테러방지법제정반대공동행동
(2003년 9월 ~ 12월)

자료 모음 10.

반테러조치로 인한 인권적 문제

: 다른 나라의 경우 (미국, 영국 중심으로)

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Human Rights Watch
350 Fifth Avenue, 34th Floor
New York, NY 10118-3299
Tel: 212 290-4700
Fax: 212 736-1300
Email: hrwnyc@hrw.org
Website:http://www.hrw.org

In the Name of Counter-Terrorism: Human Rights Abuses Worldwide

A Human Rights Watch Briefing Paper for the 59th Session of the United Nations Commission on Human Rights
March 25, 2003

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I. INTRODUCTION

On September 21, 2001, Ahmed Alenany, an Egyptian physician, was approached by a police officer after he had stopped by the roadside in New York City to look at a map. According to Alenany, the police officer questioned why he had stopped in a no-parking zone, asked to see his visa, and discovered it had expired. The police officer also noted two pictures of the World Trade Center in Alenany's car. Alenany was subsequently charged with overstaying his visa even though he had filed for an extension before it expired, and thus, was legally in the United States. Alenany agreed to be deported because the judge suggested that pursuing his case would keep him in jail for many weeks. He was detained for more than five months while waiting to be removed from the country, during which time the government presented no evidence linking him to terrorism. He is now free but still faces possible removal from the United States.

On June 24, 2002, Hassan Bility, the editor of one of Liberia's independent newspapers, and three other journalists were arrested in Monrovia by plain-clothes police and held incommunicado on suspicion of operating a rebel terrorist cell. The Liberian government twice failed to honor a court decision to produce the detainees in court. Echoing the terminology used by the Bush Administration to justify its handling of Taliban and al-Qaeda detainees, the Liberian authorities claimed that Bility was an "illegal combatant" who should be tried before a military tribunal. Judge Wynston Henries, the criminal court judge who ruled that the men be tried before a military court, reportedly claimed that an illegal combatant may not only be a person who carries arms, but also one who "collaborates and means to assist one side or the other." Under pressure from the United States, Hassan Bility was finally released in December 2002. Information Minister Reginald Goodridge told the BBC's Network Africa that he had not been released because of humanitarian concerns, and maintained that Bility was "a terrorist involved in an Islamic fundamentalist war."

In February 2002, in Godhra in the western state of Gujarat, a Muslim mob set fire to a train carrying Hindu activists. Fifty-eight people were killed in the attack. In the days that followed, Hindu nationalist groups in league with the ruling Bharatiya Janata Party (BJP) killed over 2,000 Muslims throughout the state. Local leaders and the vernacular press branded Muslims as terrorists while mobs were deployed to systematically destroy Muslim homes, businesses, and places of worship. Scores of Muslim women and girls were gang raped before being mutilated and burned to death. The government charged 131 Muslims under its new anti-terrorism ordinance, but has failed to prosecute the perpetrators of attacks against Muslims that were carried out with extensive state participation and support.

At a time when the media prominently reports the latest arrests of alleged terrorist suspects, these cases show a different human face to the war against terrorism. Just as terrorism targets innocent civilians, so too are innocent civilians becoming casualties in the international campaign against terrorism.

Terrorism is the very antithesis of human rights. Indeed, it is the body of international human rights and humanitarian law—the limits placed on permissible means to political ends—that best explains why such acts are not legitimate acts of war or politics. Such law makes clear that governments have a responsibility to protect citizens from politically motivated violence of this kind and to cooperate internationally to bring to justice the perpetrators of such abuse.

In fighting terrorism, however, governments must also ensure they meet their other obligations to their people by ensuring that counter-terrorist measures respect and do not violate international human rights, humanitarian, and refugee law. As U.N. Secretary-General Kofi Annan has consistently stressed since September 11, 2001, there must be no tradeoff between human rights and fighting terrorism. In the very first paragraph of his latest report on the Work of the Organization, he states: "I firmly believe that the terrorist menace must be suppressed, but States must ensure that counter-terrorist measures do not violate human rights." True security is ultimately about ensuring an environment in which all human rights are fulfilled, respected and protected—this will not be achieved when basic freedoms are undermined, democratic space is closed, and alienation and discontent are channeled into politically motivated violence.

This paper first surveys initiatives taken by U.N., regional, and other intergovernmental bodies in the context of the international campaign against terrorism. In view of the human rights violations being committed in the name of counter-terrorism, it urges the creation of a dedicated mechanism to address the human rights impact of counter-terrorism measures, most appropriately the appointment of a new special representative of the U.N. secretary-general charged with monitoring and reporting on developments in this area. The paper then details human rights violations connected to anti-terrorism efforts in China, Egypt, Georgia, India, Indonesia, Russia, Spain, United Kingdom, United States, and Uzbekistan. It highlights the degree to which the United States and other governments have become muted in their criticism of and have even extended new security assistance and support to some of the most abusive governments worldwide that have become newfound allies in the fight against terrorism.

The human rights framework is not soft on terrorism. It acknowledges that states must sometimes take exceptional measures to ensure public security. But whatever the emergency situation, some fundamental human rights and freedoms can never be suspended or derogated, such as the right to life; the right to freedom from torture and all forms of cruel, inhuman, or degrading treatment; and the right to freedom of thought, conscience, and religion. In addition, human rights treaties such as the International Covenant on Civil and Political Rights establish that any restrictions on other rights must be, among other requirements, exceptional and temporary in nature; limited to the extent strictly required by the exigencies of the situation; non-discriminatory solely on the ground of race, color, sex, language, religion or social origin; and consistent with the state party's other obligations under international law, particularly the rules of international humanitarian law.

As this document highlights, the campaign against terrorism has led to human rights violations in many countries worldwide. In some cases, governments have enacted new security laws that violate basic rights and freedoms, or have denied terrorist suspects due process and the protection of law. In other cases, the war against terrorism has been used by governments opportunistically to justify the repression of opponents or arbitrary and punitive measures against asylum seekers and other non-nationals.

Protecting human rights during counter-terrorist efforts is more than a legal requirement. It is integral to the success of the campaign against terrorism itself. Terrorism will not be defeated solely by military or security means. By indiscriminately attacking civilians, terrorism breaches the most basic values of human rights. Combating terrorism requires a reaffirmation of human rights values, not their rejection. State repression and human rights abuse closes off peaceful and political channels for political dissent and can channel alienation and grievance into extremism and violence. As the U.N secretary-general told an open debate of the Security Council's Counter Terrorism Committee in October 2002, "to pursue security at the expense of human rights is short-sighted, self-contradictory, and, in the long run, self-defeating."

II. INTERNATIONAL INITIATIVES

U.N. Security Council

In the aftermath of the September 11 attacks, the U.N. Security Council used its powers under Chapter VII of the U.N. Charter to mandate member states to adopt specific measures to combat terrorism. Resolution 1373 of September 28, 2001 takes many elements of existing counter-terrorism treaties and in one swift move makes them binding on all member states. The measures include:

- Prevention of the financing of terrorism, through, inter alia, freezing of the financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or who participate or facilitate the commission of terrorist acts;
- Establishment of terrorist acts as serious criminal offences in domestic laws and regulations, with commensurably serious punishment; and
- Taking appropriate measures before granting refugee status to ensure that the asylum seeker has not planned, facilitated, or participated in the commission of terrorist acts.

The resolution created a new entity called the Counter Terrorism Committee (CTC) of the Security Council, which oversees the implementation of Resolution 1373. It mandated that governments report to the CTC within ninety days, and periodically after that, on the measures adopted to implement the resolution.

Resolution 1373 calls for tough criminal, financial, and administrative measures aimed at individuals and entities considered supportive of or involved in terrorism. But it makes no positive reference to member states' obligations to respect international human rights, humanitarian, or refugee law.

Successive U.N. high commissioners for human rights have expressed serious concerns about the possible impact of Resolution 1373 on human rights worldwide. Soon after the passage of the resolution, then High Commissioner Mary Robinson initiated contacts with the CTC, chaired by U.K. Ambassador Sir Jeremy Greenstock.[1] This dialogue has since been followed up by new High Commissioner Sergio Vieira de Mello. In his meeting with CTC members on October 21, 2002, de Mello raised concerns about states enacting anti-terrorism legislation that is too broad in scope or seeking to fight terrorism outside the framework of the legal system.

- He offered the readiness of his office to assist the CTC in encouraging, as he put it, "the non-abuse of 1373."
- He reiterated an earlier recommendation put forward by Mary Robinson that the CTC appoint a human rights advisor.
- He suggested that the CTC place basic information on issues such as the non-derogation of certain rights, or relevant conclusions and recommendations of U.N. human rights mechanisms, on its website.
- He encouraged the CTC to establish links with the Human Rights Committee and other relevant treaty bodies and mechanisms of the United Nations human rights system.

The High Commissioner's office also produced a set of guidelines highlighting human rights obligations that should be actively considered by the CTC in reviewing country reports and developing

[1] In April, the chairmanship of the CTC will be passed on to Spain's Ambassador Inocencio Arrias.

further measures. The document focused on the legality of counter terrorism measures, dealing with issues such as non-derogability, non-discrimination, the right to seek asylum and non-refoulement, and due process.

While Human Rights Watch welcomes this initial dialogue between the CTC and the High Commissioner for Human Rights, we are dismayed by the CTC's refusal to date to act fully upon the High Commissioner's recommendations or integrate consideration of human rights into its work. For instance, while the High Commissioner's guidance was included on the CTC website, the CTC declined to make it an official document and circulate it to all member states. The CTC has also failed to appoint a human rights advisor to its staff. As a welcome step, Security Council Resolution 1456 of January 20, 2003 stressed in its paragraph 6 that "States must ensure that any measure taken to combat terrorism comply with all their obligations under international law, in particular international human rights, refugee, and humanitarian law." On March 6, 2003, during a special meeting of the CTC, Amb. Greenstock stressed that counter-terrorist measures had to be taken "without undue damage" to civil liberties. But he once again reminded those gathered that while the CTC did not ask states to do anything incompatible with their human rights obligations, monitoring such obligations was not the responsibility of the Committee.

U.N. General Assembly

In November 2002, at its 57th session, the U.N. General Assembly adopted an important new resolution on Protecting human rights and fundamental freedoms while countering terrorism.[2] The resolution, initiated by Mexico, underscored the need for states to comply with their legal obligations under international human rights, refugee, and humanitarian law. It stressed that certain non-derogable rights must be fully observed at all times, and that where states derogated from their other obligations, they must meet the strict requirements of international law. The resolution asked the U.N. High Commissioner for Human Rights to monitor the protection of human rights in the fight against terrorism and to make recommendations to governments and U.N. bodies. It also requested the U.N. secretary-general to submit reports to both the U.N. Commission on Human Rights and the General Assembly on the implementation of the resolution, promising future attention to this important issue.

The General Assembly resolution came after the U.N. Commission on Human Rights failed to take up this issue at its 58th session last year. A similar draft resolution, circulated by Mexico, was withdrawn in the face of strong opposition by the United States, later joined by India, Pakistan, Algeria, and Saudi Arabia. In receiving the secretary-general's report at this 59th session, it is incumbent that the Commission take up this important challenge and consider an appropriate institutional response to the issue.

Treaty Bodies and Special Procedures

Over the past year and a half, several rapporteurs and other specialists appointed by the U.N. Commission on Human Rights ("special procedures") as well as expert committees monitoring implementation of human rights treaties have addressed the negative impact of some counter-terrorist measures on human rights.

On August 31, 2002, just before the September 11 attacks, the Human Rights Committee set forth clearly the strict parameters within which states can justifiably derogate from their obligations in response to threats to public security. As the Committee observed, even in armed conflicts, states must show that the situation threatens the life of the nation and that the measures derogating from the Covenant are necessary, legitimate, and "limited to the extent strictly required by the exigencies of the situation." This

[2] A/RES/57/219.

proportionality requirement "relates to the duration, geographical coverage and material scope of the state of emergency and any measures of derogation."[3]

Since September 11, the Human Rights Committee has examined the human rights impact of counter-terrorism measures in its consideration of several periodic reports by states parties under article 40 of the Covenant. The Committee has repeatedly stressed that counter-terrorist measures taken under Security Council Resolution 1373 must be in full conformity with the Covenant.

In considering reports by New Zealand and Sweden, for instance, the Committee expressed concern about possible negative effects of new legislation and practices on asylum seekers, including the risk of refoulement and the absence of monitoring mechanisms with respect to the expulsion of those suspected of terrorism to their countries of origin.[4] In its consideration of Yemen, the Committee expressed concern about the arrest and detention of terrorist suspects in violation of the guarantees set out in the Covenant, and the expulsion of foreigners without an opportunity to legally challenge such measures.[5] In relation to Egypt, the Committee questioned the broad and general definition of terrorism in national law; noted with alarm that military courts and state security courts have jurisdiction to try civilians accused of terrorism without fair trial guarantees; and expressed concern about the incommunicado detention and treatment of Egyptian nationals arrested abroad and returned to Egypt.[6]

In considering the periodic report of the United Kingdom in December 2001, the Human Rights Committee noted with concern legislative measures being considered by the government which could have "far-reaching effects" and require derogations from its human rights obligations.[7] The Committee also expressed concern at reports of attacks and harassment on the basis of religious beliefs and the use of religion to incite criminal acts, and called for criminal legislation to cover offences motivated by religious hatred and other steps to protect against religious discrimination.[8] During questioning by the Committee, the United Kingdom reportedly invoked Article 103 of the U.N. Charter to argue that its obligations to the Counter Terrorism Committee under Resolution 1373 took precedence over its obligations to the Human Rights Committee.

In November 2001, the Committee against Torture (CAT) issued a statement reminding states parties of the non-derogable nature of most of their obligations and calling for states to ensure their responses to the threat of international terrorism were in full conformity with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The CAT has lately issued

[3] Human Rights Committee, States of Emergency (article 4): CCPR General comment 29. (General Comments), U.N. Doc. CCPR/C/21/Rev.1/Add.11, 31/08/2001, paragraph 4.

[4] Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant, Concluding observations of the Human Rights Committee: New Zealand, 07/08/2002, U.N. Doc. CCPR/CO/75/NZL, paragraph 11; Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant, Concluding observations of the Human Rights Committee: Sweden, 24/04/2002, U.N. Doc. CCPR/CO/74/SWE, paragraph 12.

[5] Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant, Concluding observations of the Human Rights Committee: Yemen, 26/07/2002, U.N. Doc. CCPR/CO/75/YEM, paragraph 18.

[6] Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant, Concluding observations of the Human Rights Committee: Egypt, 28/11/2002, U.N. Doc. CCPR/CO/76/EGY, paragraph 16.

[7] Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant, Concluding observations of the Human Rights Committee: United Kingdom and Northern Ireland, 06/12/2001, U.N. Doc. CCPR/CO/73/UK; CCPR/CO/73/UKOT, paragraph 6.

[8] Human Rights Committee, Consideration of reports submitted by States parties under article 40 of the Covenant, Concluding observations of the Human Rights Committee: United Kingdom and Northern Ireland, 06/12/2001, U.N. Doc. CCPR/CO/73/UK; CCPR/CO/73/UKOT, paragraph 14.

important recommendations related to counter-terrorism to specific countries such as Egypt, Sweden, and Russia. In the last case the Committee stressed that, in accordance with article 2 of the Convention, "no exceptional circumstance whatsoever ... may be invoked as a justification of torture."[9]

In January 2002, the Committee on the Elimination of Racial Discrimination (CERD) adopted a statement on racial discrimination and measures to combat terrorism.[10] CERD emphasized that measures to combat terrorism should be in accordance with international human rights and humanitarian law, of which the prohibition of racial discrimination was a peremptory norm from which no derogation was permitted. It demanded that states and international organizations ensure that counter-terrorist measures did not discriminate in purpose or effect on grounds of race, color, descent, or national or ethnic origin, and pledged to monitor the potentially discriminatory effects of legislation and practice in its work. In its concluding observations on the 13th and 14th periodic report of Canada under the International Convention on the Elimination of All Forms of Racial Discrimination, CERD expressed concern about increased racial hatred, violence and attacks against Muslims and Arabs in the wake of the September 11 attacks.[11] It called on Canada to ensure application of Canada's Anti-Terrorism Act did not lead to negative consequences for ethnic and religious groups, refugees, and asylum seekers, particularly as a result of racial profiling.

On Human Rights Day in 2001, seventeen thematic rapporteurs and independent experts of the CHR issued a joint statement in which they expressed deep concern about the adoption of certain national counter-terrorism laws and reminded states of their obligations to uphold human rights and fundamental freedoms in the aftermath of the events of September 11.[12]

Many of these rapporteurs have underscored specific concerns relating to their specific mandates. For example, the special rapporteur on migrant workers has noted how "In the context of anti-terrorism measures adopted after 11 September 2001, the legislation of some countries allows for long periods of detention of non-nationals, without basic guarantees."[13] The special rapporteur on torture has warned that, "the provisions of some new anti-terrorist legislation at the national level may not provide sufficient legal safeguards as recognized by international human rights law in order to prevent human rights violations, in particular those safeguards preventing and prohibiting torture and other forms of ill-treatment."[14] The special rapporteur on freedom of expression has stressed that "the fight against terrorism, (…) is more and more frequently resorted to by the authorities in many countries to infringe—through, inter alia, the adoption of restrictive laws, arrest, detention, censorship, bans, surveillance of and restrictions on publications or the use of the Internet—the right to freedom of opinion and expression, in particular for journalists, members of political opposition groups and parties and human rights

[9] Conclusions and recommendations of the Committee against Torture, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, Russian Federation, 28th Session, U.N. Doc. CAT/C/CR/28/4, paragraph 4.

[10] Committee on the Elimination of Racial Discrimination, Statement on racial discrimination and measures to combat terrorism, U.N. Doc. A/57/18 (Chapter XI)(C.). (Statement), 01/11/2002.

[11] Committee on the Elimination of Racial Discrimination, Concluding Observations: Canada, 01/11/2002, U.N. Doc. A/57/18, paragraph 338.

[12] December 10, 2001, http://193.194.138.190/huricane/huricane.nsf/newsroom

[13] Report of the Special Rapporteur on the human rights of migrants, Ms. Gabriela Rodríguez Pizarro, submitted pursuant to Commission on Human Rights resolution 2002/62, 59th Session of the Commission on Human Rights, ECOSOC, E/CN.4/2003/85, December 30, 2002, paragraph 25.

[14] Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, Theo van Boven, presented to the General Assembly in accordance with resolution 56/143 of 19 December 2001, General Assembly, A/57/173, July 2, 2002, paragraph 5.

defenders."[15] The special rapporteur on extrajudicial, summary or arbitrary executions has emphasized the fact that even in time of public emergency the right to life allows for no derogations, and that this is "particularly relevant at the present juncture, when Governments should not be tempted to misuse the international war against terrorism as a justification for human rights abuses, including extrajudicial, summary or arbitrary executions."[16]

This increased attention afforded by treaty bodies and special procedures to the counter-terrorist measures adopted by states is very welcome. But it remains limited in scope and fails to provide comprehensive scrutiny and analysis of the human rights impact of counter-terrorist measures. The treaty bodies are only able to review the performance of states in the context of their periodic reports, and may therefore only raise concerns sometimes years after the event, or in the context of individual communications, which are limited to specific cases. The special procedures, for their part, focus only on those issues that fall within their mandates, failing to give a complete and holistic picture of the problem. As noted above, the Counter Terrorism Committee of the Security Council is receiving more regular reports from states of their actions under Resolution 1373, but it has to date largely excluded human rights considerations from its work.

Regional Organizations

A number of regional and other intergovernmental organizations have taken initiatives in the context of the international campaign against terrorism. Many of these initiatives follow the template of Resolution 1373, highlighting its far-reaching, "trickle down" effect. But all too often they use broad and sweeping definitions of terrorism which could encompass peaceful opposition, and they make little or no reference to international human rights standards.

- In September 2002, the African Union/Organization of African Unity's Convention on the Prevention and Combating of Terrorism, adopted at the 1999 OAU Summit, came into force. The Convention includes a broad definition of terrorist acts and, while invoking numerous international counter-terrorist conventions and measures, makes no reference to international human rights standards.

- In May 2002, the Organization of the Islamic Conference finalized the Convention on Combating International Terrorism. Terrorism is given a very broad definition, framed in terms of national law rather than international human rights standards. In adopting the Convention, member states condemned terrorism as "a gross violation of human rights," but failed to affirm the positive obligations of states to respect human rights when combating terrorism.

- The Association of South East Asian Nations (ASEAN) is still working on a regional agreement to combat terrorism. However, neither the 2001 ASEAN Declaration on Joint Action to Counter Terrorism nor the 2002 Joint Communiqué on the Special ASEAN Ministerial Meeting on Terrorism addressed human rights.

[15] Report of the Special Rapporteur on the right to freedom of opinion and expression, Mr. Ambeyi Ligabo, submitted in accordance with Commission on Human Rights resolution 2002/48, 59th session of the Commission on Human Rights, ECOSOC, E/CN.4/2003/67, December 30, 2002, paragraph 34.

[16] Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Ms. Asma Jahangir, submitted in accordance with paragraph 23 of General Assembly resolution 55/111 of 4 December 2000, General Assembly, A/57/138, paragraph 16.

Some regional bodies, however, have addressed human rights concerns more positively:

- In December 2001, the Inter-American Commission on Human Rights adopted a resolution and comprehensive report on Terrorism and Human Rights, affirming states' human rights obligations. In June 2002, the Organization of American States General Assembly adopted the Inter-American Convention Against Terrorism. The new Convention makes explicit commitments on human rights.[17]

- On July 11, 2002, the Committee of Ministers of the Council of Europe adopted guidelines on human rights and the fight against terrorism. The guidelines address many important human rights concerns, including the prohibition of arbitrariness, the prohibition of torture, protection of privacy, arrest procedure and pre-trial detention, due process in legal proceedings, conditions of detention, prohibition of the death penalty, prohibition of refoulement, and safeguards on extradition. The guidelines set out clearly the strict limitations on derogation contained in international human rights instruments.

- In December 2002, the Ministerial Council of the Organization for Security Cooperation in Europe (OSCE) adopted a Charter on Preventing and Combating Terrorism. The OSCE undertook "to implement effective and resolute measures against terrorism and to conduct all counter-terrorism measures and co-operation in accordance with the rule of law, the United Nations Charter and the relevant provisions of international law, international standards of human rights and, where applicable, international humanitarian law."[18]

In light of the above, Human Rights Watch believes there is an urgent need for a dedicated mechanism to address these issues, most appropriately a special representative of the secretary-general on human rights and counter-terrorism. This would provide an appropriate institutional link between the United Nations human rights machinery, the Security Council, and other international and regional bodies. This new mandate should be complemented by continued scrutiny by the treaty bodies and special procedures, and effective coordination of activities across their mandates by the Office of the High Commissioner for Human Rights.

[17] Article 15 of the Convention states: (1) that measures should fully respect the rule of law, human rights, and fundamental freedoms; (2) that nothing in the Convention shall be interpreted as affecting other rights and obligations of states and individuals under international law, in particular the Charter of the United Nations, the Charter of the Organization of American States, international humanitarian law, international human rights law, and international refugee law; and (3) that any person whom measures are taken in compliance with the Convention shall be given a fair treatment, including the enjoyment of all rights and guarantees in conformity with the law of the state in the territory of which that person is present and applicable provisions of international law.

[18] Significantly, the Charter also underlined "the need to address conditions that may foster and sustain terrorism, in particular by fully respecting democracy and the rule of law, by allowing all citizens to participate fully in political life, by preventing discrimination and encouraging intercultural and inter-religious dialogue in their societies, by engaging civil society in finding common political settlement for conflicts, by promoting human rights and tolerance and by combating poverty.

III. COUNTRY STUDIES: THE HUMAN RIGHTS IMPACT OF COUNTER-TERRORISM MEASURES IN TEN COUNTRIES

This chapter looks at human rights concerns raised by counter-terrorism measures in China, Egypt, Georgia, India, Indonesia, Russia, Spain, United Kingdom, United States, and Uzbekistan. Particularly troubling, and common, have been the pretextual use of counter-terrorism laws as new weapons against old political foes, systematic violation of terrorist suspects' due process rights, and tightening of controls on refugees and migrants. The cases detailed below include far-reaching restriction of civil liberties, crackdowns against internal political movements, misuse of immigration laws to circumvent criminal law protections otherwise available to suspects, pervasive secrecy, allegations of torture, and at times indiscriminate detention of non-nationals.

정치적 반대자에 대한 새로운 무기, 테러응징과 정당절차에 대한 권리 침해, 연행과 이주민 통제 강화.

China

Since the September 11 attacks, China has sought to blur the distinctions between terrorism and calls for independence by the ethnic Uighur community in the Xinjiang-Uighur Autonomous Region (XUAR) in order to enlist international cooperation for its own campaign, begun years earlier, to eliminate "separatism." Chinese authorities have used the global counter-terrorism effort as a justification for deepening crackdown in Xinjiang.

Before September 11, official reports made no distinction between Uighur demands expressed peacefully and acts of separatist violence. All were labeled separatist and treated simply as criminal cases. After September 11, the government re-categorized separatist acts involving the use of force as "international terrorism," reserving the term "separatism" for peaceful activities such as expressions of cultural identity, religion, literature, association, or rites of passage. But at every opportunity the two terms are linked.

China first presented allegations of Uighur complicity in international terrorism in mid-November 2001. On January 21, 2002, the Information Office of the State Council (China's cabinet) issued a report arguing that terrorist forces from Xinjiang "jeopardized…social stability in China, and even threatened the security and stability of related countries and regions." The report cited four waves of terrorism during which Uighur activists were allegedly responsible for explosions, assassinations, attacks on police and government institutions, and poison and arson attacks both inside China and abroad. During the last phase, which began in the latter half of 1999, it claimed that "anti-China" forces outside the country directed domestic forces to carry out sabotage within China. Between 1990-2001, according to the report, the combined efforts resulted in over 200 incidents, 162 deaths, and more than 440 injuries. During those years, Xinjiang police reportedly broke up 487 terrorist groups and identified 253 major violent terrorist crimes. The most serious threat purportedly came from organizations operating from neighboring countries, such as Afghanistan and Uzbekistan, but the report also alleged that other groups, operating from bases in Turkey, Germany, and the United States also sponsored terrorist activities.

Much of the State Council's report and a subsequent one in September 2002 focused on a relatively small group called the East Turkistan Islamic Movement (ETIM), dozens of whose members allegedly trained in Afghanistan. They accused the organization of responsibility for sending terrorists into China, setting up training bases, manufacturing explosives, stockpiling weapons, and preaching "holy war." China claimed that financing for ETIM, including its Central and Western Asian and North African operations and training for over 500 core members, some of whom fought with the Taliban and in

Chechnya, came from Osama bin Laden. The Chinese Foreign Ministry specifically accused ETIM of joining the Islamic Movement of Ubekistan's "rebellions of invasion" into parts of Uzbekistan and Kyrgyzstan. However, no detailed evidence supporting any of China's allegations has been made public.

The police have claimed success in cracking down on terrorists, arresting over 100 of the more than 1,000 Chinese Muslim Uighurs identified by authorities as having fought with the Taliban. Another 300 reportedly were captured in Afghanistan. Scattered reports indicate that as many as thirty Uighurs are now held by the United States at Guantánamo Bay, Cuba. So far as is known, the United States has refused Chinese requests for extradition.

In December 2001, the Chinese Communist Party committee of the XUAR convened a teleconference to urge that the "strike hard" law and order campaign, which had begun anew in April 2001, be directed against terrorists and separatists. The strike hard campaign involved systematic violations of due process and the right to a fair trial. Credible reports of crackdowns came from communities across Xinjiang; while exact numbers and information about specific crimes were strictly controlled, available information indicated severe sentences and liberal use of the death penalty.

China has sought international support for its campaign. In January 2002, the Shanghai Cooperation Organization (China, Russia, and the Central Asian states of Kazakhstan, Tajikistan, Kyrgyzstan, and Uzbekistan), prodded by China, agreed to step up its backing for China's anti-separatist campaign which, it said, threatened the whole region. In August 2002, the United States, which had repeatedly warned China not to use counter-terrorism as an excuse to repress ethnic minorities, put ETIM on the U.S. State Department list of terrorist organizations. It then backed China's successful effort to have ETIM placed on the U.N. Security Council Sanctions Committee's list of terrorist organizations.

The anti-terrorist campaign may now spread to other parts of China. By March 2002, the Ministry of Public Security had formed special units in all provinces to deal with "terrorist crimes." In December 2002 Chinese courts in two provinces lodged the first known terrorism charges outside Xinjiang. In Sichuan, the renowned and popular Tibetan religious leader Tenzin Delek Rinpoche was sentenced to death (with a two-year reprieve) for "crimes of terror" and "incitement to separatism" in connection with a series of bombings. He denied all charges. His co-defendant, Lobsang Dhondup, was executed. Both men were denied access to family members and lawyers of their own choosing. Chinese authorities had long been unhappy with Tenzin Delek's activities, including support for schools and orphanages, renovation of monasteries, opposition to extensive logging in the region, and his unflagging support for the Dalai Lama.

On February 10, 2003, a court in Guangzhou sentenced U.S. permanent resident Wang Bingzhang to life imprisonment in part for "organizing and leading a terrorist group." The accusations included plotting to blow up the Chinese embassy in Thailand and using the Internet to advocate violence. However, a Thai anti-terrorism official said information about Wang was never solicited, that Wang had come to Thailand as a tourist and had been monitored simply as a "high-profile" person. Wang had been active in dissident activities in China and the U.S. Wang and two others disappeared in June 2002 after meetings with labor activists in the Guangxi Zhuang Autonomous Region. According to Chinese official sources, the three were kidnapped in Vietnam and later secretly transported to Shenzhen.

Egypt

Egypt has a long history of using anti-terrorism decrees and emergency rule to suppress peaceful dissidents, as well as to punish opponents advocating or using violence. But repressive measures have intensified since the September 11 attacks.

Egypt has been under emergency rule—Emergency Law No. 162 of 1958—for most of the past thirty-five years, and continuously since the assassination of President Anwar Sadat in October 1981. The government has routinely used its authority under the law to arrest individuals at will and detain them without trial for prolonged periods, refer civilians to military or exceptional state security courts, and prohibit strikes, demonstrations, and public meetings. On February 23, 2003, without prior notice, the government introduced a bill in the People's Assembly to extend the law for another three years, and rushed its passage the same day. Prime Minister Atif Ubayd cited the "war on terrorism" and new security laws passed in the United States and elsewhere since September 11, 2001, to justify the emergency law extension. The prime minister said that most of this legislation was "permanent" and "adopted the principles to which we have adhered in the Egyptian Emergency Law."

In the early 1990s, following a resurgence of political violence spearheaded by several armed Islamist groups, the government introduced "anti-terror" decrees, notably Law No. 97 of 1992, that gave security and intelligence forces still greater powers of arrest and detention. In its submission to the U.N. Security Council Counter-Terrorism Committee, the government highlighted Law No. 97's extremely broad definition of terrorism, as "any use of force or violence *or any threat or intimidation* to which the perpetrator resorts in order to carry out an individual or collective criminal plan *aimed at disturbing the peace or jeopardizing the safety and security of society* and which is of such a nature as to create harm or create fear in persons or imperil their lives, freedom or security; harm the environment; damage or take possession of communications; *prevent or impede the public authorities in the performance of their work; or thwart the application of the Constitution or of laws or regulations.*" The U.N. Human Rights Committee has questioned this broad and general definition of terrorism in national law.

Since September 11, 2001, Egypt has arrested hundreds of suspected government opponents, many for alleged membership in the Muslim Brotherhood, a banned but non-violent group, and possession of "suspicious" literature. Many of those arrested, including professors, medical doctors, and other professionals, have been referred to military courts or to emergency and regular state security courts whose procedures do not meet international fair trial standards.

In one case, ninety-four alleged members of a previously unknown Islamist group were arrested in May 2001, prior to the September 11 attacks, on charges of illegally collecting funds for Chechen separatists and the Palestinian group Hamas. In October 2001, after the attacks on the U.S., they were additionally charged with plotting to assassinate government officials and others, and of arranging for military training in Chechnya. Fifty-one were convicted and forty-three acquitted in a trial before the Supreme Military Court.

In January and February 2003, state security forces used emergency law provisions to detain without charge or trial persons involved in peaceful demonstrations opposing military intervention in Iraq and in support for the Palestinian uprising against Israeli military occupation.

Top Egyptian officials have frequently cited the September 11, 2001 attacks to justify Egypt's repressive policies. "There is no doubt that the events of September 11 created a new concept of democracy that differs from the concept that Western states defended before these events, especially in regard to the freedom of the individual," President Mubarak said in December 2001, adding that the U.S. decision to authorize military tribunals "proves that we were right from the beginning in using all means, including military tribunals." In September 2001, Prime Minister Ubayd, referring to critical reports on torture and unfair trials, lashed out at human rights groups for "calling on us to give these terrorists their 'human rights.'"

Responding to the February 2003 renewal of emergency legislation, the State Department spokesman said, "we understand and appreciate the Egyptian government's commitment to combat

terrorism and maintain stability." He said the U.S. had "serious concerns" with "the manner in which that law has been applied" but did not criticize the law or its renewal.

On a number of occasions before and since September 2001, the U.S. has encouraged and participated in the rendition of suspects to Egypt from third countries without regard for extradition or other legal procedures, and despite concerns about the routine use of torture by Egyptian security officials. Although Egypt 's abusive practices are well known, other governments have returned persons there, in likely violation of the Convention against Torture. Two Egyptian asylum seekers in Sweden, Ahmad Hussein Mustafa Kamil Agiza and Muhammad Sulaiman Ibrahim al-Zari, were forcibly repatriated on December 18, 2001, after their claims were rejected on the basis of secret evidence that they had connections to armed Islamic opposition groups. Other Egyptians have reportedly been forcibly repatriated by Jordan, Syria, Canada, Bosnia, and Uruguay.

The U.N. Human Rights Committee, the treaty body responsible for overseeing implementation by States Parties of the International Covenant on Civil and Political Rights, examined Egypt's most recent periodic report on November 28, 2002. The Committee expressed alarm at the jurisdiction of military courts and state security courts in cases of civilians accused of terrorism, and "the very broad and general definition of terrorism given in Act No. 97 of 1992." The Committee noted that "Egyptian nationals suspected or convicted of terrorism abroad and expelled to Egypt have not benefited in detention from the safeguards required to ensure that they are not ill-treated…."

Georgia

U.S.-supported anti-terror measures in Georgia have focused on the Pankisi Gorge and on Georgia's Chechen population. In implementing these measures the government has committed serious human rights violations, which it refuses to address. President Eduard Shevardnadze indicated the government's attitude toward observing human rights in its counter-terrorism campaign on October 5, 2002, one day after Georgia had extradited five Chechens to Russia without due process, when he said: "International human rights commitments might become pale in comparison with the importance of the anti-terrorist campaign.[19]"

The U.S. and Russia have both claimed that Georgia's Pankisi Gorge -- home to several thousand Chechen refugees who fled renewed conflict from 1999 – was a haven for terrorists, citing the presence there of al-Qaeda and Chechen rebel fighters.[20] The U.S. established a $64 million "Train and Equip" program to strengthen Georgia's counter-terrorism capability. As of October 2002, at least sixty U.S. military personnel were based in Georgia, as trainers for the "Train and Equip" program.

Georgian operations in the Pankisi Gorge at times have been arbitrary and brutal. Georgian forces have committed at least one extrajudicial execution, several "disappearances," summary extraditions, arbitrary detentions, and discrimination on the basis of racial and ethnic identity.

On March 22, 2002 the National Security Ministry detained two Georgian ethnic Chechen activists who worked with refugees in the Gorge, Islam Saidaev and Zurab Khangoshvili, on suspicion of association with al-Qaeda, apparently based only on the fact that they were the only Georgian citizens to make the pilgrimage to Mecca in 2002. That information was provided in a U.S. Embassy letter to the Ministry of National Security.[21] The ministry secured their pre-trial detention for three months by

[19] Those extradited had been arrested in August. The Procuracy General extradited them without recourse to a court appeal, which is provided for in Georgia's criminal procedure code.

[20] Russia has repeatedly demanded the forcible return of Chechen refugees and threatened to conduct its own military operations in the Pankisi Gorge.

[21] Human Rights Watch interviews with attorneys for both the defendants, Tbilisi, April 2002.

India

India's response to perceived threats of terrorism intensified in the wake of an attack by militants on the national parliament in December 2001. On March 26, 2002, the long debated Prevention of Terrorism Act (POTA) was enacted. Like its predecessor, the much misused and now lapsed Terrorists and Disruptive Activities (Prevention) Act (TADA) of 1985 (amended 1987), POTA has already been used by the Indian government to target minorities and political opponents.

POTA creates an overly broad definition of terrorism, while expanding the state's investigative and procedural powers. Suspects can be detained for up to three months without charge, and up to three months more with the permission of a special judge. Its close resemblance to TADA foreshadowed a return to widespread and systematic curtailment of civil liberties. Under TADA, tens of thousands of politically motivated detentions, acts of torture, and other human rights violations were committed against Muslims, Sikhs, Dalits (so-called untouchables), trade union activists, and political opponents in the late 1980s and early 1990s. In the face of mounting opposition to the act, India's government acknowledged these abuses and consequently let TADA lapse in 1995.

Indian and international human rights groups, journalists, opposition parties, and minority rights groups have unequivocally condemned POTA. Numerous political parties have alleged the misuse of POTA against political opponents in states such as Uttar Pradesh and Jammu and Kashmir. Since it was first introduced, the government has added some safeguards to protect due process rights but POTA's critics stress that the safeguards do not go far enough and that existing laws are sufficient to deal with the threat of terrorism. India's own National Human Rights Commission has stated that "existing laws are sufficient to deal with any eventuality, including terrorism, and there is no need for a draconian POTA." India has a plethora of security laws, some pre-dating independence. Many lack adequate procedural safeguards and have been similarly abused.

Since its passage, POTA has been used against political opponents, religious minorities, Dalits, tribals and even children. In February 2003 alone, over three hundred people were arrested under the act.

On July 11, 2002, in the state of Tamil Nadu, Vaiko, a leader of the political party Marumalarchi Dravida Munetra Kazhakam (MDMK), was arrested and charged under POTA for making remarks in support of the banned terrorist group, the Liberation Tigers of Tamil Eelam (LTTE). Only two weeks after Vaiko's arrest, P. Nedumaran, a leader of the Tamil Nationalist Movement, was also arrested under POTA for making pro-LTTE remarks at a conference on April 13.

In Kashmir, the Jammu and Kashmir Liberation Front (JKLF) chairman, Yasin Malik, was held under POTA the very day of its enactment, March 26, on charges of receiving smuggled money from a Pakistan-based separatist group. Malik was released on bail for medical reasons, but was immediately rearrested under a Jammu and Kashmir preventive detention law, the Public Safety Act (PSA), for anti-national activity. Acknowledging the extent of its misuse, the newly-elected government of the state of Jammu and Kashmir announced in October 2002 that POTA would no longer be used in the state.

An independent member of the legislative assembly in Uttar Pradesh and political opponent of the state's chief minister was charged under POTA in January 2003, along with his seventy-year-old father. Both were arrested in November 2002 under the National Security Act. Also in Uttar Pradesh, between April and July 2002, over twenty-five Dalits and tribals were charged under POTA. Tribals in the area, who work for Rs. 20 (U.S.$0.42) a day, claim that POTA has become an instrument to brand them as Naxalites (members of extreme leftist Maoist-Leninist groups) whenever they challenge the government official-landlord nexus. One villager remarked, "We are thrashed, arrested and called Naxalites. The nexus between the contractors, police, landlords and industry is just growing stronger here…. when we

protest we are booked under POTA." In one case from Sonbadhra district, nine out of twelve people arrested were bonded laborers who refused to return to work because of the physical abuse of their employer.

On February 19, 2003 in Jharkhand state almost 200 people were arrested under POTA, among them a twelve-year-old boy and an eighty-one-year-old man. According to the government, the accused are being held for supporting Naxalites. According to press reports most of those arrested were farmers, students, or daily wage earners. When asked how a Naxalite was identified, a senior police official told reporters, "Anyone caught with a copy of the Communist Manifesto or Mao's Red Book becomes a suspicious character. We then watch him and often find clinching evidence." Following widespread criticism against the charges, Deputy Prime Minister Advani directed the state to review the cases. As a result, officials decided to drop the POTA charges against eighty-three of the detainees. Rights groups have charged that POTA is being used indiscriminately against ordinary citizens in the state, including young children. In January 2003, for example, a thirteen-year-old boy was arrested because his father was suspected of involvement with the insurgent Maoist Communist Centre group. The charges were later withdrawn. At this writing, a total of ten children, mostly students, had been arrested under POTA in Jharkhand state.

On February 19, 2003, the Gujarat government charged 131 Muslims under POTA for allegedly attacking Hindus. A year earlier, a Muslim mob set fire to a train carrying Hindu activists in Godhra in the western state of Gujarat. Fifty-eight people were killed. In the days that followed, Hindu nationalist groups and their supporters killed more than 2,000 Muslims throughout the state. Muslims were branded as terrorists while armed gangs set out to systematically destroy Muslim homes, businesses and places of worship. Scores of Muslim women and girls were gang-raped before being mutilated and burnt to death. Human Rights Watch investigations revealed that attacks against Muslims were carried out with extensive state participation and support and planned months in advance of the Godhra attack. The Hindu nationalist Bharatiya Janata Party that heads the state government has not charged any Hindus under POTA for violence against Muslims.

Indonesia

Since the September 11 attacks, Indonesia has been seen as a frontline in the international campaign against terrorism due to ongoing political and sectarian violence and alleged links between local Islamist movements and international terrorist networks. After the October 12, 2002 Bali bomb attack, President Megawati, under intense U.S. pressure, issued two executive decrees to address terrorism. The Indonesian parliament is now considering similar anti-terror legislation. The decrees and draft legislation threaten to seriously curb fundamental rights, invoking broad definitions of terrorism that could be used to target political opponents. Critics argue that existing Indonesian criminal laws are sufficient to address the country's security needs.

Under the draft law, suspected terrorists can be detained by the police for up to seven days on the basis of scant preliminary evidence and then for a further six months for questioning and prosecution. The draft law would allow intelligence reports to be admitted as prima facie evidence in order to detain suspects. The military would be allowed to conduct arrests, bringing the Indonesian military back into direct involvement in policing and criminal investigations, powers it abused in the Soeharto era. Investigators would also have the authority to go through personal mail and parcels and to tap telephone conversations or other forms of communication. While intelligence-gathering actions have to be reviewed by a judge, the Indonesian court system is so weak and corrupt that judicial review cannot be relied upon to constitute a meaningful safeguard. The draft law allows for the death penalty.

After the Bali attack, senior Indonesian officials began to incorporate the term "terrorist" into their rhetoric when talking about domestic groups perceived to be a threat to the unity of Indonesia.

Armed separatist groups, the Free Papua Movement (OPM) in Papua and the Free Aceh Movement (GAM) in Aceh, were singled out. In September 2002, Indonesian Foreign Affairs Minister Hasan Wirajuda publicly labeled OPM a terrorist organization, while Coordinating Minister of Political and Security Affairs, Susilo Bambang Yudhoyono, accused GAM of carrying out acts of terrorism.

The Indonesian police have carried out a high profile investigation to identify and arrest the perpetrators of the Bali attack. Up to thirty people have been arrested and are being held under the terrorism decrees. The police have conducted public interrogations of suspects and staged public re-enactments of the crime, using detainees as key 'actors' in these re-enactments. This will make it difficult to hold fair and credible trials, as the presumption of innocence is lost after such reenactments. There are also concerns with the validity of "confessional" evidence from other detainees in Singapore and Malaysia, which has apparently served as the basis for the arrests of many suspects. It is unclear whether or not persons who are not involved in violent activities have been arrested under the anti-terrorism decrees.

The U.S. has pressured the Indonesian government to arrest key terrorist suspects and label the radical Islamic group Jemaah Islamiyah a terrorist organization under Indonesian law. Jemaah Islamiyah has been accused of sponsoring the Bali attack and of planning to carve out an Islamic state in Southeast Asia through violent means. On October 23, 2002, the U.S. State Department designated Jemaah Islamiyah a foreign terrorist organization. Shortly afterwards the U.N. Security Council Sanctions Committee included Jemaah Islamiyah on its consolidated list of individuals and entities, the assets of which member states are required to freeze in accordance with Security Council resolutions. At the end of January 2003 the United Nations Security Council Sanctions Committee added two Indonesians to its list of persons and entities subject to the sanctions because of their links to the Taliban or to other terrorist operatives: Riduan Nurjaman Samuddin and Iqbal Mohamad Abdurrahman. It is unclear where these two individuals are at present but at least one of them is wanted by the Indonesian police in connection with the Bali attack.

Omar al-Faruq, an alleged Kuwaiti citizen married to an Indonesian woman, was arrested on December 5, 2002 and handed over to the U.S. authorities as part of an intelligence operation involving Indonesia's intelligence service and the CIA. Indonesian authorities have given conflicting statements about al-Faruq's case, including statements by authorities insisting that al-Faruq was an Indonesian citizen wanted by the U.S. government for terrorist acts in the U.S. even prior to the September 11 attacks. Coordinating Minister for Political and Security Affairs Susilo Bambang Yudhoyono was quoted in the press as saying, "The arrest was the result of cooperation between the Indonesian police and intelligence as well as foreign intelligence sources under a cooperation framework in the fight against terrorism." However, Minister of Foreign Affairs Hassan Wirayuda said that al-Faruq's extradition to the U.S. was not linked to the government's efforts against terrorism, but was immigration related. It was unclear where Omar al-Faruq was at the time of writing.

The Bush administration has renewed links with Indonesia's military (TNI) as part of its counter-terrorist strategy for Indonesia, arguing that the only way to support democracy and human rights and fight terrorism in Indonesia is to work with the military. The U.S. IMET (International Military Education and Training) program to Indonesia had been cut after the TNI-orchestrated 1999 violence in East Timor. Resumption was conditioned on demonstrable reform of the military and a willingness to tackle impunity, but in its efforts to secure a bulwark against terrorism in Southeast Asia the Bush administration has agreed to resume the program without the necessary reforms. On a visit to Jakarta in 2002, U.S. Secretary of State Colin Powell announced a new $50 million program to assist the security forces in the campaign against terrorism. The U.S. Congress approved legislation giving Indonesia's police force $16 million, including $12 million to set up a special anti-terrorism unit. Restrictions on lethal arms and arms supplies, both commercially and U.S. government-funded, remained in place.

Russia – Chechnya

Since it launched a military operation in Chechnya in 1999, Russia's leaders have described the armed conflict there as a counter-terrorism operation and have attempted to fend off international scrutiny of Russian forces' abusive conduct by invoking the imperative of fighting terrorism. This pattern has become more pronounced since the September 11 attacks, as Russia sought to convince the international community that its operation in Chechnya was its contribution to the international campaign against terrorism. The current armed conflict in Chechnya is Russia's second in ten years.

Following bombings in Moscow attributed to Chechen separatists, in September 1999 Russian forces began aerial bombing and ground operations in Chechnya. Several thousand civilians died before Russian forces established control over most of the republic's territory in March 2000. Russian officials constantly used the language of counter-terrorism to describe the conflict; in some forums they argued that this meant that humanitarian law was irrelevant.[27] The terrorist label was attached not only to Shamil Basaev, a Chechen field commander responsible for a mass hostage-taking of civilians during the first Chechen war, and Khattab, a field commander with alleged links to al-Qaeda, but to all Chechen forces.

After September 11, Russia went to great lengths to link the war in Chechnya to the global campaign against terrorism. On September 12, 2001, Russian President Vladimir Putin declared that America and Russia had a "common foe" because "Bin Laden's people are connected with the events currently taking place in our Chechnya,"[28] and on September 24 said that the events in Chechnya "could not be considered outside the context of counter-terrorism," glossing over the political aspects of the conflict.[29]

World leaders, until then critical of Russia's conduct in Chechnya, did little to challenge these claims. Two weeks after the attacks in the United States, German Chancellor Gerhard Schroder said, during a meeting with President Putin, "As regards Chechnya, there will be and must be a more differentiated evaluation in world opinion." On the same occasion, Prime Minister Silvio Berlusconi of Italy said, "We'll probably have to judge things differently than we have done until now regarding Chechnya. But it does not mean forgetting about various rights such as human, civil and political rights."

While Russia has described its actions in Chechnya as a tightly focused counter-terrorism operation, it has produced vast civilian casualties. The first phase of the conflict involved the bombing and shelling of dozens of towns and villages to dislodge Chechen fighters. Research by Human Rights Watch and other organizations showed the shelling and aerial bombardment by Russian forces to be highly indiscriminate and disproportionate, causing about 3,000 civilian casualties. Between December 1999 and February 2000, Russian forces committed massacres after taking control of three villages, killing at least 130 people. During this period they also rounded up thousands of people, mostly males whom they called "potential terrorists," took them to detention centers, and tortured them to compel confessions or testimony.

[27] Russian diplomats objected to references to international humanitarian law for the Chechnya conflict during the 56th and 57th sessions of the U.N. Commission on Human Rights. Resolutions adopted at both sessions of the UNCHR recognized the applicability of international humanitarian law to the conflict. See, Commission on Human Rights, "Situation in the Republic of Chechnya of the Russian Federation, E/CN.4/2000/L32,12 April 2000, and Commission on Human Rights, "Situation in the Republic of Chechnya of the Russian Federation," E/CN.4/RES/2001/24.

[28] Susan B. Glasser and Peter Baker, "Putin, Bush Weigh New Unity Against A 'Common Foe,'" Washington Post, September 13, 2001, p. A25.

[29] "Vremya" (Russian Public Television news program), September 24, 2001.

By the spring of 2000, Russian troops had established nominal control over most of Chechnya and large-scale hostilities ceased. They continued to conduct many "sweep operations," to seek out rebel fighters and ammunition depots. Sweep operations have become synonymous with abuse, involving the arbitrary detention of large numbers of Chechen civilians (along with captured fighters), who are then beaten and tortured in detention.

This cycle of abuse, well established before September 11, continues to this day. Hundreds of people have "disappeared" since that date after being taken into Russian custody. Increasingly, Russian forces conduct targeted night operations, in which masked troops raid particular homes, execute targeted individuals, or take them away, never to be seen again. In December 2002, Human Rights Watch documented nine extrajudicial executions and seventeen forced disappearances by Russian forces, most of which had taken place in the two months following a mass hostage taking in Moscow by armed Chechens. Among these cases was the November 29 killing of Malika Umazheva, who had previously been dismissed from her post as village administrator, had been an outspoken critic of Russian abuses, and a trusted source of information on abuses for human rights organizations. Masked Russian troops shot her at point-blank range during a night raid of her home. Among the many individuals who have "disappeared" is Issa Abumuslimov, a fifty-two-year-old engineer, whom Russian forces detained in a December 11 night raid of his home.

Chechen forces have also targeted civilians. They are believed to be responsible for a continuing pattern of assassinations of village administrators and other civil servants working for the pro-Moscow government in Chechnya. They bombed the main government building in Grozny in December 2002, killing seventy-two civilians, and are believed responsible for other explosions that have cost civilian lives. They took more than seven hundred people hostage at a Moscow theater last October, demanding the withdrawal of Russian troops from Chechnya. They threatened to kill all of the hostages, and killed several. Three days later, Russian special forces liberated over six hundred hostages in a raid that resulted in the deaths of 128 hostages and about fifty hostage takers.

Spain

In the aftermath of September 11, Spain applied its existing strict counter-terrorism regime to the investigation, apprehension, and detention of suspected al-Qaeda operatives. The climate created by the international campaign against terrorism provided the Spanish authorities with a further pretext to crackdown on Basque separatists and supporters of the pro-independence movement. Spanish authorities were also quick to issue public statements equating stricter controls on immigration with the war against terrorism, contributing to a climate of fear and suspicion toward migrants, asylum seekers, and refugees.

Spain's anti-terror laws permit the use of incommunicado detention, secret legal proceedings, and pre-trial detention for up to four years. The proceedings governing the detentions of suspected al-Qaeda operatives apprehended in Spain in November 2001, July 2002, and January 2003, among others, have been declared secret (*causa secreta*). The investigating magistrate of the Audiencia Nacional, a special court that oversees terrorist cases, can request *causa secreta* for thirty days, consecutively renewable for the duration of the four-year pre-trial detention period. Secret proceedings bar the defense access to the prosecutor's evidence, except for information contained in the initial detention order. Without access to this evidence, detainees are severely hampered in mounting an adequate defense.

In November 2002, the United Nations Committee against Torture (CAT) expressed serious concern about incommunicado detention under Spain's criminal laws. A suspect can be held incommunicado for up to five days, without access to an attorney, family notification, services such as access to health care, or contact with the outside world. The CAT concluded that incommunicado detention under these circumstances can facilitate acts of torture and ill-treatment. In Spain, most suspected terrorist detainees are held incommunicado for at least the first forty-eight hours in custody.

The global anti-terror climate hardened the Spanish government's resolve in the ongoing conflict with armed Basque separatists, *Euskadi ta Askatasuna* (ETA) and the non-violent pro-independence movement. ETA uses violent means to seek the creation of an independent Basque state in parts of northern Spain and southern France. The group has been responsible for over 800 deaths since the 1960s. In recent years, it has targeted civilians, including academics and journalists. Since September 11, over fifty suspected ETA members have been detained and held under Spain's anti-terror laws. Casualties of the government's hard-line approach, however, have included *Gestoras pro Amnistía*, an organization that provided support to families of ETA detainees, which was banned in December 2001. In August 2002, the Batasuna Party, widely regarded as the political arm of ETA, was banned for three years. In February 2003, *Euskaldunon Egunkaria*—the sole remaining newspaper written entirely in the Basque language—was closed down, and ten people associated with the paper were arrested and held incommunicado. These actions give rise to serious concerns that Spain's counter-terrorism measures breach the rights to freedom of association and expression. Human rights organizations have also documented instances of alleged torture and ill-treatment of ETA members and pro-independence supporters detained by Spanish authorities.

In the aftermath of September 11, then Spanish Foreign Minister Josep Pique told *El País* that "the reinforcement of the fight against illegal immigration is also the reinforcement of the fight against terrorism." Such political rhetoric has been accompanied by increasingly restrictive immigration and asylum policies and practices, including police harassment in Muslim and Arab migrant communities, which undermine the right to seek asylum and contribute to the creation of a climate hostile toward all migrants in Spain.

United Kingdom

In the United Kingdom, the government's response to the events of September 11 resulted in laws, policies, and practices that undermine fundamental human rights protections, including the right to seek asylum and prohibitions against arbitrary detention and mistreatment. The U.K. derogated from the European Convention on Human Rights and Fundamental Freedoms (ECHR), the sole Council of Europe member to do so on counter-terrorist grounds. Subsequent government action and rhetoric signaled a further tendency to opt out of human rights obligations, with little effort to find accommodation between national security interests and the protection of human rights.

In considering the periodic report of the United Kingdom in December 2001, the Human Rights Committee noted with concern legislative measures being considered by the government which could have "far-reaching effects" and require derogations from its human rights obligations. The Committee also expressed concern at reports of attacks and harassment on the basis of religious beliefs and the use of religion to incite criminal acts, and called for criminal legislation to cover offences motivated by religious hatred and other steps to protect against religious discrimination. During questioning by the Committee, the United Kingdom reportedly invoked Article 103 of the U.N. Charter to argue that its obligations to the Counter Terrorism Committee under Resolution 1373 took precedence over its obligations to the Human Rights Committee.

Arbitrary Detention

In December 2001, the Anti-Terrorism, Crime and Security Act (ATCSA) went into force. The ATCSA provides for the indefinite detention without charge or trial of non-U.K. nationals who are suspected of terrorism-related activity and cannot be returned to their country of origin or to another country. The Secretary of State for Home Affairs must certify a detainee as a suspected terrorist or a national security risk. The evidence used to make such a determination is secret and the suspect is prohibited from gaining access to it. A detainee can lodge an appeal with the Special Immigration Appeals Commission (SIAC), but only on a point of law. Although a detainee can be represented by a

court-appointed "special advocate," he or she has no right to legal counsel. A detainee's advocate cannot reveal to the detainee or discuss the evidence upon which the original certification was issued, undermining a detainee's ability to mount an adequate defense. Certification can be withdrawn by the Home Secretary or by the SIAC, although the U.K. courts have ruled that the executive should be given wide discretion in certifications based on national security interests. An October 2002 Court of Appeal ruling held that the indefinite detention of aliens on grounds of national security is a power expressly reserved to the state in time of war or similar public emergency.

In response to the charge that it was reinstituting the practice of internment, used in Northern Ireland, the U.K. government derogated from Article 5 of the ECHR, the provision establishing procedural guarantees that govern the right to a fair trial. The derogation was predicated on the argument that the global threat of terrorism amounted to a public emergency that "threatened the life of the nation," although the Home Secretary publicly stated in October 2001 that there were no specific terrorist threats aimed at the U.K.

In February 2002, the European Committee for the Prevention of Torture (ECPT) made an *ad hoc* visit to the U.K. to monitor detentions under the ATCSA. The committee expressed concern about lack of access to counsel; the use of secret evidence; lack of exercise and out-of-cell time; delayed access to healthcare, in particular to psychological support and psychiatric treatment; translation and interpretation problems; and lack of adequate contact with the outside world.

The U.K. police have arrested over 300 people under anti-terrorism legislation since September 11. Approximately forty persons have been charged, most with immigration-related offenses. Three persons have been convicted for membership of a banned organization, including a Sikh youth group, but none to date for membership or association in a banned Islamic group or organization. Defense lawyers have alleged that the police have targeted particular racial, ethnic, or religious communities in random sweeps, with little hard evidence of terrorist activity.

The arbitrary nature of detention under the ATCSA was highlighted by the case of Lotfi Raissi. In an April 2002 ruling, a U.K. court halted extradition proceedings against Raissi, certified by the Home Secretary as a "terrorist suspect" associated with the September 11 attacks, after the United States promised repeatedly but failed to produce evidence to support that charge. Raissi was released on bail in February 2002 after five months in detention under the ATCSA. The court ruled that it had received "no evidence" to support Raissi's certification as a "terrorist suspect." According to human rights monitors, Raissi was severely traumatized by the combination of harsh detention conditions in a high security prison, lack of access to the evidence against him, and the indefinite nature of detention under the ATCSA.

Seven United Kingdom nationals, detained in Guantánamo Bay under the supervision of the U.S. military, have also been subject to indefinite detention without charge or trial and denied access to legal counsel (see section on the United States). While U.K. authorities have interrogated these detainees, they have failed to press the U.S. adequately to ensure that they fully enjoy their rights. A November 2002 ruling by the U.K. Court of Appeals described one U.K. national's detention at Guantánamo as "objectionable."

Mistreatment in Detention

In January 2003, following opposition calls for rejected asylum seekers certified as security threats to be removed from the country, Prime Minister Tony Blair stated publicly that the government would "consider further measures, including fundamentally looking at the obligations we have under the Convention on Human Rights." Prime Minister Blair's remarks raised serious concerns that the U.K.

would consider withdrawing from the ECHR in order to return suspected terrorists to their home country despite the possibility that they might be tortured.

The treatment of detainees under anti-terrorism legislation in high security U.K. prisons has also raised concern that they are subject to cruel, inhuman or degrading treatment. Detainees in U.K. prisons have complained of long periods of isolation; lack of access to health care, exercise of religion, and educational services; lack of exercise; obstacles to visits from friends and family; and psychological trauma associated with the uncertainty of when they will be released.

Concerns about the use of torture have also arisen in connection with other aspects of U.K.'s participation in the international campaign against terrorism. In December 2002, reports that U.S. forces were using "stress and duress" techniques in their interrogations of al-Qaeda suspects detained on the island of Diego Garcia—part of British-held Indian Ocean Territory—resulted in urgent appeals to the U.K. government to ensure that the detainees' human rights were upheld. The U.K. government could be seen as having been complicit in acts of torture if it permits allies to use abusive interrogation techniques on its soil.

Treatment of Refugees and Asylum Seekers

The U.K. government, political parties and the media have exploited insecurities arising from the September 11 attacks to call for greater restrictions on the right to seek asylum in the U.K. The ATCSA and the Immigration, Nationality and Asylum Act of 2002 both contain provisions that seriously undermine the right to seek asylum, ostensibly in the interest of national security. In January 2003, allegations that asylum seekers were implicated in a plot to manufacture poison ricin and the killing of a police officer in the course of that investigation, spawned a backlash against asylum seekers and refugees in the media. Following the killing, the opposition Conservative Party called for the detention of all asylum seekers on arrival in the U.K. pending security checks. Home Secretary David Blunkett responded to media attacks on asylum seekers and refugees, warning against possible vigilante action against asylum seekers by the public. Despite this response, human rights organizations claimed the government was partially responsible for creating a climate of suspicion that links asylum seekers with terrorism.

United States

Many of the measures adopted by the U.S. government after the September 11 attacks violated fundamental provisions of international human rights and humanitarian law. These included the arbitrary and secret detention of non-citizens, secret deportation hearings for persons suspected of connections to terrorism, the authorization of military commissions to try non-citizen terrorists, a failure to abide by the Geneva Conventions in the treatment of detainees held in US military custody in Cuba and elsewhere, and the military detention without charge or access to counsel of U.S. citizens designated as "enemy combatants."

Recently unveiled draft legislation prepared by the Department of Justice reveals the administration's plan to further increase executive branch powers under the rubric of strengthening national security. The so-called Domestic Security Enhancement Act of 2003 would, among other legal changes, authorize secret arrests in immigration cases, permit Americans to be stripped of their citizenship for peacefully supporting groups deemed terrorist by authorities, expand the grounds on which non-citizens can be summarily deported without a hearing, and preclude judicial review of certain immigration proceedings by exempting them from habeas corpus provisions.

Non-Citizen "Special Interest" Detainees Held on Immigration Charges

Some twelve hundred non-citizens, mostly from the Middle East or South Asia, some of whom were legal permanent residents, were detained in connection with the investigation of the September 11 attacks, although the government has never disclosed the exact number. At least 752 were held on immigration charges; the others were held on criminal charges or as material witnesses. Four have been indicted for terrorism-related crimes. Although the detainees were of interest to the Department of Justice because of possible links to terrorism, they were held under immigration laws, which enabled the Department of Justice to circumvent the greater safeguards in the criminal law—including the requirement of probable cause for arrest, the right to a court-appointed attorney and the right to be brought before a judge within forty-eight hours of arrest. The U.S. Department of Justice has maintained in secrecy the names of "special interest" detainees held on immigration charges, their place of incarceration, and the names of their attorneys, and has closed their deportation proceedings to the public, arguing that this was necessary to protect national security interests. A federal appeals court accepted this argument on October 8, 2002. Human Rights Watch has documented the mistreatment of non-citizens detained in the September 11 investigation, including: custodial interrogations without access to counsel, prolonged detention without charge, executive decisions overriding judicial orders to release detainees on bond during immigration proceedings, and unnecessarily restrictive conditions--including solitary confinement--under which some "special interest" detainees were held.

Guantánamo Bay Detainees

Since September 11, the United States has transferred about 650 men captured in connection with the Afghan war or who are suspected of links to al-Qaeda to the U.S. military base at Guantánamo Bay, Cuba. U.S. officials apparently chose the site both for security purposes as well as because they believed that U.S. courts would refuse to exercise jurisdiction over it – a belief that has been borne out in court cases. The detainees were originally held in makeshift open-air facilities with chain-link walls until moved to a newly constructed facility on April 28, 2002. According to press reports, the detainees spend twenty-four hours a day in small single-person cells, except for two fifteen minute periods of solitary exercise a week, as well as interrogation sessions. About eighty of the prisoners were held in special high security cells with steel walls that prevented them from communicating with other prisoners.

The United States has refused to recognize the applicability of the Geneva Conventions to any of the Afghan war or al-Qaeda detainees held at Guantánamo or elsewhere, including captured members of the Taliban armed forces, although it has insisted that it treats them humanely. It refused to permit competent tribunals to determine whether any of the detained combatants were entitled to prisoner of war status. It has also refused to abide by principles of international human rights law with regard to these detainees, asserting, in effect, that no legal regime applies to them and that in the war against terrorism, the United States may hold such combatants for as long as it chooses. The Guantánamo detainees remain without a legal forum in which they can challenge their detention; a federal judge ruled on July 30, 2002 that U.S. federal courts do not have jurisdiction to hear constitutional claims brought by aliens held by the United States outside U.S. sovereign territory. In addition, the United States denied the request made by the Inter-American Commission on Human Rights to provide for a lawful tribunal or court to determine the status of these detainees. The United States did not even respond to letters from the United Nations Working Group on Arbitrary Detention seeking information on the treatment and legal status of the Guantánamo detainees.

Enemy Combatants

The United States is holding incommunicado at U.S. military facilities two U.S. citizens who it claims are "enemy combatants" who may be held indefinitely without charges and without access to counsel. Jose Padilla, a.k.a. Abdullah al-Mujahir, was arrested on May 8, 2002 at the Chicago international airport and initially held as a material witness pursuant to a federal court order. In June, President Bush signed an order designating him as an enemy combatant and he was then removed from

the criminal justice system, and incarcerated in a military base in South Carolina. U.S. officials claimed that Padilla had met with al-Qaeda representatives overseas, that he had engaged in conduct in preparation for acts of international terrorism, and that he had returned to the United States to advance plans to explode a radioactive "dirty bomb" in the United States. According to U.S. officials, Yaser Esam Hamdi was captured in Afghanistan in November, 2001, where he was reportedly fighting with the Taliban, and he was transferred to Guantánamo Bay, Cuba. When U.S. officials learned that he was a U.S. citizen, they transferred him to a U.S. Navy brig in Norfolk, Virginia.

In the case of Yaser Esam Hamdi, a federal appeals court agreed with the United States' position that a citizen alleged to be an enemy combatant could be detained indefinitely without charge or access to counsel if a court, based on documents provided by the government, agrees that there is "some basis" for the enemy combatant designation. The court rejected Hamdi's petition for habeas corpus even though Hamdi was never given an opportunity to contest (or even review) the facts alleged against him by the government and was never permitted to meet with his attorney. In the case of Jose Padilla, a court ruled that he has a right to present facts to argue against his detention and that the best way for him to do so would be through counsel. The U.S. government, however, has still refused to give Padilla access to his lawyer, and has filed briefs arguing that to do so would disrupt ongoing interrogations (which at this point have lasted more than eight months) and hence harm national security. The U.S. government is appealing a federal court decision ordering that Padilla be able to meet with his lawyer.

Uzbekistan

Since September 11, the government of Uzbekistan has used the global campaign against terrorism to justify its own abusive five-year campaign to eliminate independent Islam. Western governments, particularly the United States, have been less critical of the Uzbek government's human rights record in view of the country's strategic importance to international counter-terrorist efforts.

Since 1998, the Uzbek government has imprisoned thousands of independent Muslims whom it claims are religious "extremists." These are individuals who practice their religion beyond the tight restrictions imposed by the government, by participating in private prayer groups, following imams out of favor with the state, joining religious organizations banned by the state, and distributing literature not sanctioned by the state.

After a series of bombings of government buildings in Tashkent in February 1999, government officials began to brand such people as "terrorists." They also tried to justify abuses as a necessary element of the government's campaign against the Islamic Movement of Uzbekistan (IMU), an armed insurgent group that was primarily based in Afghanistan and that had links to the Taliban and al-Qaeda.[30] On October 9, 2001, President Karimov declared that "indifference to, and tolerance of, those with evil intentions who are spreading various fabrications, handing out leaflets, committing theft and sedition in some neighborhoods and who are spreading propaganda on behalf of religion should be recognized as being supportive of these evil-doers."

Victims of the arrest campaign face charges of "anti-state activity" or "attempted subversion of the constitutional order," with sentences of up to twenty years in prison. While the Uzbek authorities have claimed defendants are associated with terrorism, they have very rarely charged them with acts of terrorism, conspiracy to commit terrorism, or involvement in any violent act. Human Rights Watch has documented more than one hundred cases in which arrest victims were tortured, including five deaths resulting from torture in 2002 alone. Among them was Muzafar Avazov, who died in August 2002. His

[30] The IMU launched cross border incursions into Uzbekistan in 2000 and Kyrgyzstan in 1999 and 2000.

body was covered with burns, bruises, and open wounds; his hands had no fingernails. Avazov had been sentenced to nineteen years for having given classes on Islam and other related charges.

Another victim of the arrest campaign was human rights defender, Yuldash Rasulov. Police arrested Rasulov, of the Human Rights Society of Uzbekistan, on May 24, 2002, charging him with "religious extremism." On May 27, police claimed that Rasulov had recruited young men for "terrorist training camps abroad,"[31] a move that seemed aimed at discrediting human rights workers. In a letter to Human Rights Watch, which Uzbek authorities distributed among Tashkent's diplomatic community, Uzbek authorities attempted to link him to the IMU, and by association to Osama bin Laden and the Taliban, "against whom international forces are carrying out a counter attack in the campaign against terrorism after the events of September 11."[32] A court sentenced him to seven years of imprisonment for spreading "religious extremist" materials; it dismissed the charge that he had recruited for criminal organizations.

The government also invoked the counter-terrorism imperative when faced with international criticism about the death in custody of an independent Muslim. On January 14, 2002, a police spokesman justified the actions of four policemen charged with the October death in custody of Ravshan Haidov, an accused member of the Islamic group Hizb ut-Tahrir, by claiming that the group was responsible for the events of September 11. Hizb-ut-Tahrir, which employs anti-Semitic and anti-American rhetoric, is banned in Uzbekistan for espousing the establishment of a Caliphate, but it has not been implicated in acts of violence. On January 30, 2002, the policemen were found guilty of inflicting "bodily harm that caused death" and were sentenced to twenty years in prison.

Uzbekistan's proximity to Afghanistan, and its willingness to host U.S. airbases, has made it a valued partner in the international campaign against terrorism. The U.S. has failed to leverage this partnership to press for human rights improvements in Uzbekistan, and sometimes exaggerated Uzbekistan's progress in meeting its human rights commitments. In August 2002, the State Department prematurely certified that Uzbekistan was making the progress demanded by supplemental aid legislation, allowing for the release of $16 million in military and security assistance. It made no visible effort to use the law to seek additional progress to meet the law's requirements, despite several key human rights setbacks during those months. Prior to the August supplemental appropriation, Uzbekistan was scheduled to receive $173 million in U.S. assistance, of which $61.3 million was security related. Citing "serious human rights violations by members of Uzbek security forces," a Congressional amendment to the U.S. Foreign Appropriations Act required the administration to report every six months on all military and security assistance to the government.

[31] Remarks made by Ilia Piagi, of the Department for the Fight Against Organized Crime, Corruption and Terrorism of the Ministry of Internal Affairs of Uzbekistan, to Human Rights Watch and others gathered at the Ministry of Internal Affairs to protest Rasulov's arrest, Tashkent, May 27, 2002.

[32] Letter dated July 25, 2002 to Human Rights Watch from A.O. Sharafutdinov, chief of Main Directorate for Investigation of the Ministry of Internal Affairs.

UNITED KINGDOM
Briefing on the Terrorism Bill

The UK government has issued, for parliamentary debate, the "Terrorism Bill" in which it seeks to introduce -- into permanent legislation -- provisions which either directly contravene international human rights treaties to which UK is a party[1], or may result in human rights violations. Most of them are present in current emergency or temporary legislation[2], which in the past facilitated serious abuse of human rights, extensively documented by the organization throughout the years. As a result, Amnesty International has grave concerns about this Bill.

The creation of a permanent distinct system of arrest, detention and prosecution relating to "terrorist offences" may violate the right of all people to be equal before the courts (article 14 of the International Covenant on Civil and Political Rights (ICCPR)). This different treatment is not based on the seriousness of the criminal act itself but rather on the motivation behind the act, defined in the Bill as "political, religious or ideological". Some of the provisions that Amnesty International is concerned about in particular are the following:

* wide-ranging powers of arrest;
* denial of a detainee's access to a lawyer upon arrest;
* denial of the right to have a lawyer present during interrogation;
* the maximum period of detention without charge being seven days, with an extension of up to five days being granted by a judicial authority after the initial 48 hours;
* the shifting of the burden of proof from the prosecution to the defence in various provisions of the Bill.

Definition

The proposed definition of "terrorism" widens the existing legal definition[3] to include "the use or threat ... of action which involves serious violence against any person or property"

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[1] This includes provisions within the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the incorporation of which will come into effect in October of this year.

[2] These are the Emergency Provisions Act, which was first introduced in 1973 and the Prevention of Terrorism Act, which was first introduced in 1974.

[3] The current definition of terrorism in the Prevention of Terrorism Act is: "the use of violence for political ends ... for the purpose of putting the public or any section of the public in fear".

for the purpose of advancing a "political, religious or ideological cause".[4] As such the definition is therefore vaguely worded and could be extended to include supporters of, for example, animal liberation or anti-nuclear campaigns and others. The inclusion of "violence to property" as opposed to the existing criminal offence of "damage to property" appears to equate people and property, whereas in the past terrorism provisions have been reserved for crimes involving the most serious injury to people, including injury resulting in death. The whole notion of "violence to property" remains unclear; it is not spelt out and therefore could lead to abuse.

The lack of a clear definition gives cause for concern because the decision to bring a prosecution for such offences could be seen to be political.

Incitement

The risk of politically-motivated prosecutions is also to be seen in the new offence of "inciting terrorism overseas", because decisions may be affected by government foreign policy. This provision is in response to pressure by other governments to deal with their opponents who reside in the UK and who are involved in oppositional activities; such activities may or may not include support for the use of violence abroad. The offence of "incitement" may be committed by words alone. Whether or not the person incited is present in the UK at the time of the incitement or not is immaterial. There is a great danger that prosecuting such "inciters" may be prompted by overseas repressive governments targetting opponents based in this country. Thus these provisions may infringe the rights to freedom of expression and of association. Furthermore, there is concern that the right to fair trial may be infringed if people are charged on the basis of intelligence information provided by other governments or on the word of informants, if this information is then kept secret from the defendant through the use of public interest immunity certificates.

Proscription

The powers to proscribe organizations not only make it a criminal offence to belong to "a terrorist organisation", but they also criminalize anyone speaking at a meeting where a member of a proscribed organization is also speaking even if the speech opposes the activities of such organization. The "meeting" could consist of three people "whether or not

[4] Under the Terrorism Bill, Clause 1(1) states:
"In this Act 'terrorism' means the use or threat, for the purpose of advancing a political, religious or ideological cause, of action which --
a) involves serious violence against any person or property,
b) endangers the life of any person, or
c) creates a serious risk to the health or safety of the public or a section of the public."

the public are admitted". The penalty for the latter offence could be imprisonment for up to ten years.[5] Amnesty International is concerned that these powers may infringe on the rights to freedom of association and expression and, if anyone were to be imprisoned for speaking at such a meeting in such circumstances, the organization would consider him/her to be a prisoner of conscience.

Powers of arrest

The powers of arrest in the Terrorism Bill are derived from current emergency legislation. Of the thousands of people who have been detained in Britain under the Prevention of Terrorism Act, the vast majority were released without charge; only a fraction of them were charged with offences linked to terrorism.

Under the Bill, a police officer "may arrest without a warrant a person whom he reasonably suspects to be a terrorist". The powers of arrest are too wide, because they do not specify that the police officer has to have "reasonable suspicion" that the person committed an offence or was about to commit one. They contravene the ECHR because the purpose for the arrest may be other than to bring the person before a competent legal authority, for example, for questioning for the purpose of gathering intelligence. Article 5(1)(c) of the ECHR permits arrest to bring the person before a competent legal authority on three specific grounds: a) on a "reasonable suspicion" of their having committed an offence; b) as a necessary measure to prevent them from committing an offence; or c) to prevent them fleeing after having done so. The second ground, to prevent them from committing an offence, has been interpreted by the European Court of Human Rights as meaning that the anticipated offence must be a "concrete and specific act" (in *Guzzardi v Italy*). The wide-ranging powers of arrest may also contravene Article 5(2) of the ECHR which requires anyone arrested "to be informed .. of the reasons for his arrest".

The various police powers to stop, question and search people and to search property are similar if not identical to emergency provisions which have been abused to commit human rights violations in the past in Northern Ireland. Such powers should always be counterbalanced by adequate safeguards in order to ensure that a person's rights to liberty (Article 5, ECHR) and to respect for one's private life (Article 8, ECHR) are protected from abuse. Safeguards for such powers should include the grounds of "reasonable suspicion" of committing an offence before any action can be taken. Instead, the powers in the Bill allow police officers to stop and search pedestrians and vehicles at random for articles which could be used in connection with terrorism; the search can take place "whether or not the

[5] An offence under the different sections of Clause 11 carries, on summary conviction, a prison term of up to six months, or fine or both; or on conviction on indictment, a prison term of up to 10 years, or fine or both.

constable has grounds for suspecting the presence of articles of that kind". These powers breach the ECHR's requirement of "reasonable suspicion" before a search can take place.

Detention

Amnesty International opposes any proposal which deviates from international standards relating to detention. These standards were adopted to protect people against human rights violations -- including being subjected to torture and ill-treatment -- which, as has been documented, occurred in special interrogation centres in Northern Ireland while people were held in detention without charge and virtually incommunicado without the supervision of [illegible]

- promptly informed at the time of arrest of the reasons for the arrest (ICCPR Article 9(2))
- informed of their rights (Principles 13 and 14 of the Body of Principles[6])
- allowed to notify the family or an interested person of the fact and place of detention without delay (Principle 16 Body of Principles; Rule 92 European Prison Rules)
- promptly informed of the specific charges against them (ICCPR Article 9(2), ECHR Article 5(2))
- granted full legal assistance (see section below)
- promptly brought before a court (ICCPR Article 9(3), ECHR Article 5(3))
- and be granted access to a court to challenge the legality of their detention (ICCPR Article 9(4), ECHR Article 5(4))

Schedule 8 of the Terrorism Bill sets out the provisions concerning detention and the treatment of persons while in detention. Under it, the Secretary of State has the power to direct "the place where a person is to be detained". This is of concern if it means that people arrested under this legislation could be detained at special interrogation centres, as opposed to designated police stations. In the past, Amnesty International called for the closure of the special interrogation centres in Northern Ireland and welcomed the announcement in December 1999 of the closure of Castlereagh holding centre and the closure of the two other centres as soon as practicable. The Independent Commission for Policing in Northern Ireland, under Chris Patten, also called for the closure of the interrogation centres and for suspects to be held in designated police stations with monitoring by "Lay Visitors" (ordinary citizens appointed to visit police stations).

The Bill fails to provide explicitly for detainees to be informed, upon arrest, of all of their rights. However, the Bill provides for the right of a detainee to inform one person of his/her detention and the place of detention. The detainee is also entitled to consult a solicitor "as soon as is reasonably practicable". Both of these rights can be delayed, up to 48 hours, if the

[6] (UN) Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

police believe the granting of these rights may impede the investigation (seven detailed reasons are listed in the Bill). The provisions regarding judicial supervision of detention are still significantly weaker than under ordinary legislation. Under the Bill, a person can be detained for 48 hours before a judicial authority shall determine whether an extension of that detention can be granted; this is longer than the 36 hours in ordinary criminal legislation. Under the Bill, the maximum period of detention without charge is seven days, whereas it is four days under ordinary legislation. Under ordinary legislation, the request for further detention, beyond 36 hours, can only be granted by a court for a further 36 hours and then the court would have to approve the final 24-hour detention, to a maximum of four days. Under the Bill, however, further detention beyond the initial 48 hours could only be granted by a judicial authority within 48 hours of the arrest; it would appear that the judicial authority could, at that first 48-hour stage, then grant an extension of up to five days. If so, this may be in violation of the ECHR which ruled that detention beyond 4 days and 6 hours without judicial supervision breached Article 5(3).

The grounds upon which the judicial authority would decide to issue a warrant for further detention are less stringent than under ordinary legislation; they include belief that further detention is necessary to obtain relevant evidence including through questioning and that the investigation is being conducted diligently.[7] In addition, in contrast to ordinary legislation, the Bill allows for the detainee and the lawyer of their own choice to be excluded from any part of the judicial hearing concerning the reasons for the extension. This violates fair trial standards[8]. Anyone deprived of their liberty has the right to be brought promptly before a judge, so that their rights to liberty and freedom from arbitrary arrest or detention can be protected. This procedure often provides the detained person with their first opportunity to challenge the lawfulness of their detention and to secure release if the arrest or detention violated their rights. This safeguard would be severely undermined if the detained person were to be excluded from this judicial hearing and thus excluded from challenging the lawfulness of his/her detention. The safeguard of a judicial hearing would also be undermined if the detainee and his/her lawyer were excluded from the hearing while the court is deciding on whether to order the non-disclosure of information relied upon by the police officer applying for a warrant of extension.This amounts to an *in camera* hearing

[7] Under ordinary legislation, information would have to be submitted to the court indicating: a) the nature of the offence; b) the general nature of the evidence on which the person was arrested; c) what inquiries were being made in relation to the offence; and d) the reasons for believing that further detention were necessary.

[8] This includes the right to prepare one's defence, and have legal representation, throughout the entire pre-trial detention stage. Moreover, Principle 11(1) of the Body of Principles states that "A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority"; and 11(2) states "A detained person and his counsel, if any, shall receive prompt and full communication of any order of detention, together with the reasons therefor."

where police officers present evidence or allegations which could not be challenged by the detainee or his/her lawyer. Amnesty International is very concerned that these clauses undermine the very essence of this safeguard.

Scotland and Children
Schedule 8 of the Bill concerns the detention of people arrested under this legislation. Several clauses within it apply exclusively to Scotland, and within those, some apply specifically to children in Scotland. Under the Bill, children in Scotland (defined as under the age of 16) have the right to have a lawyer notified "without delay" of their arrest and place of detention, and the right to consult a solicitor "without delay". Children also have the right to have their parents notifed of their arrest and place of detention "without delay" and to have access to their parents "without delay". However, the implementation of all of these rights can be delayed if a police officer authorizes a delay of up to 48 hours on grounds that such information or such access may not be in the interests of the investigation or prevention of crime.

Amnesty International is concerned that children in Scotland, under the age of 16, may be arrested and detained for up to 48 hours without their parents or a solicitor being notified and without them having access to their parents or a solicitor. Article 9(4) of the Convention on the Rights of the Child requires that a child be allowed to notify his/her parents or guardian immediately of his/her arrest and detention.

Children
Under the Bill children can be detained for up to seven days without charge. The Committee on the Rights of the Child, in its Concluding observations on the UK implementation of the Convention on the Rights of the Child, at its January 1995 session, expressed concern that under emergency legislation, enforced in Northern Ireland, children, from the age of 10 upwards, could be detained for up to seven days without charge.The Committee recommended that emergency legislation should be reviewed to ensure its consistency with the principles and provisions of the Convention. Thus, the provisions in the Bill for seven-day detention without charge of children would not be consistent with the Convention.

Access to a lawyer

The Terrorism Bill permits a delay of up to 48 hours before the detained person can gain access to a lawyer (compared to a maximum of 36 hours under ordinary legislation).

The right to have a lawyer present during interrogation is not referred to explicitly in the Bill, except in relation to Scotland. Schedule 8(2) states: "where a person detained has been

permitted to consult a solicitor [in Scotland], the solicitor shall be allowed to be present at any interview...". The Bill does not appear to give detainees in Northern Ireland the right to have their lawyer present during questioning, whereas the right appears to continue to exist in England and Wales. Although not explicitly stated in the Bill, one assumes that in England and Wales, the provisions concerning detention under the Terrorism Bill will continue to be governed by the Codes of Practice attached to the Police and Criminal Evidence Act (in the same way that these Codes governed arrests under the PTA). These Codes of Practice include the right to have a lawyer present during interviews. However, in Northern Ireland, the Codes of Practice were part of emergency legislation which will no longer exist once the Bill comes into force. In the absence of those Codes of practice, the Bill does not make clear whether the Codes of Practice attached to the Police and Criminal Evidence (Northern Ireland) Order will apply or whether the Secretary of State will draw up new Codes of Practice.

Amnesty International believes that the Bill should state clearly that all suspects will have the right to immediate access to legal advice and to have their lawyers present during interrogation, because these provisions, as they stand, are contrary to recommendations made by international treaty bodies, including the UN Human Rights Committee and the Committee against Torture, which have urged the government to remove all restrictions on immediate access to lawyers and on lawyers being present during interrogation. Such measures are inconsistent with international standards including the UN Basic Principles on the Role of Lawyers and the (UN) Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which establish the right of all detained people to have access to a lawyer during pre-trial phases and the investigation. The Human Rights Committee has also stated that "all persons must have immediate access to counsel".[9] Similarly, in July 1996, the European Court concluded in the case of *Murray v. UK* that delay of 48 hours in granting a detained person access to counsel violated the European Convention in circumstances in which the detainee was being questioned by police and his decision to exercise his right to remain silent could result in adverse inferences being drawn against him. Indeed, the right to have counsel present during interrogation is so fundamental that it has been guaranteed for persons suspected or accused of genocide, crimes against humanity and war crimes in the Rome Statute of the International Criminal Court and the Rules of Procedure and Evidence of the International Criminal Tribunals for the former Yugoslavia and for Rwanda.

The Bill allowes for a consultation between lawyer and detainee to be held "in the sight and hearing" of a police officer, if a senior police officer has reasonable grounds to believe that such consultation would lead to interference with the investigation. Separate provisions, in relation to Scotland, similarly allow for an officer "to be present during a consultation". These powers breach international standards; Principle 18(4) of the Body of

[9] UN Doc. CCPR/C/79/Add.74, 9 April 1997, para 28.

Principles states: "Interviews between a detained or imprisoned person and his legal counsel may be within sight, but not within the hearing, of a law enforcement official."

Reversal of burden of proof

The onus should always be on the prosecution to prove all the elements of a criminal offence in accordance with the standard of "beyond reasonable doubt". However, numerous provisions in the Bill shift the burden of proof from the prosecution to the defence, where it would be up to the accused to prove their innocence. Such provisions undermine the fundamental right to a presumption of innocence (article 6(2) of the ECHR).

The following are examples from the Bill of the reversal of the burden of proof:
* it is a criminal offence to possess an "article" in circumstances which give rise to a reasonable suspicion that its possession is for a purpose connected with an act of terrorism; if it is proved that the "article" was "on any premises of which the accused was the occupier or which he habitually used otherwise than as a member of the public, the court may assume that the accused possessed the article, unless he proves that he did not know of its presence on the premises or that he had no control over it";
* it is a criminal offence to collect or make a record of or possess information likely to be useful to a person committing or preparing an act of terrorism, including a photographic or electonic record; it is a defence for the accused "to prove that he had a reasonable excuse" for possession;[10]
* it is a criminal offence to withhold from police any knowledge of terrorist activities.

Freedom of expression

Amnesty International has been concerned in the past that the police have used emergency powers to obtain court orders to force journalists to hand over to the police information in their possession which the police claim may be useful to their investigation. In fact, Amnesty International believes that these powers have been used in order to intimidate journalists from pursuing certain lines of inquiry which may be embarrassing for the authorities; these cases have mainly involved investigative journalists who have refused to hand over information which was obtained in confidence from their sources or who have refused to reveal the name of their source. These journalists were exposing possible human rights violations by agents of the state and the attempts by the authorities to force journalists to reveal their sources or confidential information could have a chilling effect on freedom of

[10] These two clauses are very similar to clauses in the Prevention of Terrorism Act which were heavily criticized by the Court of Appeal under Lord Chief Justice Bingham; the judgment stated that "both sections undermined in a blatant and obvious way the presumption of innocence" (Regina v DPP, Ex parte Kebilene and Others, March 1999).

expression. Amnesty International considered that such journalists, if imprisoned, would have been prisoners of conscience. Therefore the organization is concerned that such emergency powers have now been made permanent in Schedule 5 of the Bill. The organization is also concerned that, with the widening of the definition of terrorism, these powers could be used against much wider circles of people in connection with a broader range of activities.

Part VII (exclusively for Northern Ireland)

Amnesty International is concerned that Part VII of the Terrorism Bill provides for additional emergency powers which would apply only in Northern Ireland. The effect of this section is to totally undermine the spirit of human rights protection in the Multi-Party Agreement of April 1998, in which the government committed itself "to make progress towards the objective of as early a return as possible to normal security arrangements in Northern Ireland, consistent with the level of threat".

Part VII extends, for up to five years, many of the existing provisions in emergency law, provisions which have resulted in unfair trials and other human rights violations. Such provisions would not be subject to annual independent review and parliamentary renewal, as is currently the case with emergency legislation. These provisions include:
* the non-jury, single-judge "Diplock Court" for trials for "scheduled" offences;
* a lower standard of admissibility for confessions as a basis for prosecution and conviction than in ordinary courts;
* powers to admit, as evidence of membership of a proscribed organization, oral evidence by a senior police officer and corroborated by the suspect's remaining silent in the face of questioning about such membership;
* general police powers of arrest, entry, search and seizure without a warrant;
* general army powers of arrest, entry, search and seizure without a warrant;
* general powers to stop and question any person (it is an offence to refuse to disclose one's movements);
* the limitation of the power to grant bail.

The "Diplock Courts"

Amnesty International has documented, since the early 1980s, concerns about unfair procedures in the single-judge, juryless "Diplock Courts" and has, more recently, called for them to be abolished. The organization believes that the continuing existence of a special court is normalising what is intended under national law to be an exceptional and temporary measure and is contrary to the spirit of international law. International standards prohibit the establishment of special courts which do not use the duly established procedures of legal process and displace the jurisdiction of ordinary courts (Principle 5 of the UN Basic Principles on the Independence of the Judiciary). International human rights bodies have

stated that the trial of civilians outside of the ordinary court system is prohibited apart from "exceptional" cases. Moreover, international instruments and guidelines require that these courts operate in a manner strictly consistent with fair trial requirements. All courts must be "competent, independent and impartial". Under UN Basic Principles on the Independence of the Judiciary, adjudication must be based on facts and "in accordance with the law, without any restrictions". Individuals are entitled to a trial by ordinary courts or tribunals "in accordance with the law".

Amnesty International has several concerns regarding the use of the "Diplock Courts" for "scheduled" offences. The "juryless" system, combined with the lower standard for the admission of evidence allowed under emergency legislation, is incompatible with the right to a fair trial.

Under English law, there is a distinction between the jury, which serves as a trier of fact, and the judge who rules on the admissibility of evidence and matters related to the law. Under the Diplock Courts, the judge must take on both roles -- to weigh the evidence **and** apply the law. There are some serious questions regarding the fairness of such an approach as applied in Diplock Courts. Amnesty International notes that in a number of cases, an alleged confession comprised the primary evidence against an individual. In cases where the defendant denies having made a confession or maintains that the confession was obtained under duress, a *voire dire* is entered.[11] In an ordinary court during a *voire dire* a judge, in the absence of the jury, listens to the evidence to determine whether a confession was obtained lawfully and whether it should be admissible as evidence. However, in the Diplock Courts, the judge and trier of fact are one and the same. Therefore, if a trial judge decides that a confession is admissible, he/she must formally warn himself/herself to discount anything that he/she heard during the *voire dire* that would be inadmissible in court. If he/she chooses not to admit the confession, then he/she must disregard everything the judge heard during the *voire dire*. This raises a second, related matter, which is the conditions in which the confession has been obtained. The Terrorism Bill allows for questioning up to seven days. It is during this period, in the absence of a solicitor, that involuntary or false confessions have been made in the past.

The standard of admissibility of confession evidence is lower under the Bill than the standard under the ordinary criminal law, and would permit confession evidence even if it was obtained through oppressive or other unfair questioning. The standard for the admissibility of confession evidence should always be high because the conditions in which such confessions have been obtained can be open to abuse if there are insufficient

[11] A *voire dire* is a trial within a trial, a procedure whereby a defendant challenges the admissibility of his/her confession evidence.

safeguards to protect the rights of the detainee. In Northern Ireland the consequence has been convictions based solely on confessions which were obtained through coercion, or threats of violence, or psychological pressure; these confessions were obtained in the absence of the solicitor. Such confessions would not be admissible under ordinary law.

There are only a small number of judges hearing cases in the Diplock Courts. As Douwe Korff observed, the fact that these judges hear cases alone increases the risk that subjective factors come to influence the findings of fact, especially in cases of confession-based evidence. "Such subjective factors need not constitute bias on the part of the judge, but may include "case-hardening": the negative effect of constant involvement in the administration of justice on the objectivity of judges."[12] In a number of cases, Amnesty International has documented instances in which Diplock judges have made prejudicial or adverse comments. One example is at the trial of the "Ballymurphy 7" when the judge stated, upon their acquittal, that their release was not a "resounding vindication on their innocence". Another statement was by a judge who acquitted three police officers of the murder of Eugene Toman, in an alleged shoot-to-kill case, and then commended them for "their courage and determination in bringing the three deceased men to justice, in this case, the final court of justice".

Evidence of membership

In Northern Ireland, the evidence for membership of a proscribed organization can consist of a senior police officer's oral statement of his opinion combined with an inference drawn from the silence of the suspect in respect of membership charges. Under the Criminal Justice (Terrorism and Conspiracy) Act, these measures are currently in operation throughout the UK, but the Bill proposes to repeal this Act and the measures will only be applicable in Northern Ireland under Part VII of the Terrorism Bill. Amnesty International is opposed to measures which allow proof of membership of a proscribed organization to consist solely of the opinion of a senior police officer and the corroboration of such a membership to be inferences drawn from a person's failure to respond to questioning. The provisions, which allow presumptions to be made as a result of a person's failure or refusal to provide answers to police questioning, violate the presumption of innocence, and the right not to be compelled to testify against oneself or admit guilt enshrined in Articles 14(2) and 14(3)(g) of the ICCPR. They also violate the right to remain silent which has been deemed to be inherent in these two fundamental rights. The provisions which allow the main basis for a conviction of membership to be the opinion of a senior police officer are incompatible with the right to a fair trial under Article 6 of the ECHR because it is unlikely that the defendant will have an opportunity to cross-examine effectively the police officer about the basis for his opinion, i.e. his sources of information.

[12] The Diplock Courts in Northern Ireland: A Fair Trial?, by Douwe Korff, SIM, 1983.

Additional powers of arrest and search.
The proposed powers of the police and soldiers to arrest without warrant, and without "reasonable" suspicion that a person has committed, or is about to commit, a particular identified offence, may violate Article 5 of the ECHR. The proposed powers to stop and search do not require officers to have reasonable grounds for conducting a search. Such a search may not comply with Article 8 of the ECHR. Furthermore, provisions allowing searches do not clearly state that a search should be confined to material which is relevant to an investigation under the Act.

Conclusion

Amnesty International is concerned that many provisions in the Terrorism Bill contravene UK obligations under international human rights law. Furthermore, many provisions are open to abuse by law enforcement officials; and the Bill fails to provide adequate safeguards against such abuse.

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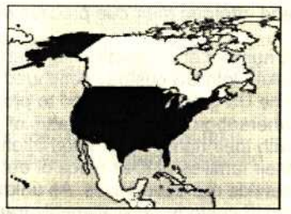
Amnesty International

USA

Covering events from January - December 2002



UNITED STATES OF AMERICA
Head of state and government: George W. Bush
Death penalty: retentionist
International Criminal Court: signed

More than 600 foreign nationals – most arrested during the military conflict in Afghanistan – were detained without charge or trial or access to counsel or family members in the US naval base in Guantánamo Bay, Cuba. The USA refused to recognize them as prisoners of war or allow their status to be determined by a "competent tribunal" as required under the Geneva Conventions. There were concerns about the situation of others taken into US custody outside the USA, some of whom were held in undisclosed locations. Many of the 1,200 foreign nationals detained in the USA during investigations into the 11 September 2001 attacks on the Pentagon and World Trade Center were also deprived of safeguards under international law, as were two US nationals held incommunicado in military custody in the USA as "enemy combatants". Death sentences continued to be imposed and carried out under state and federal law. There were reports of police brutality, deaths in custody and ill-treatment in prisons and jails.

Background

The US-led international military action in Afghanistan, launched following the 11 September 2001 attacks, continued into 2002. Thousands were detained in the context of the conflict, with frequent transfers of prisoners between the US, Afghan and Pakistan authorities. While calling for those responsible for the 11 September attacks and other crimes to be brought to justice, AI and others criticized the US government for denying internationally recognized rights to people taken into custody in the context of its declared "war against terrorism" (see below).

Detentions outside the USA

During the year, starting in January, the USA transferred more than 600 foreign nationals to the US naval base in Guantánamo Bay, Cuba, where they were held without charge or trial or access to the courts, lawyers or relatives. Although most were arrested during the armed conflict in Afghanistan, the USA refused to grant them prisoner of war status under the Geneva Conventions or to afford them other rights under international human rights law. Attempts to challenge the lawfulness of the detentions in US or other courts were unsuccessful, although several cases were pending at the end of the year. An urgent call by the Inter-American Commission on Human Rights to the US government to have the legal status of the detainees determined by a competent tribunal was ignored.

The conditions of the detainees' transfer to and detention in Guantánamo Bay gave cause for serious concern. During the 22-hour flights, the prisoners were handcuffed, shackled, made to wear mittens, surgical masks and ear muffs, and were effectively blindfolded by the use of taped-over ski goggles. They also had their beards and heads shaved. At first, the detainees were held in Camp X-Ray at the naval base, a temporary facility consisting of small wire-mesh cells, exposed to the elements, and lit up throughout the night by powerful arc lighting. Prisoners were made to wear shackles whenever they were taken out of their cells, and granted almost no out of cell exercise time.

A more permanent prison, Camp Delta, was constructed and began

Further information

Report 2003: 'Counter-terrorism' and human rights

USA: Arbitrary, discriminatory, and cruel – an aide-mémoire to 25 years of judicial killing
(AI Index: AMR 51/003/2002)

USA: The restraint chair – how many more deaths?
(AI Index: AMR 51/031/2002)

USA: Amnesty International's concerns regarding post September 11 detentions in the USA
(AI Index: AMR 51/044/2002)

USA: Memorandum to the US Government on the rights of people in US custody in Afghanistan and Guantánamo Bay
(AI Index: AMR 51/053/2002)

USA: Joseph Amrine: Facing execution on tainted testimony
(AI Index: AMR 51/085/2002)

USA: Amnesty International's concerns on police abuse in Prince George's County,

to house the detainees from April. The detainees continued to be held for up to 24 hours a day in cells smaller than those of Camp X-Ray. Some prisoners engaged in a hunger strike during the year, and there were also reports of several suicide attempts.

AI received no reply to its repeated requests to visit Guantánamo.

In December, AI wrote to the US government reiterating concerns raised in a Memorandum in April, and calling for the Guantánamo detainees to be repatriated or charged with recognizable offences and afforded their due process rights under international law.

A number of suspected members of *al-Qa'ida* reported to have been taken into US custody continued to be held in undisclosed locations. The US government failed to provide clarification on the whereabouts and legal status of those detained, or to provide them with their rights under international law, including the right to inform their families of their place of detention and the right of access to outside representatives. An unknown number of detainees originally in US custody were allegedly transferred to third countries, a situation which raised concern that the suspects might face torture during interrogation.

Two US nationals continued to be held in incommunicado detention without charge or trial as "enemy combatants" in military custody in the USA at the end of the year. Yaser Esam Hamdi reportedly surrendered to the Northern Alliance in Afghanistan in late 2001 and was transferred to Virginia from Guantánamo Bay in April 2002.
José Padilla was arrested at Chicago airport in May 2002 and was originally held on a material witness warrant – with access to an attorney – on suspicion of involvement in an alleged conspiracy to detonate a radioactive "dirty bomb" against a US target. He was transferred to US military custody on 9 June, without notice to his court-appointed attorney. On 4 December, a federal district judge issued a ruling stating that José Padilla could have access to his attorney under certain conditions. However, the terms of access had still not been agreed by the end of 2002.

Maryland
(AI Index: AMR 51/126/02)

USA: Indecent and internationally illegal – the death penalty against child offenders
(AI Index: AMR 51/143/2002)

USA: James Colburn – mentally ill man scheduled for execution in Texas
(AI Index:AMR 51/158/2002)

USA: Beyond the law – Update to Amnesty International's April Memorandum to the US Government on the rights of detainees held in US custody in Guantánamo Bay and other locations
(AI Index: AMR 51/184/2002)

All AI documents on USA

Military commissions

In March, the Department of Defense released the operating procedures for the trial of non-US nationals by the military commissions established by presidential order in 2001. By the end of the year, no one had been named to appear before such commissions. AI believes that trials before such bodies, which would have the power to impose death sentences, would violate fundamental fair trial standards.

Abuses by US forces in Afghanistan and Yemen

There were allegations of ill-treatment of civilians during raids by US ground forces in Afghanistan. During a raid in Uruzgan province in January, US Special Forces killed at least 16 villagers, some of whose bodies were discovered with their hands tied behind their backs. Some 27 villagers taken into US custody during the raid were allegedly hooded, blindfolded, tied up and flown to the US base in Kandahar, where they were allegedly kicked, beaten and punched by US soldiers. A 17-year-old alleged that he was kept in solitary confinement in a shipping container for eight days. All the detainees were released two weeks later, after it had been determined that they were members of neither *al-Qa'ida* nor the *Taleban*. AI questioned the adequacy of the investigation into the allegations, but received no reply from the US authorities. Similar allegations of ill-treatment were made by a group of 31 people detained by US soldiers during a raid on a compound near Kandahar on 17 March.

Baryalai, an 18-year-old telephone operator arrested by US troops in Sharan, Paktika province, Afghanistan, in November, was reportedly made to kneel with his hands bound behind his back and a hood over his face for about six hours before being taken to an undisclosed location. After he had been held for two weeks, the US authorities acknowledged that he was being held in the US airbase at Bagram for investigation.

In December, the *Washington Post* newspaper alleged that Central Intelligence Agency (CIA) personnel were operating "stress and duress" techniques during interrogations of detainees at Bagram airbase. Alleged techniques included prolonged kneeling or standing, hooding, blindfolding, sleep deprivation and 24-hour lighting.

In November, six men, including a suspected leading member of *al-Qa'ida*, were killed in Yemen in what appeared to be extrajudicial executions when their car was struck by a missile launched by a Predator drone aircraft controlled by the CIA.

Detentions in the USA in the aftermath of the 11 September 2001 attacks

Some 1,200 foreign nationals – most of them Muslim men of Arab or South Asian origin – were arrested during investigations into the 11 September attacks. More than 700 were held for routine visa violations,

many under a regulation allowing the Immigration and Naturalization Service (INS) to hold individuals for an extended period without charge. Many were denied prompt access to attorneys and some remained in custody for months pending "clearance" by the government even after immigration judges had granted them bail or issued them with deportation or "voluntary departure" orders. There were also reports of ill-treatment of detainees, including verbal and physical abuse, prolonged solitary confinement, and heavy shackling of detainees during visits and court appearances.

There was continued concern at the secrecy surrounding the detentions. In August, a federal judge ordered the government to release the names and places of detention of all INS detainees held in the post-September 11 investigations, in a case brought by a consortium of human rights groups, including AI, under the Freedom of Information Act. The order was stayed pending an appeal by the government.

In October a federal appeals court ruled that the government had acted lawfully in ordering hundreds of deportation hearings to be held behind closed doors in so-called "special interest" cases. Legal challenges to this process continued.

In September the Inter-American Commission on Human Rights requested that the US government take urgent "precautionary measures" to "protect the fundamental rights of the 9/11 detainees ordered deported or granted voluntary departure".

An inquiry set up by the Justice Department's Office of Inspector General into the treatment of the detainees had still not reported by the end of the year. Their probe included a review of conditions in two New Jersey jails, which an AI delegation had visited in February and reported on, and in the federal Metropolitan Detention Center (MDC), New York, where more than 40 detainees were held in an isolation unit. The authorities rejected AI's request to visit the MDC.

By the end of the year most detainees arrested during the initial sweeps had been deported or released or were charged with crimes which were unrelated to 11 September or to "terrorism". The Justice Department reported in early December that only six of the 765 people detained on immigration charges in the above sweeps remained in custody and 500 had been deported; 134 others were arrested on federal criminal charges and 99 convicted. An earlier review by the *Washington Post* found that at least 44 people had been arrested and detained in the probes as "material witnesses" but no information was provided by the Justice Department on these cases. Some people were deported to countries, including Pakistan, Egypt and Yemen, where it was feared they were at risk of human rights abuses, including incommunicado detention and torture.

Human rights and immigrant groups expressed concern about the discriminatory nature of a new federal order requiring males aged 16 and over from designated Arab and Muslim countries and North Korea who did not have permanent US resident status to register with the INS to be interviewed, fingerprinted and photographed. Several hundred Middle Eastern men and boys who complied with the first round of registrations in December were detained for alleged visa irregularities and many were subjected to harsh treatment, including being placed in handcuffs and leg shackles and held in cold cells with inadequate clothing or blankets; some were reportedly moved around different facilities without an opportunity to contact lawyers or relatives. Although most were released after a few days, many faced deportation hearings, including people who reportedly had a claim to lawful status at the time of their arrest.

Ill-treatment and excessive use of force by law enforcement officials

There were reports of ill-treatment, deaths in custody and excessive use of force by police and prison officers. At least three people died after being struck by M26 Tasers: dart-firing, high-voltage stun guns deployed by a growing number of US police agencies. Although most such deaths have been attributed to other factors, there were concerns about the health risks associated with electro-shock weapons as well as their potential for abuse.

- Gordon Randall Jones, an unarmed man, died in July after he was struck 12 times with an M26 Taser by police in Orange County, Florida. The autopsy report listed the cause of death as "positional asphyxia, secondary to the application of restraints in the setting of acute cocaine intoxication".
- Chiquita Hammonds, a 15-year-old schoolgirl, was pepper-sprayed and struck with a Taser by police in Miramar, Florida, following a minor disturbance on a school bus. AI believes the use of chemical and electro-shock devices in this case constituted cruel, inhuman or degrading treatment.
- There were calls for a civil rights investigation into an incident in November in which two 16-year-old Latino boys died after a Los Angeles police officer shot at their car, hitting them with bullets and causing the car to crash. Two other juveniles and a 20-year-old in the car were also injured. The police – who had earlier tried to question two youths who fled in a car – said the officer opened fire when the Latino boys' car accelerated towards him. However, relatives questioned the use of deadly force in such circumstances. The case was under police investigation at the end of the year.
- An unarmed mentally disturbed man died of asphyxiation after being physically restrained by police in Prince George's County, Maryland, in March. The report of a federal investigation into an alleged "pattern and practice" of brutality within the department was still pending at the end of the year.
- Chad Boggess died of injuries received after allegedly being beaten by guards in the Boyd County Detention Center, Kentucky, in March. A coroner found that he had died from asphyxiation due to the manner in which he was restrained and that "blunt force" injuries had contributed to his death. Three

jailers were subsequently fired and one was charged with assault in the case.

Conditions in supermax prisons

Lawsuits filed by human rights groups led to improvements in two supermax prisons – high-security facilities where prisoners are housed for 23 or more hours a day in solitary confinement in conditions of reduced sensory stimulation. However, more than 70,000 prisoners continued to be housed in supermax units, where AI believes conditions can amount to cruel, inhuman or degrading treatment.

- In February, a federal district judge ruled that harsh conditions at Ohio State Penitentiary, a supermax prison designed to house some 500 inmates, imposed "atypical and significant hardship". The court also ruled that the procedure for assigning prisoners to the facility – which a lawsuit claimed was arbitrary – had "great potential for error". The lawsuit was filed by the American Civil Liberties Union and the Center for Constitutional Rights. During earlier negotiations in the case, the authorities had agreed to remove seriously mentally ill prisoners from the facility and to make some other changes.
- In March, a lawsuit on conditions in Boscobel, Wisconsin's supermax prison, was settled. The settlement agreement included a ban on seriously mentally ill prisoners being housed in the facility; a modest improvement to exercise provision and rehabilitation programs; and a reduction in the use of restraints and electro-shock control devices, although these continued to be authorized. Some prisoners were also allowed face-to-face visits with their families; most inmates continued to receive family "visits" only through video.

Death penalty

In 2002, 69 men and two women were executed, bringing to 820 the total number of prisoners put to death since the US Supreme Court lifted a moratorium on executions in 1976. The USA continued to violate international standards in its use of the death penalty, including by executing people who were under 18 at the time of the crime and people who had received inadequate legal representation. On 20 June 2002, the US Supreme Court ruled that the execution of people with mental retardation violates the constitutional ban on "cruel and unusual punishments". The Court acknowledged that "within the world community" such executions were "overwhelmingly disapproved".

The moratorium on executions in Illinois, announced by the state Governor in January 2000 because of the number of wrongful convictions in capital cases, was still in force at the end of 2002. In May, the Governor of Maryland announced a moratorium on executions in his state pending the outcome of a study into racial and geographic disparities in its capital sentencing, which had not been published by the end of the year.

Executions continued elsewhere, with Texas carrying out 33 of the year's executions. Mississippi carried out its first execution since 1989. Executions also took place in 11 other states.

- In October, the Inter-American Commission on Human Rights handed down its decision in the case of Michael Domingues, on death row in Nevada for a crime committed when he was 16 years old. The Commission concluded that the prohibition on the execution of those under 18 at the time of the crime was of a "sufficiently indelible nature to now constitute a norm of *jus cogens*", binding on all states and that "[t]he norm cannot be validly derogated from, whether by treaty or by the objection of a state, persistent or otherwise".
- Napoleon Beazley, T.J. Jones, and Toronto Patterson were executed in Texas on 28 May, 9 August and 28 August respectively for murders committed when they were 17 years old.
- Javier Suárez Medina, a Mexican national, was executed in Texas in August, despite having been denied his consular rights after arrest. The governments of 16 countries either sent appeals for clemency or joined Mexico in signing a brief urging the US Supreme Court to halt the execution and hold a full hearing to resolve the legal implications of the treaty violation in this case.
- Pakistan national Mir Aimal Kasi was executed in Virginia in November. He had been convicted of killing two CIA agents in 1993. He remained at large until 1997, when he was forcibly abducted from a hotel room in Pakistan by agents of the Federal Bureau of Investigation, held in a secret location, and flown back to the USA.

International Criminal Court

On 6 May, the US government wrote to the UN Secretary-General to inform him that the USA did not intend to become a party to the Rome Statute of the International Criminal Court, and therefore "has no legal obligations arising from its signature on December 31, 2000". During the year, the US approached several governments requesting that they enter into agreements that they would not surrender US nationals accused of genocide, crimes against humanity and war crimes to the new International Criminal Court. In some cases, the US government threatened to withdraw military assistance from countries that would not agree. AI condemned such actions as undermining the treaty.

AI country visits

AI delegates visited the USA in January, October and November. An AI delegation visited immigration

detainees in jails in New Jersey in February. An AI observer attended a pre-trial hearing in the case of John Walker Lindh in July.

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united states of america.pdf

American Civil Liberties Union

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URL: **http://www.aclu.org/SafeandFree/SafeandFree.cfm?ID=12666&c=206**

Freedom Under Fire: Dissent in Post-9/11 America (Text Version)

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THE AMERICAN CIVIL LIBERTIES UNION is the nation's premier guardian of liberty, working daily in courts, legislatures and communities to defend and preserve the individual rights and freedoms guaranteed by the Constitution and the laws of the United States.

ACLU
National OFFICE
125 Broad Street, 18th Floor
New York, NY 10004
(212) 549-2500
www.aclu.org

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FOREWORD

There is a pall over our country. In separate but related attempts to squelch dissent, the government has attacked the patriotism of its critics, police have barricaded and jailed protesters, and the New York Stock Exchange has revoked the press credentials of the most widely watched television network in the Arab world. A chilling message has gone out across America: Dissent if you must, but proceed at your own risk.

Government-sanctioned intolerance has even trickled into our private lives. People brandishing anti-war signs or slogans have been turned away from commuter trains in Seattle and suburban shopping malls in upstate New York. Cafeterias are serving "freedom fries." Country music stations stopped playing Dixie Chicks songs, and the Baseball Hall of Fame cancelled an event featuring "Bull Durham" stars Tim Robbins and Susan Sarandon, after they spoke out against the war on Iraq.

Compounding the offense is the silence from many lawmakers. There is palpable fear even in the halls of Congress of expressing an unpopular view.

Why should this disturb us? Because democracy is not a quiet business. Its lifeblood is the free and vibrant exchange of ideas. As New York Times columnist and author Thomas L. Friedman has pointed out, the war on terror is also a war of ideas. How are we going to convince holdouts in other countries about the importance of free speech and civil liberties if we show so little faith in our own?

With U.S. forces deployed overseas, and concerns about safety and freedom at home, we ought to be having as robust a debate as possible.

But if this report describes a shadow across America, we can also find much to cheer in the multitudes fighting to push it back. One could even see, countering the vehemence of the government's response, signs of the opposition's success.

Cities from Honolulu to Portland, Me. and one state (Hawaii) have adopted resolutions affirming their constituents' free speech, privacy and due process rights, even against federal incursions. As this report went to press, more than 100 cities and counties had taken such stands, and dozens more were preparing to do so. I heartily urge members of communities interested in taking similar action to contact the nearest ACLU affiliate, or to visit our Web site (www.aclu.org/safeandfree), for sample resolutions and strategies for getting them passed.

The California Police Chiefs Association and police departments from Detroit to Austin have also come out publicly against a blurring of the lines between federal and local law enforcement. Many have refused to become extensions of the FBI or the Immigration and Naturalization Service - bravely risking their shares of a promised $1.5 billion in federal anti-terrorism funds - for fear of jeopardizing their primary, crime-fighting roles in immigrant communities.

The American Library Association says the FBI is treading on the rights it is supposed to uphold. Libraries from Buffalo to Santa Cruz have posted signs to warn patrons that records of the materials they view and borrow may wind up in the hands of federal agents. Some are shredding some library records, in an effort to preserve patrons' privacy.

Not only has the government failed to suppress dissent; the protest movement has actually picked up steam. For every person who has grown wary of speaking out, this report indicates there are many demanding to be heard. The number of "card-carrying" members and supporters of the ACLU surged in the fall of 2001, after Attorney General John Ashcroft accused his critics of disloyalty, rising to more than 400,000 in 2003.

Yes, some government officials, including local police, have come down hard on protesters, as this report makes clear. But in most of the cases that have come to light, protesters have stood firm. Lawsuits alleging excessive force, wrongful arrest and denial of due process have been filed on behalf of hundreds of protesters in New York and Washington alone. Undaunted by suspensions, arrests or other actions taken against them, a high school student in Michigan, a pair of college students in Iowa, a shopkeeper in Colorado and two grandmothers in Tampa are among those stepping forward to challenge those who would violate their First Amendment rights.

These democratic stirrings encourage us. We recall that although some of the greatest names in American liberalism (President Franklin D. Roosevelt and Supreme Court Justices Earl Warren and Hugo Black) supported the Japanese internments after Pearl Harbor, history has exonerated the people of good hearts and minds who opposed them.

Dissenters who take unpopular positions in their own times are often seen as heroes later on. We believe that when future generations look at what was done to our core freedoms and values after 9/11, the voices of dissent will stand out as the true defenders of democracy.

Anthony D. Romero
Executive Director, ACLU

FREEDOM UNDER FIRE:
Dissent in Post-9/11 America

In the tense time following the Sept. 11, 2001 terrorist attacks on New York and Washington, Attorney General John Ashcroft mocked government critics and assailed their patriotism, calling their concerns "phantoms of lost liberty." And the American Civil Liberties Union shot back with a national ad campaign asserting our right to be "safe and free."

"The nation's highest ranking law enforcement officer is using his bully pulpit to shut down dissent and debate," ACLU Executive Director Anthony D. Romero charged, declaring that free and robust debate is the engine of social and political justice.

But Ashcroft's words were just the opening volley in a war of intimidation. White House spokesman Ari Fleischer also warned Americans to "watch what they say." Conservative commentators like Bill O'Reilly suggested prosecuting war protesters as "enemies of the state." Since 2001, hundreds have been arrested for exercising their constitutionally protected freedoms, and some have lost their jobs or been suspended from school. Many have called on the ACLU for assistance.

We need to stop and consider the direction in which we are going, for we are in danger of allowing ourselves

to be governed by our fears rather than our values. We are not the first generation to face this challenge.

Since the administration of President John Adams, who feared that sympathy with the radical ideas of the French Revolution would throw America into upheaval, there have been attempts to silence dissent. The Alien Act of 1798, which gave Adams the power to deport any non-citizen he judged dangerous, was never enforced, but his Sedition Act was used to suppress freedom of the press. President Abraham Lincoln suspended the writ of habeas corpus during the Civil War. And President Woodrow Wilson used the Espionage Act of 1917 not to catch spies but to mount a full-scale assault on free speech.

Faced with strong domestic opposition to the First World War from citizens who believed he was less interested in "making the world safe for democracy" than in protecting the investments of the wealthy, Wilson encouraged "patriotic citizens" to report on neighbors they suspected of disloyalty. His Justice Department prosecuted more than 2,000 critics of the war and judges were quick to hand down harsh punishments. In 1918, Congress also enacted a Sedition Act, restricting criticism of the government, the Constitution, the flag and the military.

The decades that followed ushered in some of the most shameful chapters in American history: the World War II internments of Japanese Americans; the McCarthy hearings; the Pentagon Papers, Watergate and FBI spy scandals. All involved government restrictions on speech, the press and freedom of movement. All were popular at the time, and are now seen as abhorrent to the national interest.

This is the latest in a series of special reports issued by the ACLU - along with Insatiable Appetite (April 2002), Civil Liberties After 9/11 (September 2002), and Bigger Monsters, Weaker Chains (January 2003) - on government actions since 9/11 that threaten fundamental rights and freedoms without making us safer. While not intended to be a comprehensive analysis of dissent since 2001, this report, drawn from recent and pending ACLU case files, does suggest how challenging it has become to oppose the current administration.

Dissent since 9/11 has taken three principal forms: mass protests and rallies, messages on signs or clothing, and other acts of defiance by communities and individuals. These have ranged from silent vigils in parks to the passage of resolutions by dozens of local governments protesting federal measures that threaten fundamental freedoms.

Some government officials, including local police, have gone to extraordinary lengths to squelch dissent wherever it has sprung up, drawing on a breathtaking array of tactics - from censorship and surveillance to detention, denial of due process and excessive force. Police have beaten and maced protesters in Missouri, spied on law-abiding activists in Colorado and fired on demonstrators in California, and campus police have helped FBI agents to spy on professors and students in Massachusetts. Ashcroft's Justice Department has further asserted the right to seize protesters' assets and deport immigrants under anti-terrorism statutes rushed through Congress after the attacks, and debated whether to revoke U.S. citizenship in some cases.

Some of the most insidious government practices, such as the compiling of political dossiers on protesters arrested in New York, didn't come to light until they were exposed and challenged by the ACLU.

The cases described here present a disturbing post-9/11 picture of life in America's streets, malls, parks, schools, airports and harbors.

In the Streets

RIGHTS AT RISK IN NEW YORK: The ACLU has been engaged in a running battle with America's largest city over the right to protest and to engage in lawful political activity during times of war.

In February 2003, the New York Civil Liberties Union sued the city on behalf of protest organizers who were denied permission to hold a large antiwar march on the brink of the American attack on Iraq. Though the federal courts upheld the unprecedented denial, public outcry forced the city to take a less confrontational approach in March, when more than 200,000 protesters marched down Broadway with a permit obtained by the NYCLU.

But police arrested hundreds and, the NYCLU later discovered, interrogated them about their political affiliations and prior activities, methodically entering the information into a database. Not only was that information constitutionally protected, NYCLU Executive Director Donna Lieberman declared in a letter to Police Commissioner Raymond W. Kelly, police also used "the coercive environment of an arrest" to obtain it illegally, "outside the presence of counsel."

Embarrassed, the NYPD halted the program abruptly. But the disclosures were telling, just two weeks after a federal judge relaxed guidelines that for nearly 20 years had limited NYPD surveillance and investigation of political groups. "As a city and a nation, we are at a crossroads about civil liberties when the visceral response to political protest is to contain it and curtail it," Lieberman said. "The police interrogations reveal how willing government is to abandon basic First Amendment values in these difficult times," she said; but the reversal "shows that New Yorkers can successfully defend their freedoms."

PERMIT DENIED IN PLEASANTVILLE: The ACLU of New Jersey is challenging the City of Pleasantville's permit requirements on behalf of the Coalition for Peace and Justice, a group that was barred from holding an Oct. 9, 2001 event to protest the bombing of Afghanistan - and was then thwarted in its attempts to obtain a permit. The permit ordinance requires a "procession or parade of any kind" to obtain a permit before it may "pass, congregate or be in or over any of the streets, highways, alleys or any other public place in the City of Pleasantville."

The permit must be approved by both the chief of police and the mayor, there are no limits placed on their discretion, and applicants are required to purchase costly insurance. Penalties include fines of up to $1,000 and up to 90 days in jail. The city agreed in negotiations not to enforce its provisions against coalition members but did not adequately protect free speech rights. The ACLU of New Jersey was preparing to file suit as this report went to press.

MASS MOVEMENT IN WASHINGTON: In a class-action lawsuit filed March 27, 2003, the ACLU of the National Capital Area charged police with deliberately violating the constitutional rights of more than 400 peaceful anti-war demonstrators and bystanders by directing them into a police trap and then arresting them - though they had not violated any law.

"In this country, the government is not supposed to arrest you unless you break the law," said local ACLU Legal Director Arthur Spitzer. "But the evidence will show that the police deliberately rounded up hundreds of people who had not broken any law, many of whom were not even involved in the demonstration. No one in the neighborhood was safe from the lawless conduct of the D.C. police."

The arrests occurred on Sept. 27, 2002 in Pershing Park, two blocks from the White House. Arrestees were charged with failing to obey a police order - though no order to disperse was ever given; in fact, people who tried to leave were physically prevented from doing so, according to the ACLU complaint. One demonstrator suffered broken ribs after being knocked down by the police. The true purpose of the mass arrests, the ACLU contends, was to disrupt and prevent peaceful political demonstrations scheduled for that weekend.

Plaintiffs include: Julie Abbate, a local attorney and graduate of Howard University School of Law, who was observing the demonstration when she was trapped in Pershing Park and arrested; Christopher Downes, a demonstrator who did not resist arrest but whose ribs were broken when he was knocked down by police; Joe Mayer, a retired U.S. Army lieutenant colonel who accompanied his daughter, in part to be sure she didn't get arrested (they were both arrested); and Tom Ulrich, a Maryland resident and grandfather who was trapped and arrested and was then detained for more than 24 hours. The D.C. Council's Judiciary Committee is also investigating allegations of police misconduct.

DELAYS IN DEARBORN: Waiting periods "prevent citizens from demonstrating at a time when they can be most effective in influencing public policy," the ACLU of Michigan said, in a Jan. 21, 2003 lawsuit challenging the constitutionality of Dearborn's 30-day waiting period for protest permits. "If the Dearborn City Council schedules a vote next week on a proposal to fire half of the city employees, should the workers have to wait a month to protest that proposal?"

The lawsuit was filed on behalf of the American-Arab Anti-Discrimination Committee and Imad Chammout, a business owner who staged a timely protest without a permit to oppose the incursion of Israeli soldiers into a Palestinian refugee camp in Jenin. Chammout was prosecuted for violating the local law, punishable by up to 90 days in prison and a $500 fine. The ACLU also asked for a preliminary injunction barring enforcement of the waiting period because of strong likelihood that it would be found unconstitutional.

On campus

SPIES IN AMHERST: The ACLU of Massachusetts filed a Freedom of Information Act request in December 2002 seeking details of government surveillance of college professors and students nationwide. The presence of FBI agents on college campuses came to light after FBI agents in the war on terrorism questioned a faculty member and campus organizer at the University of Massachusetts in Amherst. Their presence "can have an

enormous chilling effect on students and faculty," said attorney Bill Newman, director of the ACLU's Western Massachusetts office. "We need to know what the FBI is doing on our nation's campuses."

DISTRESS SIGNAL AT GRINNELL: The Iowa Civil Liberties Union in December 2002 sued two police officers and a county attorney who threatened to arrest a pair of Grinnell College students for hanging a U.S. flag upside-down from their dormitory window. "People tell me it offends them to see the flag upside-down, but sometimes I tell them it offends me to see one right-side up," said Juan Diaz, 18, who with John Bohman hung the flag Sept. 26, 2002 as a sign of their "displeasure with the policies of the United States Government" toward Iraq.

Flag etiquette says that a flag should be flown upside-down only as a sign of distress. And after the lawsuit was filed in U.S. District Court in Des Moines, authorities agreed that hanging it upside-down was protected under the First Amendment. But officials defended other restrictions in their flag ordinance, which the suit says is unconstitutional in its entirety. The students also seek damages for willful violation of their speech rights.

"Police use this (flag etiquette) law for no other purpose than to silence government critics," ICLU executive director Ben Stone said, citing a 30-year-old Iowa Supreme Court ruling (State v. Kool, 212 N. W. 2d 518 (Iowa 1973)), that displaying an American flag upside-down was protected speech and could not be prosecuted. In 1989, the U.S. Supreme Court threw out the conviction of a protester who was arrested for actually burning a flag during a demonstration (Texas v. Johnson, 491 U.S. 397), declaring that the right of free speech protected symbolic use of the flag.

IN FLORIDA, PATRIOTISM LITE: Incredibly, officials on some campuses even try to control expressions of patriotism. Right after the 9/11 attacks, some librarians at Gulf Coast Community College in Fort Myers, Fla. were asked by their bosses not to wear "I'm proud to be an American" stickers because they might offend foreign students. Howard Simon of the ACLU of Florida came to their defense, saying, "If some people are offended by another person's speech, that's the price of freedom in this country."

POSTER PROBLEMS IN DURHAM: A.J. Brown, a freshman at Durham Technical College, almost jumped out of her skin when agents from the Raleigh, N.C. office of the U.S. Secret Service and an investigator from the Durham Police Department knocked on her apartment door on Oct. 27, 2001. They were responding to an anonymous report about an "anti-American" wall poster. Terrified, Brown, 19, phoned her mother before opening the door.

Did she have any information about Afghanistan? they asked. No. The Taliban? No. At their request, she filled out a form providing her full name, race, phone number and other identifying information but, on her mother's advice, stopped short of inviting them in.

The poster, opposing the death penalty, showed George W. Bush holding a rope against a backdrop of lynch victims, with the text, "We hang on your every word." Texas executed 152 people while Bush was governor, it said. Brown never did find out which of her classmates or neighbors made the call that brought her under suspicion.

BEHIND CLOSED DOORS IN MARYLAND: The ACLU of Maryland and a private Washington law firm filed a lawsuit March 6, 2003 on behalf of students at the University of Maryland at College Park, challenging unreasonable restrictions on outdoor public speaking and leafleting on the university's 1,500-acre campus. Public speaking is currently limited to the Nymburu Amphitheater stage and prohibited elsewhere. The overly broad rules apply to all "speech directed to a general audience or non-specific persons" and limit the distribution of literature "to designated sidewalk space outside the Stamp Student Union."

"I came to College Park for a great education but I also expected a free exchange of ideas outside and inside the classroom," said Daniel Sinclair, a junior and one of the plaintiffs. "I would like to get out the word about student activities that I am involved in but the University's policies stand in the way - and also frustrate my ability to hear what others have to say."

"Not only is the university's policy blatantly unconstitutional, but it is also unworthy of this great institution," summed up Anthony Epstein, lead attorney for the plaintiffs.

PROTECTED SPEECH IN MICHIGAN: The ACLU of Michigan filed a friend-of-the court brief Oct. 10, 2002 in support of a pro-Palestinian group's efforts to hold a conference on the University of Michigan's Ann Arbor campus. The university defended the Palestine Solidarity Movement against attempts to stop it, saying it

would have been "unlawful as well as a violation of the university's policies on freedom of speech and expression" to do so. Two students claimed in a lawsuit that conference organizers sought to promote terrorism and anti-Semitism. Kary Moss, executive director of the ACLU of Michigan, said the case "strikes at the heart of freedom of speech... We may not agree with what all people have to say, but we need to defend their right to say it." The rally was allowed to proceed, and ACLU provided legal observers to ensure that no civil rights were violated.

EXCESSIVE FORCE IN ALBUQUERQUE: The ACLU of New Mexico is looking into complaints that police used excessive force in breaking up a March 20, 2003 anti-war demonstration at the University of New Mexico. Seventeen protesters, arrested on charges ranging from public nuisance to refusing to obey a police officer, said they were tear-gassed or beaten with batons before being taken into custody.

In the Mall

PEACE OFFENSE IN NEW YORK: Oddly, a T-shirt promoting "Peace" brought out the cavalry at a mall in upstate Guilderland, N.Y., where Stephen Downs, a 61-year-old lawyer, was arrested for refusing to leave or remove a shirt he'd bought there. The New York Civil Liberties Union on March 11, 2003 wrote the operators of the Crossgates Mall after Downs was led away in handcuffs on a trespassing charge. "Give Peace a Chance," his shirt said on one side, and "Peace On Earth" on the other. Downs was accompanied by his 31-year-old son Roger, who also wore an anti-war T-shirt, but was allowed to leave after removing it.

The mall operators later asked the Guilderland Police Department to drop the trespassing charge but the news coverage made Downs a local hero and the NYCLU erected a billboard in protest near the entrance. "Welcome to the mall, you have the right to remain silent," it said. The security officer who called police was way out of line, NYCLU Executive Director Donna Lieberman said; decades earlier, at the height of the Vietnam War, the Supreme Court had even upheld the right of a protester (in Cohen v. California) to wear a jacket emblazoned with "Fuck the Draft" in a county courthouse.

"While the issue of free speech in shopping malls came to a head with Mr. Downs' arrest at Crossgates, it remains an issue at malls across the country," Lieberman said. "When, as here, the mall replaces Main Street as a center of commercial and social activity, the censorship of expression has a devastating effect on the freedom and diversity that is at the heart of a free society."

IN SEATTLE, A CHILLY RECEPTION: On March 11, 2003, a week before the war in Iraq started, the ACLU of Washington asked Mayor Greg Nickels to investigate a "crackdown on free speech" at the Westlake Mall, in the heart of downtown Seattle, which includes a monorail station. On Feb. 15, the day of a major downtown protest march, a woman waiting to board the Monorail was asked to lower a protest sign she was holding over her shoulder; when she refused, she was asked to leave the building. On March 6, a person trying to purchase a meal at the food court was ordered by a security officer to remove a small, black-and-white 1.5-inch "No War" pin or exit the building.

These were violations of Seattle's Open Housing and Public Accommodations Ordinance, which bars denying any person "directly or indirectly...the full enjoyment of ...any place of public accommodation because of the person's political ideology," the ACLU said.

"As our nation stands on the brink of war, Seattle needs your leadership in standing up for civil liberties," Kathleen Taylor, executive director of the ACLU of Washington, wrote the mayor, urging him to "use your good office to ensure that Seattle remains a vibrant and tolerant place to live."

"If Seattle learned anything from the WTO protests," she added, "it is the need to respect peaceful exercise of free speech and to distinguish between disruptive and non-disruptive conduct."

ON THE WATERFRONT

FIRING OFFENSE IN OAKLAND: Police using rubber bullets, wooden pellets and tear gas opened fire at an anti-war protest at the Port of Oakland, Calif. April 7, 2003, injuring several demonstrators and longshoremen and sending at least one to the hospital. It was "a display of force that would have made Bull Connor blush," according to San Francisco Chronicle columnist Chip Johnson (referring to the notorious Birmingham, Ala. official who turned police dogs and water hoses against civil rights demonstrators in the 1960s).

In a letter to the chief of police, the ACLU of Northern California and three civil rights groups asked for an explanation of police procedures and training, saying that the "flagrant disregard" for people's rights, safety

and lives demanded a swift response.

Protest organizers had targeted the port because it handled war supplies, but even the dockworkers saved their anger for the police. "They shot my guys. We're not going to work today," said Trent Willis, a business agent for the International Longshore and Warehouse Union, as the dockworkers stomped off the job. "The cops had no reason to open up on them."

"It was very scary," longshoreman Kevin Wilson told the Associated Press, after watching police try to clear 500 protesters from an entrance to the docks. "All of that force wasn't necessary."

VIGILANCE IN BALTIMORE: Responding to a series of complaints about free-speech restrictions in Baltimore's Inner Harbor, the ACLU of Maryland on April 10, 2003 sued the city on behalf of five women participating in a silent vigil to protest the war.

City police had told eight members of their group, Women in Black, on April 4 that they needed a permit to stand silently at the southeast corner of Pratt and Light streets in the Inner Harbor, holding signs, as they had done on a weekly basis since December.

The ACLU challenged the city's practice of requiring permits for small groups of demonstrators, on the grounds that speech that does not trigger crowd control cannot be burdened by government regulation. Its unnecessarily long advance-notice requirement - up to eight weeks - also stifles timely responses to current events.

"The Inner Harbor is the quintessential public square," said ACLU Staff Attorney Rajeev Goyle. "It is the most visible spot in downtown Baltimore and the natural place for people exercising their free speech rights to gather and voice their ideas."

The suit has already resulted in a preliminary victory for Women in Black; upon learning of the suit, Baltimore City Solicitor Thurman W. Zollicoffer, Jr. agreed to the ACLU's request to suspend for 180 days the permit requirement for all demonstrations with 25 or fewer people, making it possible for Women in Black to stand in their customary spot without fear of arrest.

ON THE SIDEWALKS

WESTMINSTER RECONSIDERS: The ACLU of Maryland persuaded another Maryland city to ease unreasonable restrictions on demonstrators in 2003 after intervening on behalf of women and girls conducting similar vigils. Members of Women in Black and a Girl Scout had been holding silent peace vigils on the sidewalk in front of the Westminster city library. They were threatened with arrest under an ordinance requiring a permit for any speech or expressive conduct on public property, no matter how small, plus up to 60 days advance notice, at the discretion of the Common Council of the City of Westminster, without any meaningful standards. After being contacted by the ACLU, the Common Council voted April 21, 2003 to suspend enforcement of the ordinance for groups of less than 25, reduce the advance-notice requirement to two days, include a 24-hour exigency provision, and vest discretion in the city clerk. It also agreed to work with the ACLU and cooperating counsel to draft a constitutional statute.

In the Park

FULL EXPOSURE IN FLORIDA: A U.S. District Court judge in West Palm Beach, Fla. prohibited officials from blocking a nude anti-war demonstration in a state park. The ACLU of Florida went to court on behalf of T.A. Wayner, a Fort Pierce naturist who planned to choreograph the creation of a peace symbol on Singer Island using nude bodies, and videographer George T. Simon, who planned to observe. Randall Marshall, legal director for the ACLU of Florida, said the intent was "not mere nudity, but political protest against the government's plans for war." For these demonstrators, he said, "nudity is an essential part of their political expression."

Judge Donald M. Middlebrook agreed, calling it "well within the ambit of the First Amendment." (He added that the state was free to put up signs notifying the public that the Feb. 14 demonstration would be taking place, or to erect screens around it.)

SHOW OF FORCE IN ST. LOUIS: Eight youthful protesters carrying anti-war signs were arrested and dozens injured in a confrontation with police March 30, 2003 following a large peace rally in the city's Forest Park. Some 60 youths, who had attempted to march out of the rally together, said police blocked off the street,

ordered them onto the sidewalk and pushed one participant off her bicycle. Some were thrown to the ground or against squad cars, and one suffered a concussion and had to go to the hospital. Some said they were handcuffed, and then maced after the cuffs were on, and that the arresting officers hurled epithets - "traitor," "anti-American," "unpatriotic" - at them for opposing the war.

In the Public Square

EQUAL TIME IN CHICAGO: Open public spaces, such as Federal Plaza in downtown Chicago, that traditionally serve as a venue for discussion of public issues, should be able to accommodate more than one point of view at a time, the ACLU of Illinois told the federal General Services Administration. As a result of an ACLU lawsuit, the plaza, a longtime center of prayer vigils and protests, now is accessible to a range of voices. The ACLU had filed the suit in May 2001 in a case of police brutality, but amended it to more broadly challenge GSA restrictions after the 9/11 terrorist attacks, when the government closed the plaza to demonstrations and activities altogether. Under a 2002 court-sanctioned agreement, GSA may not deny a permit to use the plaza solely because another group holds a permit for the time requested, protecting the rights of all persons, including counter-demonstrators, to make their voices heard about critical public policy matters. The ACLU lawsuit also contributed to the GSA's March 2002 decision to lift the closure of the plaza.

At Presidential Appearances

OUT OF SIGHT IN ST. LOUIS: If the president didn't see it, did it happen? A favorite tactic of the Bush administration has been to herd protesters at presidential appearances into "designated protest zones," out of sight of his motorcade, and to arrest people who refuse to be moved. The policy, applied only to those with dissenting views, has been used to suppress dissent nationwide, and ACLU lawyers around the country are working to get charges dropped against people arrested for nothing more than wanting to voice their opinion during a presidential visit.

"There is nothing more sacred," said Matt LeMieux, executive director of the ACLU of Eastern Missouri. "Herding dissenters into far-away zones, while supporters are allowed to get within earshot of the president, serves absolutely no purpose other than to suppress certain viewpoints. Free speech rights are simply meaningless if they can only be exercised in an area far away from the intended audience."

The ACLU of Eastern Missouri is considering legal action in several St. Louis cases:

* During a Nov. 4, 2002 Bush visit, activists Bill Ramsey and Angela Gordon were arrested after refusing to move to a gravel parking lot a quarter-mile away from the president's entourage.

* On Jan. 22, 2003, Andrew Wimmer was arrested for refusing to take his "Instead of war, invest in people" sign to a designated protest zone more than three blocks away and down an embankment; however, a woman with a "Mr. President, we love you" sign was allowed to remain. Police also barred reporters from entering the protest zone to interview dissenters.

* When Bush visited the local Boeing plant on April 16, 2003, authorities attempted to herd protesters into a designated protest zone a quarter-mile away and off the main road, in a field. But the 20-square-foot roped-off area was too small to contain all the protesters - among them, Christine Mains and her 5-year-old daughter. When Mains, standing several hundred feet away with an antiwar sign, refused to move, she and her tearful child were hauled away in separate squad cars. Mains charged that authorities also treated her roughly and set her bond so high she couldn't be released until the ACLU intervened, hours later.

"While a security buffer may be appropriate, one that regulates based on viewpoint is indefensible on security and First Amendment grounds," said Denise Lieberman, legal director for the ACLU of Eastern Missouri.

SIDELINED IN PITTSBURGH: In Pittsburgh, where people with pro-Bush signs lined the streets for a Labor Day visit in 2002, police moved those "critical" of the president, under what they said were orders from the Secret Service, to a protest zone one-third of a mile away. Among those arrested was William Neel, a 65-year-old retired steelworker with a sign declaring: "The Bushes must love the poor; they've created so many of us." The ACLU of Pittsburgh got all the charges against him dismissed.

ACLU HEAD ARRESTED IN PHOENIX: There had been complaints of police misconduct at demonstrations in Phoenix in the past, so on Sept. 26, 2002, when President Bush attended a dinner there, the head of the ACLU of Arizona went to the protest site as a legal observer - and was herself arrested. The protesters had only just gathered, Executive Director Eleanor Eisenberg said, when suddenly, with no apparent provocation,

mounted police and officers in full riot gear charged into the crowd. She was across the street taking pictures of them beating a young man when she was arrested. Eisenberg spent nine hours in custody, most of it incommunicado. She was "bruised and shaken, sore from being in handcuffs for more than an hour with my hands behind my back in a police car. It was a horrible experience," she said afterwards. The only charge against her, resisting arrest, was dropped four months later.

TROUBLE SIGNS IN TAMPA: The ACLU of Florida also sued the city of Tampa in 2002 for wrongful arrest of two Florida grandmothers and a gay activist during a 2001 rally for President Bush and his brother, Florida Gov. Jeb Bush. "We weren't exactly 20-year-old rabble rousers," said Jan Lentz, who was forcibly hauled away in handcuffs with her two companions for refusing to ditch her "Investigate Florida Votergate" sign demanding an investigation of Florida's 2000 election fiasco. They were accused of trespassing even though all three had tickets to the rally. "Lose the sign and you can stay," they were told, but they wanted Bush to see their message. The charges against the three were eventually dropped, but the pending lawsuit seeks damages and other sanctions against the city. "The protestors were entitled - just like the hundreds of other people at the rally - to lawfully exercise their free speech rights, but they were arrested in an attempt to silence them and shield the government from criticism," said ACLU cooperating attorney W.F. "Casey" Ebsary, Jr. of Tampa.

At vice-presidential appearances

1ST AMENDMENT FLOUTED IN INDIANA: The ACLU of Indiana defended an environmentalist arrested for protesting Vice President Dick Cheney's appearance at a Feb. 6, 2002 fundraiser in Evansville with a sign reading: "Cheney - 19th c. Energy Man."

"What happened to John Blair should not happen in a free country," John Krull, executive director of the ACLU of Indiana, said after the filing of a lawsuit Jan. 10, 2003 against the City of Evansville. "When police officers are given the power to arbitrarily waive or ignore a citizen's First Amendment rights, we no longer really have a First Amendment. The freedom to speak one's mind about the government is one of the things that makes this country special, and it must be defended."

The charges against Blair were dropped two weeks later but the lawsuit remains in force as the City of Evansville has refused to acknowledge that it had no right to ignore Blair's constitutional rights.

On military bases

MARCH HALTED AT BENNING: The ACLU of Georgia filed a lawsuit Nov. 13, 2002 challenging a plan by the City of Columbus, Ga. to search more than 10,000 marchers before allowing them to gather at the entrance to Fort Benning.

Gerry Weber, legal director for the ACLU of Georgia, called a mass search of non-violent protesters "completely unconstitutional" and Father Roy Bourgeois, a protest organizer, said it would have taken 80 hours to complete.

SIDEBARS

Scapegoating:
Palmer Stomped on Immigrants to Stamp Out Unrest

The ACLU was born as the First World War came to an end, trailing economic and political turmoil, rising dissent, waves of labor strikes - and terrifying attempts to suppress them. When the strikes led to violence, including the explosion of a bomb on the doorstep of Attorney General A. Mitchell Palmer's Washington townhouse, Palmer lashed out at immigrant communities with a vengeance.

Agents rounded up more than 5,000 people in 33 cities as suspected "Bolsheviks" over two months in 1920 - making arrests without warrants, conducting unreasonable searches and seizures, and wantonly destroying property. Suspects were brutally beaten and detained without charges for long periods of time. Palmer also invoked the wartime Espionage and Sedition Acts of 1917 and 1918 to deport residents without trial - among them, anarchist Emma Goldman, who was shipped back with 248 others to the Soviet Union. Most of those detained in the U.S. were ultimately released and none were charged in the bombings. But a group of affluent, well-connected East Coast liberals headed by Roger Baldwin was radicalized, seeing in the trampling of civil liberties the need for permanent vigilance. They organized themselves as a watchdog group, which in 1920 became the American Civil Liberties Union.

Popular Front:
FDR Pounced on Critics, While Courting the Press

The "credibility gap" had its roots in the administration of a popular president waging a popular war. Though Attorney General Francis Biddle set a high standard for tolerance of free speech under President Franklin D. Roosevelt, he was the first to use the Smith Act, passed in the anti-Communist hysteria of 1940, to punish dissent. Five months before Pearl Harbor, his Justice Department indicted 29 Minneapolis teamsters who belonged to the Trotskyite Socialist Workers Party, at the request of Teamsters president Dan Tobin who, as Samuel Walker recounts in In Defense of Liberties: A History of the ACLU (1990, Southern Illinois University Press) "wanted to be rid of his critics." The ACLU argued that none of the Teamsters' speeches or publications met the "clear and present danger" test of the Act, which made it illegal to advocate or abet the overthrow of government by force or violence, but a circuit court upheld the convictions and the Supreme Court refused to hear an appeal.

After Pearl Harbor, Roosevelt gave conflicting signals - on Dec. 14, 1941 warning that "some degree of censorship is essential at war time," and the next day declaring, "We will not, under any threat, or in the face of any danger, surrender the guarantees of liberty our forefathers framed for us in our Bill of Rights." He pushed for prosecution of fascists and other right-wing extremists for speeches and pamphlets criticizing the war effort, and created an Office of Censorship to control the flow of news to and from abroad, winning voluntary media compliance. Over ACLU protests, major news organizations suppressed news of racial disturbances at home and battlefront news from abroad. This "unofficial censorship," begun in the climate of a popular war, had the most corruptive influence - spurring later administrations to conclude that "national security" was sufficient to curtail serious criticism. Or simply to lie.

CAUGHT ON FILM:
Cops Took Liberties in the '60s and '70s

In the late 1960s, with the Vietnam War dividing the country, protest found its voice - and was largely upheld by the courts. But there were so many complaints of police brutality that the New York Civil Liberties Union began sending observers to film police actions at peace marches and rallies - and in that way discovered and recorded rampant violations of defendants' rights.

Police were too busy to record the names of those arrested, so others were arbitrarily assigned to be the arresting officers of record later on. Unable to truthfully testify they had seen specific offenses, cops perjured themselves in court - until the ACLU began using film footage to prove that this or that officer wasn't even around when an arrest was made. After a handful of such cases, former ACLU Executive Director Aryeh Neier writes in his memoir, Taking Liberties (Public Affairs, 2003), "We found prosecutors eager to dismiss the remaining cases from those demonstrations rather than endure continuing embarrassment."

That observation came in handy again a few years later in Washington, when police rounded up some 13,000 anti-war demonstrators in what still stands as the largest mass arrest in U.S. history. Overreacting to statements by Vietnam War protesters in May 1971 that their purpose was to tie up the city, police acted under what then-Assistant Attorney General William Rehnquist, who had not yet been appointed to the Supreme Court, creatively termed "qualified martial law."

After watching officers at Washington's RFK Stadium assign themselves at random to groups waiting to be booked, ACLU lawyers were able to get almost all the charges against protesters dismissed and to win damages for many of them.

The USA PATRIOT ACT and Government Actions that Threaten Our Civil Liberties

New legislation and government actions take away our freedom

With great haste and secrecy and in the name of the "war on terrorism," Congress passed legislation that gives the Executive Branch sweeping new powers that undermine the Bill of Rights and are unnecessary to keep us safe. This 342-page USA PATRIOT Act was passed on October 26, 2001, with little debate by Members of Congress, most of whom did not even read the bill. The Administration then initiated a flurry of executive orders, regulations, and policies and practices that also threatened our rights.

The USA PATRIOT Act:

Expands terrorism laws to include "domestic terrorism" which could subject political organizations to surveillance, wiretapping, harassment, and criminal action for political advocacy.

Expands the ability of law enforcement to conduct secret searches, gives them wide powers of phone and Internet surveillance, and access to highly personal medical, financial, mental health, and student records with minimal judicial oversight.

Allows FBI Agents to investigate American citizens for criminal matters without probable cause of crime if they say it is for "intelligence purposes."

Permits non-citizens to be jailed based on mere suspicion and to be denied re-admission to the US for engaging in free speech. Suspects convicted of no crime may be detained indefinitely in six month increments without meaningful judicial review.

What rights are being threatened?

First Amendment - Freedom of religion, speech, assembly, and the press.

Fourth Amendment - Freedom from unreasonable searches and seizures.

Fifth Amendment - No person to be deprived of life, liberty or property without due process of law.

Sixth Amendment - Right to a speedy public trial by an impartial jury, right to be informed of the facts of the accusation, right to confront witnesses and have the assistance of counsel.

Eighth Amendment - No excessive bail or cruel and unusual punishment shall be imposed.

Fourteenth Amendment - All persons (citizens and non-citizens) within the US are entitled to due process and the equal protection of the laws.

New Federal Executive Branch Actions

- 8,000 Arab and South Asian immigrants have been interrogated because of their religion or ethnic background, not because of actual wrongdoing.
- Thousands of men, mostly of Arab and South Asian origin, have been held in secretive federal custody for weeks and months, sometimes without any charges filed against them. The government has refused to publish their names and whereabouts, even when ordered to do so by the courts.
- The press and the public have been barred from immigration court hearings of those detained after September 11th and the courts are ordered to keep secret even that the hearings are taking place.
- The government is allowed to monitor communications between federal detainees and their lawyers, destroying the attorney-client privilege and threatening the right to counsel.
- New Attorney General Guidelines allow FBI spying on religious and political organizations and individuals without having evidence of wrongdoing.
- President Bush has ordered military commissions to be set up to try suspected terrorists who are not citizens. They can convict based on hearsay and secret evidence by only two-thirds vote.
- American citizens suspected of terrorism are being held indefinitely in military custody without being charged and without access to lawyers.

What can be done?

This lack of due process and accountability violates the rights extended to all persons, citizens and non-citizens, by the Bill of Rights. It resurrects the illegal COINTELPRO-type programs of the '50's, '60's, and '70's, where the FBI sought to disrupt and discredit thousands of individuals and groups engaged in legitimate political activity.

The American Civil Liberties Union, along with thousands of organizations and individuals concerned with protecting our civil rights and civil liberties, is campaigning to ensure that our rights are not a casualty of the war on terrorism.

Join us in this effort to regain our hard-won freedoms.

- Support a resolution in your city rejecting the USA PATRIOT Act, joining your city with others across the country in upholding the Bill of Rights.
- Contact your elected representatives and the President to express your opposition to the USA PATRIOT Act.
- Send letters to local newspapers. Organize discussions in your schools, organizations and religious institutions.