rights, poverty reduction, and sustainable development. Major international conferences, notably the International Conference on Financing for Development (Monterrey, Mexico) in May, the summit of the Group of Eight (G8) industrialized countries (Kananaskis, Canada) in June, and the World Summit on Sustainable Development (Johannesburg, South Africa) in September, affirmed the critical nexus between human rights, good governance and economic development, and focused donor commitments toward achieving the Millennium Development Goals. UNDP devoted its human development report to the fundamental role political participation and democracy play in sustainable development. A first ever U.N. report on human development in the Arab world underscored similar themes. And NEPAD, in which African leaders made new commitments on good governance and human rights, received widespread international interest and support.

Against this backdrop, Human Rights Watch engaged with several important initiatives aimed at translating this new development thinking into operational reality. In May, as part of its preparations for the World Summit on Sustainable Development, the World Bank held an internal seminar to discuss its role in promoting human rights, previously a taboo topic. This discussion built upon new developments in World Bank policy, particularly its commitment to "participation" and "empowerment" in its Poverty Reduction Strategy Process (PRSP), as well as its growing experience with projects on rule of law issues. During the meeting, the bank's president, James Wolfensohn, commissioned an internal working group to consider options for the World Bank to adopt an explicit policy or strategy on human rights. During the year, Human Rights Watch discussed these issues with President Wolfensohn and senior bank staff, and organized policy discussions with

other NGOs around the World Bank's annual meetings. We also discussed with the International Finance Corporation the application of human rights principles in their private sector lending activities. We urged the bank to ensure that any new policy framework addressed the full range of human rights, was practical and operational in nature, and was backed up by appropriate monitoring and accountability mechanisms.

At the same time, the U.N. high commissioner for human rights developed draft guidelines on how human rights should be integrated into poverty reduction strategies, particularly the PRSPs. Human Rights Watch joined with development NGOs in consultations on this new framework, particularly how it might best address civil and political rights issues such as discrimination and access to justice which impede the development process. The guidelines will now be tested in a selection of countries before being further developed and finalized in 2003.

Human Rights Watch also undertook extensive advocacy around NEPAD, particularly in the lead up to the G8 summit in June. While we welcomed the positive commitments contained in the NEPAD framework, we drew attention to its lack of detailed content on human rights and neglect of particularly vulnerable and marginalized groups such as women, children, refugees, and the internally displaced. Human Rights Watch urged that NEPAD's Code of Governance and Peer Review Mechanism incorporate international and regional human rights standards and provide appropriate enforcement mechanisms in the case of noncompliance. In this context, we expressed concern that the African Union's choice of Libya to chair the next session of the Commission on Human Rights sent a contrary signal to these positive human rights commitments.

In May, more than fifty NGOs joined Human Rights Watch in writing to the president of the European Bank for Reconstruction and Development (EBRD) to express concern about the bank's selection of Tashkent, Uzbekistan, as the site of its 2003 annual meeting. The letter highlighted the implications that this decision could have on human rights in Uzbekistan and on the bank's credibility as an institution committed to democracy, human rights, and the rule of law. We argued that unless the bank insisted on concrete progress in human rights before the annual meeting, the Uzbek government would use it as an endorsement of its repressive policies. Quite tellingly, in his statement at the close of the 2002 annual meeting in Bucharest, EBRD President Jean Lemierre noted that the selection of Tashkent as the site for the 2003 meeting "was decided . . . before I was President of the Bank," and that hosting an annual meeting "is an incentive to make progress, and not an endorsement."

While the letter is part of an intensive, year-long campaign to promote reform in Uzbekistan in advance of the 2003 annual meeting, we also want to encourage the bank to take more seriously its political mandate to operationalize article 1 of its founding document. This provision makes clear that the bank was set up to engage those countries in the region that are committed to and apply the "fundamental principles of multiparty democracy, the rule of law, human rights and market economics."

## HIV/AIDS

Globally, activists continued to focus their advocacy around the growing HIV/AIDS epidemic on the right of persons with HIV/AIDS to antiretroviral treatment. In April, the U.N. Commission on Human Rights passed by consensus a resolution asserting the right of people with HIV/AIDS to medical treatment, including antiretroviral drugs. A previous resolution with similar text had passed unanimously in 2001 over the abstention of the United States. The 2002 resolution also echoed the conclusion of the November 2001 meeting of the World Trade Organization (WTO) in Doha (Qatar) that the WTO's agreement on intellectual property "does not and should not prevent members from taking measures to protect public health." In spite of this resolution and a growing global consensus on the urgency of expanding access to treatment for AIDS, the United States through the negotiations on the Free Trade Area of the Americas and other trade agreements continued to push for stronger intellectual property protections for pharmaceutical companies than those embodied in the WTO rules.

Human Rights Watch participated in an expert meeting convened by the high commissioner for human rights in collaboration with UNAIDS in July to draft an amendment of the International Guidelines on HIV/AIDS and Human Rights to reflect the global consensus on right to access to treatment for persons with HIV/AIDS. The new guideline, approved in September, calls upon states to take all measures necessary to ensure "availability and accessibility of quality goods, services and information for HIV/AIDS prevention, treatment, care and support, including antiretroviral and other safe and effective medicines . . ."

The Fourteenth International AIDS Conference in Barcelona (Spain) opened with UNAIDS Director Peter Piot's exhorting donors to raise their share of the estimated U.S.\$10 billion needed annually for a "minimum credible response to the epidemic." The Global Fund on HIV/AIDS, Tuberculosis and Malaria, set up in January at the behest of the U.N. secretary-general, had only \$2 billion in pledges for its first year of work. In October 2002, the board of the Global Fund reportedly decided that countries applying for grants could use their grant awards to purchase any antiretroviral drugs from the World Health Organization-approved list, which includes a number of lower-cost generic drugs. This decision represented a victory for advocates who had previously feared that the fund would effectively allow the purchase only of brand-name drugs.

The Bush administration's commitments to the fund—\$200 million in 2001 and \$250 million in 2002—were denounced as inadequate by health experts and activists alike. AIDS advocacy groups also raised concerns about ongoing reviews and investigations by the U.S. Department of Health and Human Services of hundreds of AIDS prevention organizations receiving federal money, which had a chilling effect on their work.