

# Defending Security

**The Right to Defend Rights in an Age of Terrorism**

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PRELIMINARY DRAFT

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For the past quarter century, Human Rights First (the new name of Lawyers Committee for Human Rights) has worked in the United States and abroad to create a secure and humane world by advancing justice, human dignity and respect for the rule of law. We support human rights activists who fight for basic freedoms and peaceful change at the local level; protect refugees in flight from persecution and repression; help build a strong international system of justice and accountability; and make sure human rights laws and principles are enforced in the United States and abroad.

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# Defending Human Rights in a Global “war against terrorism”



## Human Rights Defenders: Targets in the “war against terrorism”

### *In the Philippines*

*In April 2003, human rights activists Eden Marcellana and Eddie Gumanoy traveled with three colleagues to Gloria Town. They were investigating the reported abduction of three villagers by the Philippine army’s 204<sup>th</sup> Infantry Brigade—an army unit that had been accused of many human rights violations during its counterinsurgency operation in the Southern Tagalong region.*

*In the Philippines, as in other countries since September 11, 2001, longstanding counterinsurgency campaigns against rebels or armed separatists have been recast as part of a war on terrorism. In the Philippines, the violence involved in these conflicts has escalated, with accusations of human rights violations on both sides. Human rights defenders have been accused by government officials of being “fronts” for terrorist organizations, making them targets of the military and paramilitary forces engaged in counterinsurgency operations.*

*The day after Marcellana and Gumanoy arrived in Gloria Town, the human rights workers were abducted by masked men. The next day, April 21, 2003, their mutilated bodies were found, showing signs that they had been tortured before they were killed.*

*Marcellana and Gumanoy went to investigate whether official counterterrorism policies were being used as a pretext to violate human rights. They were attacked, tortured, and killed for conducting this investigation. They suffered the same fate as the victims of the human rights violations they were investigating.*

### *In Colombia*

*Rosa Elena Duarte, a local human rights ombudsman in the town of El Tarra had repeatedly reported violations by paramilitary forces to officials and to the Colombian branch office of the United Nations Office of the High Commissioner for Human Rights. The Colombian government has increasingly used paramilitary forces long associated with gross violations of human rights in what it now terms as a counterterrorist campaign against insurgent groups.*

*After threats on numerous occasions, Duarte was murdered on November 18, 2003. She was one of twenty-five human rights defenders killed in Colombia in 2002 and 2003, where the government has frequently accused human rights advocates of “serving terrorism.”*

This report, *Defending Security: The Right to Defend Rights in an Age of Terrorism* tells the story of many human rights advocates like Marcellana, Gumanoy, and Duarte – and of the new and escalating dangers these peaceful human rights workers face as they undertake their work in the context of the global war on terrorism since September 11, 2001.

This report is a response to the rising sense of alarm our human rights colleagues have voiced over the past three years—about their increasing sense of danger in undertaking human rights investigations, monitoring, and advocacy, and about the new challenges of promoting human rights in the context of heightened concern about the threat of terrorism.<sup>1</sup>

These conditions are, in some countries, a direct product of the global war on terror and how it is being waged by governments. Activists around the world are under attack for standing up for fundamental human rights principles at a time when too many governments are declaring that it is acceptable to violate human rights in the war against terrorism. For example, the Indonesian President, Megawati Sukarnoputri, is reported to have instructed soldiers that they “should not be afraid of abusing human rights in Aceh,”<sup>2</sup> where the army is engaged in a long running counterinsurgency campaign that has been recast as part of the global war against terrorism. Though human rights activism has always carried risks, these have escalated dramatically in many places since September 2001.

## **The Vital Role of Human Rights Defenders**

In every country there are individuals and groups, volunteers, and professionals that work to promote and protect human rights. They work for human rights in their own communities and internationally, bound by the common standards of the Universal Declaration of Human Rights. They are ordinary people who often have extraordinary courage: students and teachers, web designers, religious, writers, trade unionists, scientists, lawyers, and many others. They work as individuals and in nongovernmental organizations.

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1 See, for example, The Atlanta Declaration, “Human Rights Defenders on the Frontlines of Freedom,” November 12, 2003, <http://www.cartercenter.org/documents/nondatabase/atlantadeclaration.pdf>, that provides a concise expression of the concerns of leading human rights defenders from 43 countries.

2 NGO Coalition for Human Rights in Aceh, *Aceh: Perjuangan Sipil versus Representative Negara*, 2002.

Human rights defenders are an essential part of every community and of the global human rights system. They are a part of civil society that can assist governments in the fulfillment of their international obligations to respect and ensure respect for human rights. But human rights defenders are often the targets of persecution and violence by public officials who fear limits on their powers or censure for their abuses.

The September 11, 2001 attacks on the United States and subsequent attacks on civilians around the globe brought new attention to the need to combat terrorism at a state, regional, and international level. New legislation, policies, and practices have proliferated in the name of increased security, some of them inimical to human rights and to the long-term fight against terrorism. Human rights and humanitarian norms, an important bulwark against terrorism, have been relegated to secondary importance by some governments—or identified as an obstacle to those seeking broader executive powers.

Even as some strong voices have spoken out on the need to hold those who wage terror against civilians accountable under international law, many governments have seized upon the war against terrorism to turn their backs on international standards and to turn back the clock of human rights protection. Human rights defenders who press for adherence to international standards are among those targeted by many governments for repression.

### **Human Rights Defenders Equated with Terrorists**

Efforts of human rights defenders have been denigrated as being supportive of terrorism and insufficiently attentive to the imperatives of national security threats. Human rights defenders who spoke out against repression as a response to the threat of terrorism have themselves been subjected to attack for their criticisms.

Defaming human rights defenders as terrorist sympathizers is an old device. The post-September 2001 global emphasis on the primacy of counterterrorism gave new potency to such criticisms and gave them a veneer of international respectability.

- Indian Deputy Prime Minister L. K. Advani, in November 2001, called for the passage of a new Prevention of Terrorism Act that would curtail numerous previously protected rights and freedoms. He stated: “If the opposition opposes the ordinance they will be wittingly or unwittingly helping terrorists.”<sup>3</sup>
- In the United States, Attorney General John Ashcroft, in testimony before the Senate Judiciary Committee on December 7, 2001, said: “To those who scare peace-loving people with phantoms of lost liberty, my message is this: Your tactics only aid terrorists for they erode our national unity and diminish our resolve...They give

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<sup>3</sup> Mark Tully, “Politics key to India’s anti-terror moves,” CNN.com, November 5, 2001.

ammunition to America’s enemies and pause to America’s friends. They encourage people of good will to remain silent in the face of evil.”<sup>4</sup>

Human rights defenders are among the voices speaking out for a measured and effective response to the threat of terrorism. Measures to silence these voices include broad controls on freedom of expression, association, and movement—and measures to intimidate, demonize, brutalize, imprison, exile, or murder the individuals who stand up for human rights.

The global emphasis on the war against terrorism has had an adverse impact on human rights protection and the role of human rights defenders in a variety of ways. Governments have, in many cases, invoked the war against terrorism in implementing policies and practices at the national level that side-step due process of law and set aside fundamental human rights guarantees. These affect fundamental freedoms for all but often have a particular impact on human rights defenders—in some cases leading to threats to their lives and liberty and in all cases constraining their ability to protect the rights of others.

## **The Impact of Counterterrorism on Human Rights Defenders**

The work of human rights defenders has been undermined in numerous ways in this environment:

First, counterterrorism measures have been used as a justification for noncompliance with international human rights standards — and domestic law — by a wide variety of governments. For example, Former President of Georgia, Eduard Shevardnadze stated in December 2002, after coming under criticism for colluding with Russia in the violation of the human rights of Chechens, that “international human rights commitments might become pale in comparison with the importance of the anti-terrorist campaign.”<sup>5</sup>

Simultaneously, the efforts of human rights defenders have been denigrated as being supportive of terrorism and insufficiently attentive to the imperatives of national security threats. For example, in Colombia, the government of President Alvaro Uribe, which came to power in May 2002, has stated that its struggle against guerrilla forces is “working to the same ends” as the U.S.- led global war on terrorism. It has stepped up its military campaign against insurgents and has frequently accused human rights defenders of “serving terrorism and hiding in a cowardly manner behind the human rights flag,” in the president’s own words.<sup>6</sup>

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4 “Ashcroft: Critics of new terror measures undermine efforts,” CNN.com, December 7, 2001

5 International Helsinki Federation for Human Rights, “Violations of the Rights of Chechens in Georgia, Decemeber 23, 2002.

6 “Derechos Humanos: La ira presidencial,” *Semana*, ed. 1115, sec. Nacion, September 13, 2003.

Second, the context of the global war against terrorism has intensified extreme nationalist and sectarian sentiment in many countries, building added pressures to curtail rights protections, particularly of minority communities, on grounds of national security. The often longstanding tensions between governments and their opponents, particularly in situations involving violent separatist or nationalist movements, have been augmented by the new emphasis given to combating international terrorism. Violence has intensified in the Philippines, Russia, China, and India, and minority Muslim communities have suffered disproportionately from violence and deprivations of rights that have been justified by governments as a legitimate response to the threat of terrorism.

Other long-standing internal conflicts, that are not influenced by religious sectarianism, in countries like Colombia, Indonesia, and Nepal, have also been recast as fronts in the war against terrorism since September 2001. Positions previously considered extreme and unreasonable, like population transfers of minority ethnic and religious groups, are discussed by mainstream politicians and media in countries like Israel and Russia. With public fear heightened by political leaders emphasizing national vulnerabilities, it becomes increasingly difficult for activists to promote a human rights agenda.

Third, at the inter-state level, other governments have shown greater deference towards states implicated in violations of human rights, if they justify their conduct by reference to counterterrorism. For example, Australian Foreign Minister, Alexander Downer declared in June 2003, that the military crackdown in Aceh by the government of Indonesia was “justified,”<sup>7</sup> despite the resultant suffering of the civilian population in the region, and the reports of widespread violations of human rights. The United States has expressed its appreciation of the support it has received in the “war on terrorism” from a wide range of governments that are notorious for their violations of human rights, including Pakistan, Uzbekistan, and Tunisia.

State to state peer pressure as a factor in human rights promotion and protection has been greatly weakened, thus undermining one of the most important techniques available to human rights activists for bringing pressure to bear on human rights violators. For example, in May 2002, prior to a meeting between Malaysian Prime Minister Mahatir and President Bush, Minister of Justice Dr. Rais Yatim met with Attorney General Ashcroft and discussed national security measures employed by both countries to combat terrorism. The United States government had previously criticized the Malaysian Internal Security Act (isa), which among other things, permits protracted detention without charge or trial. Minister Yatim remarked:

I believe that after the meeting there will be no more basis to criticize each other's systems, specifically the isa, because if they do that, then the Patriot Act, which is quite similar in nature to the isa, could come into a position of jeopardy itself... Ashcroft

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<sup>7</sup> “Aceh Crackdown Justified, says Downer,” *Sydney Morning Herald/ The Age*, June 19, 2003.

seemed to understand the existence, need and the future of the isa in as much as we understand the Patriot Act.<sup>8</sup>

The minister was correct in his prediction. At the meeting between President Bush and the Malaysian Prime Minister there was no public criticism by the United States of the isa.

In countries that are aligned with the United States in the war against terrorism, including several states notorious for their poor human rights practices and disregard of democratic principles, unqualified U.S. support and aid have continued despite continuing violations.

Colombia, Indonesia, Pakistan, the Philippines, and Uzbekistan have all received a substantial increase in U.S. foreign assistance since September 2001, some of it direct military assistance, as well as closer formal military cooperation, especially in the field of counterterrorism. Even when the United States has criticized human rights violations in these countries, as it has continued to do in the annual *Country Reports on Human Rights Practices* and elsewhere, the governments concerned have been able to weigh that against the practical cooperation and material assistance they have continued to receive. In such circumstances, the strength of the verbal reprimands in official human rights statements is diminished.

In Russia, the government's brutal tactics in Chechnya had become a target of growing national and international criticism by 2001. After September 11, the Russian government increasingly sought to justify its harsh military actions in Chechnya as a response to the Chechen's ties to Al-Qa'eda and global Islamic terrorism. No resolution criticizing Russian practices in Chechnya was presented to the 2002 United Nations Human Rights Commission, in contrast to previous years. Nonviolent human rights defenders were openly criticized as friends of terrorists, even as their work exposed them to violent reprisal from all sides of the conflict.

Similarly an internal conflict involving the Muslim Uighur minority in northwestern China was also portrayed by the Chinese government as its front in the global war against terrorism. The post-September 11 climate has aided the Chinese government's long-standing suppression of internal political dissent throughout the country, including its intolerance of independent human rights activists.

When the President of Pakistan visited the White House in 2002, President Bush remarked: "President Musharraf is a leader with great courage, and his nation is a key partner in the global coalition against terror."<sup>9</sup> President Bush did not voice concern about the Pakistani government's human rights record during his public remarks.

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<sup>8</sup> *Sunday Star*, "U.S. Endorses ISA," May 12, 2002.

<sup>9</sup> The White House, "U.S.–Pakistan Affirm Commitment Against Terrorism," February 13, 2002.

Governments that were previously criticized for human rights violations that occurred during counterinsurgency campaigns have felt vindicated by the newly permissive attitude towards departures from international human rights standards in the name of security. For example, President Kumaratunga of Sri Lanka remarked: “When countries like Sri Lanka fought against terrorists, developed nations worried only about the human rights of terrorist organizations.”<sup>10</sup> The government in Colombia also pointed to what it saw as a double standard in Western attitudes. Referring to antiterrorism measures passed in the United States, United Kingdom, France, and Spain it stated: “For these countries, [the measures] are to defend democracy, liberty, and the citizens’ rights, but in our country they are called authoritarian measures that violate human rights treaties, when we are clearly working towards the same ends.”<sup>11</sup> Human rights defenders were weaker and more vulnerable to attack because of this erosion of international disapproval of human rights violations for whatever pretext.

Fourth, many states have either implemented new national security laws or found new validation for pre-existing emergency legislation by claiming to be following the examples of the United States. In some countries, the U.S.-led war on terrorism has had a direct impact on domestic human rights conditions. Elsewhere, domestic factors have provided the primary motive for worsening human rights conditions. Often, nonetheless, states invoke the U.S. example of to mask or justify violations.

Because many laws’ definitions of terrorism are often both vague and sweeping, their effect is to substantially increase unchecked executive power. New counterterror laws have been identified by human rights defenders as posing an actual or potential threat to the types of basic freedoms essential for human rights defenders to carry out their work—and to the broader system of justice in those nations.

States that had already proclaimed states of emergency or imposed sweeping national security legislation have found new validation for their previously criticized actions in the post-September 2001 world. Authoritarian governments felt emboldened to declare that U.S. departures from international human rights norms showed that their own methods of addressing security threats had been right all along. President Mubarak of Egypt declared that the new U.S. policies proved “that we were right from the beginning in using all means, including military tribunals, to combat terrorism....”<sup>12</sup>

Human rights defenders who spoke out against repression as a response to the threat of terrorism have themselves been subjected to attack for their criticisms. For example, Rashid Butt, a Pakistani journalist, was detained in June 2002, under the Maintenance

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10 “Sri Lanka rebukes West for Double Standards,” Global News Wire, September 18, 2001.

11 Cited in “Legislacion: Arma de doble filo,” *Semana*, ed. 1128, sec. Nacion, December 12, 2003.

12 Joe Stork, “The Human Rights Crisis in the Middle East in the Aftermath of September 11,” Cairo Institute for Human Rights Studies, p. 6. available at [http://www.cihrs.org/conference/storkpaper\\_e.htm](http://www.cihrs.org/conference/storkpaper_e.htm)

of Public Order Act for criticizing the activities of law enforcement agencies.<sup>13</sup> In the Russian province of Krasnodar, the regional authorities used the new Law on Extremist Activities, passed in July 2002, to order the summary closure for six months of the Krasnodar Human Rights Center, an organization that had monitored violations occurring in Chechnya and the North Caucasus. Prior to the passage of the new law, the organization would have been able to contest the closure order in court while continuing with its work, but the new law left it with no legal redress.

In China, Zhao Changqing, a former schoolteacher composed an open letter to the Chinese Communist party's Sixteenth Party Congress expressing concern about escalating repression and calling for the release of all prisoners of conscience and for the ratification and implementation of international human rights treaties. He was secretly detained in November 2002, and charged in June 2003, with "incitement to subvert state power" He was eventually sentenced to five years' imprisonment after an unfair trial on August 4, 2003.

Fifth, in a deeply polarized political environment, where many U.S. policies are controversial, human rights defenders with any association to the United States now face added threats and pressures. This is a particular problem for human rights advocates in the Middle East and the broader Muslim world, a vast region spanning from Indonesia to West Africa that has been repeatedly identified by the Bush administration as the target of a "forward strategy for freedom." The U.S. government is, if anything, placing more emphasis on this aspect of its counterterror policy. For example, on February 5, 2004, President Bush compared the war on terror to the challenges confronting Winston Churchill during the Second World War. He told an audience at the Library of Congress in Washington D. C. :

Our great challenge (i)s support the momentum of freedom in the greater Middle East. The stakes could not be higher. As long as that region is a place of tyranny and despair and anger, it will produce men and movements that threaten the safety of Americans and our friends. We seek the advance of democracy for the most practical of reasons: because democracies do not support terrorists or threaten the world with weapons of mass murder.

America is pursuing a forward strategy of freedom in the Middle East. We're challenging the enemies of reform, confronting the allies of terror, and expecting a higher standard from our friends.<sup>14</sup>

In recent years, the U.S. government has become publicly identified in the region with many of the issues of democratization, good governance, promotion of the rule of law, and human rights that are the core concerns of human rights activists in the region. In

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13 Reporters Without Borders, "Journalist Arrested in Quetta," June 25, 2002.

14 "President Bush Discusses Importance of Democracy in Middle East Remarks by the President on Winston Churchill and the War on Terror," February 5, 2004, available at <http://www.whitehouse.gov/news/releases/2004/02/20040204-4.html>.

many countries of the region, attention to serious problems in these areas may be considered progress after decades of apparent indifference. However, regional governments and their supporters, who have reason to feel threatened by the types of reforms promoted by the United States, found it easy to criticize the U.S. proposals and brand local human rights activists as tools of broader U.S. policies. They focus on what is widely viewed as hypocrisy in U.S. policy where the United States is curtailing rights protections at home while promoting human rights and the rule of law abroad. In this context, U.S. human rights initiatives are viewed by many critics as cynical tools aimed at reinforcing U.S. political domination throughout the world. Some criticism goes so far as to say that U.S. actions after September 2001, have demonstrated that western championing of human rights was “never more than thinly disguised self-interest,” and that, “the United States has given up all credibility as a critic of other states’ human rights practices.”<sup>15</sup>

The U.S. government has found it difficult to come up with a convincing rebuttal of such damaging arguments. When it has been confronted by human rights defenders with long experience of promoting human rights in the context of localized wars on terror being conducted by their own governments, it has asserted that U.S. practices cannot be compared to those of other governments that have been implicated in serious violations.<sup>16</sup> This does not satisfy a skeptical global audience, which sees secrecy and an assertion of executive license and military methods that look very much like counterterror campaigns implemented at great cost to human rights in countries from Peru and Turkey to Sri Lanka and the Philippines.

Ultimately, if the U.S. government demonstrates a sustained commitment to pursuing meaningful human rights policies, and makes progress in places like Iraq or Afghanistan, this environment can change dramatically. But such success will only be achieved over the longer term. At present, skepticism about U.S. motives and actions has created a very dangerous climate for human rights defenders. The United States cannot be seen as a human rights violator that flouts international legality and as a friend of anti-democratic leaders who disparage human rights if, at the same time, it wishes to be taken seriously as the promoter of liberty and democracy in the greater Middle East or elsewhere in the world.

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<sup>15</sup> See, for example, remarks by the Permanent Representative of Singapore to the United Nations at New York, Kishore Mahbubani, to an international conference organized by the International Peace Academy, New York, November 7, 2003.

<sup>16</sup> For example, in a meeting between Deputy Secretary of Defense Paul Wolfowitz and a leading Egyptian human rights defender, Deputy Secretary Wolfowitz responded to complaints that U.S. policies were making it easier for the Egyptian government to violate rights by, for example, trying civilians before special military tribunals by asserting: “If we have military tribunals, they will be military tribunals that put the Egyptians to shame.” Meeting attended by representatives of Human Rights First. The Pentagon, November 13, 2003.

## **The Erosion of Rights in the United States and its Ripple Effect**

Since September 11, 2001, the international community's progress toward protecting human rights for all has suffered a setback—not least because the leaders of the United States government itself appear to have lost confidence in the very framework of law the United States has been so instrumental in developing.

The relationship between the U.S. government and the people it serves has dramatically changed; this “new normal” of U.S. governance is defined by the loss of particular freedoms for some, and, worse, a detachment from the rule of law as a whole.<sup>17</sup>

The undermining of U.S. compliance with fundamental human rights standards has serious implications for human rights norms in scores of other countries. The consequences of changing U.S. policy have been more serious where partner governments, confident that they are needed for the global “war against terrorism,” feel new liberty to persecute human rights defenders.

There is a widespread belief among human rights activists in many parts of the world that U.S. disregard for international human rights principles has set a negative global pattern. The arguments for this view are compelling. The views and actions of the United States carry great influence in all parts of the world. Moreover, the United States has been a leading member of the contemporary international human rights system from its inception in 1948. Since the presidency of Jimmy Carter in 1976, human rights have played an increasingly prominent part in U.S. foreign policy under both Democratic and Republican administrations. Therefore, it is only natural that governments around the world should look closely at U.S. practice and rhetoric as a guide to their own compliance with international standards.

This is not to say that the United States is responsible for human rights violations committed by other governments. It is not. Each government is obliged to abide by the international human rights treaties it has ratified. Human rights violations were widespread prior to September 11, 2001, and they continued to be so afterwards, often for many of the same reasons.

Repressive government in Liberia, Zimbabwe, and Georgia under President Shevardnadze have all claimed that the precedent of U.S. policy justified indiscriminate repression of their political opponents and of their non-violent critics, including human rights defenders.

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<sup>17</sup> For an overview of Human Rights First's work on human rights conditions in the United States post –September 11, 2001 see *Assessing the New Normal, Liberty and Security for the Post-September 11 United States*, Layers Committee for Human Rights (now Human Rights First) , New York , 2003. The website of the U.S. Law and Security Program of Human Rights First contains regular updates on these concerns: [http://www.humanrightsfirst.org/us\\_law/us\\_law.htm](http://www.humanrightsfirst.org/us_law/us_law.htm).

For example, in Liberia in 2002, the government of Charles Taylor detained the independent journalist, Hassan Bility, an outspoken critic of the government’s human rights record. The Liberian Information Minister responded to objections to the imprisonment by saying that Bility was being treated “in the same manner that the U.S. treats terrorists.”<sup>18</sup> When a court ordered the release of Bility and three other nonviolent government critics, President Taylor designated them “unlawful combatants” and prolonged their detention without access to lawyers or family members. President Robert Mugabe in Zimbabwe habitually refers to his nonviolent political opponents as terrorists. In November 2001, Mugabe threatened journalists who reported on their criticism of government policies, stating: “we agree with President Bush... we too will not make any difference between terrorists and their friends and supporters.”<sup>19</sup> In April 2002, then-president Eduard Shevardnadze of Georgia suggested that human rights organizations might be “financed by foreign terrorists” and accused them of “betraying the motherland.”<sup>20</sup>

There was a pronounced shift in the global discourse about human rights after September 2001. It was a shift brought about because of the perception that when challenged by the threat of terrorism, the most powerful country in the world violated human rights in the name of upholding national security.

For decades the United States has been a leading voice for human rights around the world and a lynchpin of the international system of human rights protection. This multilateral system functions imperfectly without U.S. participation and leadership. At the present time, there is a case to be made that the United States is pulling in the opposite direction, undermining the multilateral system for human rights promotion and protection that has been painstakingly constructed over more than 50 years.

### **Human Rights and Security: Complementary Concepts**

The idea of human rights and security being antithetical—a reversal of the logic of the drafters of the Universal Declaration of Human Rights, and a consequence of short memories and political opportunism—or linked in negative correlation, is profoundly damaging to the work of human rights defenders. Within such an intellectual construct those promoting human rights are characterized as obstacles to security, if not supporters of terrorism.

U.N. Secretary General Kofi Annan has set out an alternative vision of the complementarity of human rights and counterterrorism:

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18 Charles Cobb Jr. . “Detained Journalist in Military Hands, Says Minister,” *All Africa News*, July 3, 2002.

19 See Nicholas Watt, “Mugabe calls UK reporters terrorists,” *The Guardian*, November 24, 2001.

20 Human Rights First interview with Ucha Nanushavili, Executive Director of the Human Rights Information and Documentation Center, November 23, 2003.

Our responses to terrorism, as well as our efforts to thwart it and prevent it, should uphold the human rights that terrorists aim to destroy. Respect for human rights, fundamental freedoms and the rule of law are essential tools in the effort to combat terrorism—not privileges to be sacrificed at a time of tension.<sup>21</sup>

Perhaps the greatest damage done to the international human rights system, with human rights defenders on the front line has been the erosion of state compliance with international human rights standards as the presumptive international norm. The adoption by the United Nations General Assembly of the Declaration on Human Rights Defenders in 1998 was an important indication of this growing international consensus. The Declaration codified the right to promote and protect human rights as a normative standard.

Weakening the international standards and mechanisms for human rights promotion and protection, or shaking the international consensus on human rights, has no connection to implementing effective policies against terrorism. Building conditions within states where human rights defenders operate freely helps to create an environment where terrorism does not prevail. All governments should reaffirm their commitment to support the essential work of human rights defenders.

## Conclusion and Recommendations

This report has primarily dealt with the damage inflicted on human rights defenders and human rights conditions as a result of the global “war on terrorism.”

In the context of heightened concern about the threat of terrorism, governments have become adept at evading international scrutiny and criticism by justifying abusive actions as a necessary part of the global war on terrorism. Internal armed conflicts and political upheavals that gave rise to severe violations prior to September 2001, have continued, and, in some cases, intensified, with governments giving increased emphasis to the threat of global terrorism to deter local and international criticism.

At the same time, the capability of the United States to persuade and admonish other governments to improve their human rights practices has been greatly diminished by the widespread perception that in its own counterterrorism policies it has departed from international human rights standards. The credibility of the United States as a force for the promotion of human rights has been further undermined by its close alliance in the war against terrorism with numerous governments implicated in serious and continuing human rights violations.

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21 Statement of Secretary General Kofi Annan to a special meeting of the Security Council's Counter-Terrorism Committee with International, Regional, and Sub-Regional Organizations, New York, March 6 2003, available at <http://www.unhcr.ch/terrorism/>.

The international mood among nations on the balance of rights and security has subtly shifted in the past year. Today some governments and civil society organizations are increasingly emphasizing the need to more scrupulously protect human rights in times of crisis and not least in the fight against terrorism. This is argued on its own merits—and as an important contribution to halting lawless attacks on civilian lives and property in the long term. Respect for human rights, democracy, and the rule of law is an essential antidote to the conditions in which terrorist acts are committed and perpetuated. In contrast, the abuse of basic rights in the course of efforts to combat terrorism can ultimately be self-defeating—blurring the distinction between those who stand for the rule of law and those who defy it.

Taking into account these general factors, some broad conclusions emerge:

### **Conclusions**

- **The political space for human rights work has been seriously eroded by government measures in the name of counterterrorism.** Often based on draconian national security laws and regulations, many counterterrorist measures constrain the freedom of human rights defenders to receive and impart information, to meet privately and hold public assemblies, or even to operate in legal organizations. New counterterror laws, regulations, and policies have been introduced that flout international human rights standards, extending extraordinary powers to executive authorities with limited judicial or legislative oversight. Human rights defenders face barriers to individual activism and to the work of nongovernmental organizations.
- **Human rights defenders are more vulnerable to abuse where their governments claim to be a part of international campaigns against terrorism.** Even where the legal framework is not wholly new, many governments can now exercise extraordinary powers with fewer constraints—without accountability at home, they now have far less international pressure to comply with fundamental human rights standards. Human rights defenders who before September 11, 2001, could count on strong international support from many governments are now more vulnerable when their own governments invoke the war against terrorism to justify arbitrary actions.
- **Human rights defenders are increasing “branded” as unpatriotic—or as terrorists—by officials at the highest level and exposed by this to extreme threats of violence.** In countries with longstanding civil conflicts, where human rights defenders have long faced physical threats and violence, the new language of counterterrorism has given new impetus to the practice of “branding” defenders as defenders of terrorists and as terrorists themselves. Such generalized accusations defame human rights defenders and undermine their credibility in societies scarred by violence. This branding places human rights defenders at great risk of extralegal violence, particularly where government forces operate clandestinely, or through security forces such as paramilitary militia for which they may readily evade

accountability. Attacks on human rights defenders in such situations have received less international attention and in some cases have increased.

- **Human rights activists face both legal sanctions and constraints and extralegal attacks.** Legislative measures that restrict freedom of expression, association, and movement and impose formal sanctions on human rights defenders that gather information and speak out, are paralleled by extralegal harassment and intimidation from brutal beatings to torture and murder.
- **Human rights organizations face heightened government controls—or closure.** The umbrella of counterterrorism has meant the proliferation of laws and practices through which human rights organizations are denied registration, barred from holding meetings, forbidden to disseminate information, or closed by executive order without review.
- **Human rights defenders are harassed and punished by measures stripping them of their rights to work and to a livelihood.** Human rights defenders may be deprived of their professional standing; stripped of their right to work in their professions; or barred from traveling within certain regions or internationally.
- **Progress made by human rights defenders in campaigns to halt the use of abusive national security laws and for their derogation has been reversed in the new security environment.** Longstanding counterterror or national security laws that flout international standards have been rehabilitated and employed broadly to restrict civil liberties; governments that made strong calls for reform of abusive national security and emergency laws no longer speak out in the same manner.
- **Human rights defenders continue to face harassment and legal penalties under antiquated emergency laws, including fines and detention without trial or after trial before special courts, with less international attention and support.** Governments that have traditionally spoken out against administrative detention and trials before special courts have now muted their criticism of such practices.
- **Human rights defenders face legal penalties under new counterterrorism measures.** Restrictions on the rights of freedom of expression, association, and movement; access to information concerning government policies and practices; and erosion of the basic principles of due process of law obstruct the work of human rights defenders and expose defenders to a broad range of penalties. Governments have increasingly used counterterror provisions for detention without charge or trial; secret unacknowledged detention; the use of secret detention centers; and the denial of judicial review, while limiting or prohibiting access to detainees by lawyers or family members. Human rights defenders are among those detained or under threat under these special measures. International criticism of such abuses has been increasingly muted in the context of the international campaign against terrorism.
- **Human rights defenders are denied the right to meet, to share information, or to speak out, on pain of legal penalties or extralegal violence and death.** New

and longstanding counterterror and other national security laws have placed increased restrictions on freedom of expression and association.

- **Human rights defenders are denied access to basic information on human rights policies and practices, to trials, and to detainees.** National security laws, regulations, and policies have eroded the concept of open government. Governments have increasingly restricted access to information on government policies and operations in the name of counterterrorism. Human rights defenders seeking to assist those in detention under counterterrorism and other national security measures have been denied access to detainees and to public information concerning the reason for their detention.
- **Government policies and practices have made it more difficult for human rights defenders to monitor and report on human rights conditions.** National security laws and policies have been cited by governments seeking expressly to punish human rights defenders for disseminating human rights or for contacting human rights defenders abroad.

These diverse phenomena, which have contributed to severe setbacks for human rights defenders, combine to create an acute challenge for the international human rights movement. The contribution of those who work to promote and protect human rights needs greater recognition and support by the international community. Safeguards provided for in the 1998 Declaration on Human Rights Defenders and the numerous international instruments on which it was based must be implemented in practice by all governments. Governments should act, at home and abroad, to ensure that defenders are in a position to carry out their work and effectively protect the rights of all persons and groups.

### **Recommendations to States**

1. States should conduct a public review of all laws designed to combat terrorism, including declarations of states of emergency and other national security laws, to ensure their conformity with international standards. Laws that conflict with international human rights standards should be repealed. Governments that invoke emergency powers, derogating from fundamental human rights guarantees, should do so in compliance with international standards that limit those rights that can be suspended and require that emergencies be declared only for a specific, clearly stated purpose for a strictly limited duration. Such actions and their implications should be made transparent to the wider public.
2. Each government should work through multilateral institutions to ensure that treaties and other international measures concerning terrorism take into account human rights and humanitarian law in defining prohibited acts and appropriate prophylactic and punitive measures.

3. States should review their own compliance with counterterrorism treaties and intergovernmental resolutions with a view to identifying and correcting the misuse of measures specifically designed to counter terrorism in ways that violate international human rights or humanitarian law.
4. States should review the letter and the application of national legislation that is invoked as in compliance with Security Council calls for counterterrorism measures to ensure that it does not flout international human rights standards. Identify elements in law and practice that obstruct or punish the exercise of fundamental rights by human rights defenders and other nonviolent monitors or critics of government policy.
5. States should create an enabling environment for human rights defenders to carry out their work and ensure their protection from all forms of retaliation, threats and violence. States should pay particular attention to the following rights contained in the 1998 U.N. Declaration on Human Rights Defenders:
  - a) **freedom of thought, speech, expression, communication, and the right to information**; in recent years human rights defenders have seen the extension of areas that are effectively closed to local and/or international human rights monitoring by direct government order, or because of deteriorating security conditions, moreover several counterterrorism or national security laws criminalize nonviolent speech or expression critical of state policies, including statements typically made by human rights defenders, such laws have also reduced transparency and shrouded governmental actions in secrecy;
  - b) **freedom of association**; human rights organizations have faced burdensome and intrusive regulation requirements that have undermined their ability to function independently and free from governmental interference;
  - c) **freedom of movement**; in addition to being denied access to areas where severe violations are believed to be taking place, human rights defenders have been denied permission to travel.
6. Each government should ensure that members of the military and security forces, including paramilitary forces and others serving as agents of government at some level are held accountable for violations of human rights and humanitarian law.
7. States should ensure that advocates for the rights of particularly vulnerable groups, like minority religious and ethnic communities or refugees and asylum seekers are provided with the basic freedoms, protections, and access to information necessary for them to carry out their tasks. Human rights defenders should not be maligned for standing up for the rights of disfavored communities, or for individuals from

communities out of which perpetrators of criminal acts of political violence have come.

### **Recommendations to Inter-governmental Organizations**

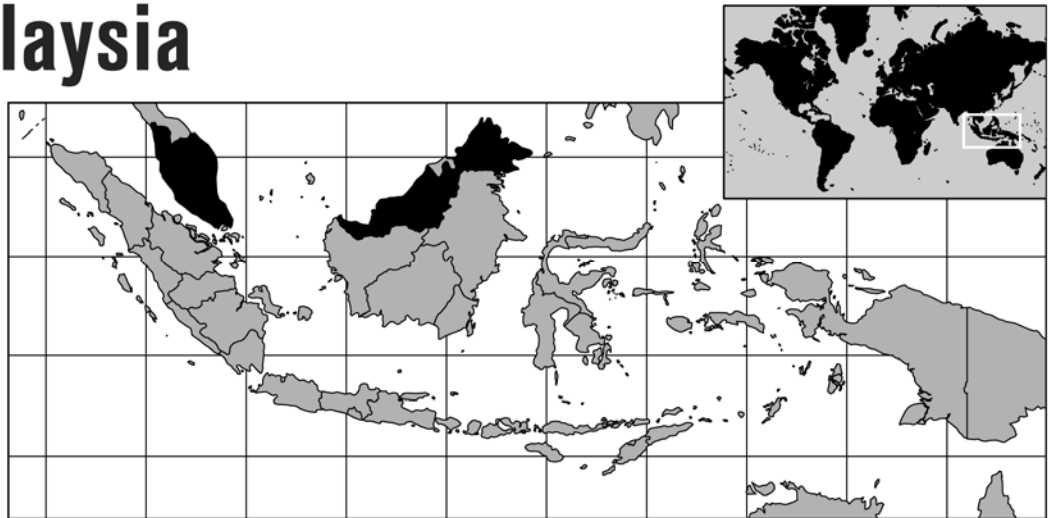
1. Strengthen mechanisms for the protection of international human rights standards and ensure the autonomy, objectivity, and impartiality necessary for carrying out their mandates. Member states of the U.N. and regional bodies have the obligation to enable the effective functioning of such bodies and provide avenues of access to them for human rights defenders. Member states also should ensure that the institutions and mechanisms that they create are provided with necessary and adequate resources to carry out their mandates.
2. Emphasize the importance of the work of local, regional, and international human rights defenders to the success of efforts to combat terrorism, in all their statements, resolutions, declarations, and decisions.
3. Ensure that the specific obstacles faced by human rights defenders as they carry out their work are recognized, paying particular attention to obstacles created by counterterrorism legislation and policies. The U.N. and regional bodies must ensure that measures are taken to overcome these obstacles and to guarantee full respect by states of the U.N. Declaration on Human Rights Defenders.
4. Raise the profile of reports and recommendations submitted by the special procedures of the U.N. Commission on Human Rights, as well as by the Office of the High Commissioner for Human Rights, the human rights treaty bodies, and regional human rights bodies that highlight pressing concerns with regard to human rights, counterterrorism, and persecution of human rights defenders.
5. Strengthen the human rights treaty bodies so that they can more effectively encourage states to implement the provisions of the treaties they have ratified, with specific attention to the recommendations issued by the treaty bodies aimed at correcting rights abuses.
6. Ensure that the U.N. Counter-Terrorism Committee and regional bodies charged with monitoring the implementation of national counterterrorism legislation cooperate with the Office of the High Commissioner for Human Rights, the special procedures of the U.N. Commission on Human Rights, the human rights treaty bodies, and with regional institutions and mechanisms for the promotion and protection of human rights. In coordination, these bodies and mechanisms should establish procedures for the prompt and thorough review of government reports, to ensure that policies designed to combat terrorism are consistent with internationally accepted human rights norms. The importance of the work of human rights defenders and the special concerns that must be addressed so that

human rights defenders are able to do their work effectively must be given particular attention.

### **Recommendations to the Government of the United States**

1. Pursue consistent, multi-track policies that place respect for human rights at the center of its efforts domestically and internationally to counter the threat of international terrorism. Particular attention must be given to ensuring that U.S. counterterrorism policies at home and abroad comply fully with U.S. law and international human rights standards. In addition, the government of the United States, in accordance with U.S. law, must ensure that military cooperation and assistance agreements entered into in the context of forging alliances in the “war in terrorism” do not facilitate violations of human rights.
2. Make clear to its international allies the importance of their compliance with international human rights mechanisms in the global struggle against terrorism.
3. Place local human rights defenders at the center of efforts to promote and protect human rights around the world. The State Department should report specifically on challenges faced by human rights defenders in such reports as the annual *Country Reports on Human Rights Practices*. Training for foreign service officers being posted overseas should include specific reference to the importance of human rights defenders, their basic needs, and the special dangers they face.
4. Cooperate fully with multilateral human rights mechanisms at the United Nations and elsewhere and commit the resources necessary to enable such mechanisms to carry out their functions.

# Malaysia



## Background on the Internal Security Act

The Internal Security Act (ISA) was passed into law on August 1, 1960, in the then newly independent state of Malaysia, as a substitute for a lapsed piece of British colonial legislation, the Emergency Regulation 1948, on July 30, 1960.

Originally framed with the express aim to quell a communist insurgency and suppress threats to “national security,” the act<sup>1</sup> has since been used to detain alleged “menaces” to the state without trial or judicial remedy.<sup>2</sup> During the 1960s, the so-called “menaces” were largely communists and leftists. In the 1970s, they were radical students and labor activists.<sup>3</sup> In the last 15 years, the national security threats identified included a varied collection of social activists, opposition leaders, and alleged Islamic extremists—with the act also applied to detain without trial those accused of providing transportation to illegal migrants and currency and passport counterfeiters.

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1 The ISA allows the police to arrest without a warrant any person suspected of having acted, or who is likely to act, “in any manner prejudicial to the security of Malaysia.” The suspect can be detained up to 60 days without trial and without access to legal counsel for the purposes of investigation. If the police believes that a person should be further detained, the Minister of Home Affairs will be advised accordingly, and may issue a two year detention order, which can be renewed indefinitely. The longest-term political detainee was the late Kamarulzaman Teh, a member of the left-leaning Malaysian People’s Party (PRM), who was detained under the ISA for 22 years.

2 The detention order of the minister is virtually unchallengeable in court and the minister is not required to produce grounds for his signing of the detention order. Section 8B (1) of the ISA reads: “There shall be no judicial review in any court of, and no court shall have or exercise any jurisdiction in respect of, any act done or decision made by the Yang di Pertuan Agong [the official title of the Malaysian head of state, although the role is largely ceremonial] or the Minister in the exercise of their discretionary power in accordance with this Act save in regard to any question on compliance with any procedural requirement in this Act governing such act or decision.”

3 During the crackdown against student activists in 1974-75, one of those detained under the ISA was then the leader of the student and youth movement ABIM, Anwar Ibrahim, who later became deputy Prime Minister. Anwar was ousted in 1998 and is currently in prison serving a 15 year sentence and is considered by human rights monitors and in many jurists’ circles, as a political prisoner.

In recent years, the application of the ISA has centered on members of nonviolent opposition parties and alleged Islamic extremists. During the 1990s, a number of alleged Muslim extremists<sup>4</sup> were detained under the ISA, including the leadership of Darul Arqam in 1994.<sup>5</sup>

Most human rights organizations in Malaysia estimate conservatively that some 10,000 people have been detained under the ISA since 1960.<sup>6</sup> However by the mid-1990s, changing times had made it difficult for the government to justify maintaining and using the ISA. As early as 1996, the government had proposed that the Act be reviewed for possible amendment, though nothing came of this. In the meantime, the ISA was invoked or threatened in a number of cases that would surprise even the staunchest of ISA advocates. Authorities threatened the use of the ISA against those who “spread rumors,” for example, or “cloned” cell phone accounts in a then-widespread form of fraud. In 1997, at the height of the Asian economic crisis, the government threatened to use the ISA against stockbrokers and financial analysts who were involved in currency speculation and those who presented “a negative economic picture” of Malaysia. In the same year, the police threatened a coalition of NGOs who campaigned against the abuse of police powers with arrest under the ISA if they were to proceed with a public forum to bring abuses to the public’s attention.<sup>7</sup> In recent times, it has even been suggested that rice smugglers be detained under the ISA.

It was, however, the dismissal and subsequent ISA arrests of the former Deputy Prime Minister, Anwar Ibrahim, and 29 of his associates in 1998, which catalyzed a multi-sectoral, multi-party movement for political reforms, known as reformasi, and along with it, the largest platform for anti-ISA campaigners and human rights NGOs in recent Malaysian history. When Anwar Ibrahim was taken out of ISA detention and brought to court to be charged, he was seen by the nation sporting a black eye, appearing to confirm reports that he had been ill-treated. Most Malaysians were incensed, and calls for the repeal of the ISA became even louder.

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4 It should be noted that political factors were also involved in the arrests in these cases. The Shia community is viewed with suspicion in Sunni-dominated Malaysia while the Darul Arqam movement was seen as a political threat to the ruling UMNO party. The movement’s leader had made the mistake of boasting that he was more popular than Prime Minister Dr. Mahathir.

5 The Darul Arqam movement was founded by Ustaz Ashaari Muda in 1968, and started as a study group among Muslim scholars. In time, it evolved into a Sufi-inspired alternative lifestyle movement that was very much centered on the personality of its founder. The movement’s aim was to create an alternative model of an ideal Islamic society, organized and managed according to the standards and norms set by the Prophet Muhammad himself and his sahabat (companions). Prior to the banning of Darul Arqam and his arrest under the ISA in 1994, Ustaz Ashaari was regarded as one of the most influential and controversial Ulama in the country.

6 Dr. Rais Yatim, the current de facto Justice Minister in the Prime Minister’s Department, put the figure at more than 20,000 people. See Rais Yatim, *Freedom Under Executive Power in Malaysia: A Study of Executive Supremacy*, p. 244, (1995).

7 In 1997, the Coalition of NGOs against Abuse of Police Powers was formed after a spate of extrajudicial executions and numerous cases of police brutality. A forum was organized, called the “Tribunal Rakyat” or People’s Tribunal. The then-Inspector General of Police, Rahim Noor, objected to the forum and threatened the organizers with detention under the ISA. Among the reasons given by the police was the use of the word “tribunal” which they claimed “smells of Marxism.” The forum was postponed indefinitely by the organizers, and a month later, a Consumers’ Tribunal was formed to hear complaints from consumers, but on this occasion there was no uproar over the use of the word tribunal.

In 2000 and 2001, there were also a number of ISA arrests, which the government attempted to link to the Pan-Islamic Party (PAS), the main opposition group. In June 2000, an arms heist took place in the sleepy town of Gerik, Perak, where 15 men dressed in army fatigues managed to remove more than a hundred pieces of weaponry from the military depot. Following a shoot-out in Sauk, the police captured most of the members, said to be from the group al-Maunah. Some were charged and convicted in court for ordinary criminal offenses,<sup>8</sup> others detained in relation to the case were sent to the Kamunting Detention Camp on ISA detention orders, where they were released in November 2003. According to the government, al-Maunah wanted to overthrow the government through armed means and replace it with an Islamic state.

A year later, another group of alleged Islamic militants was identified by the government. Referred to by authorities as “the Jihadi Gang Five,” they were alleged to be terrorists and were arrested on June 7, 2001, under the ISA. They were accused of participating in jihad campaigns in Afghanistan and in Ambon, Indonesia, as well as in the assassination of a state assemblyman, bank robberies, and in attacks on Hindu temples and churches in Malaysia. At around the same time, the government said that they would launch public campaigns to expose PAS involvement in several “treacherous acts against the country.”<sup>9</sup>

Between the months of April and June 2001, ten activists<sup>10</sup> and two students who were known for campaigning for human rights and democratic reforms were arrested under the ISA. The arrests generated mass public support for their release and for the abolition of the ISA. By this time, a new coalition was formed—the Abolish ISA Movement (AIM), comprising of an unprecedented 82 nongovernmental organizations (NGO) and all of the opposition parties.

## Civil Liberties After September 11<sup>th</sup>

During the first six months following the September 11, 2001 attacks on the United States, the Malaysian government, led by Prime Minister Dr. Mahathir Mohammad, took the initiative to counter demands for the repeal of special powers there. The government seized every opportunity to declare national security as paramount and the ISA as an indispensable weapon against “terrorism.”

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<sup>8</sup> See Public Prosecutor (PP) v. Mohd Amin & Ors [2002] 5 CLJ 281.

<sup>9</sup> Star, June 22, 2001.

<sup>10</sup> All ten men were associated with the pro-reform opposition movement in Malaysia and were accused of attempting to overthrow the government through “militant and armed” means. Two of the ten men were members of the human rights group SUARAM. At the end of the initial 60 day period of detention, the Minister of Home Affairs, Abdullah Ahmad Badawi, signed detention orders that sent six reformists to the Kamunting Detention Camp. These men became popularly known as the ‘ISA-6’ and were released in June 2004 after two years of intense campaigning. For more information, accounts and affidavits of their detention and interrogation by the police, see <http://www.hakam.org/campaigns.htm> (accessed February 23, 2004).

The government also stepped up efforts to associate the political opposition with violent extremists. As early as August 2001, the government began arresting suspected members of a group called Kumpulan Militan Malaysia (KMM).<sup>11</sup> The government had by that time on numerous occasions alleged that the opposition PAS was moving towards seizing state power through violent means. It claimed that some members had participated in overseas military training and even fought side by side with the Taliban in Afghanistan.<sup>12</sup> By the end of 2001, another group emerged, which the Malaysian government called Jemaah Islamiyyah (JI), linked to a Southeast Asia-wide conspiracy by radical Islamic groups to form a regional network of Islamic states. The names Kumpulan Militan Malaysia and Jemaah Islamiyyah have been used interchangeably.

The Malaysian public was already gripped by numerous reports and rumors of a grand Islamic conspiracy in the country prior to September 11, 2001. The attacks on the United States provided a further opportunity for the Malaysian government to justify retention of the ISA. Six days after September 11, Minister for Home Affairs Abdullah Ahmad Badawi told the press that the ISA had indeed served its purpose in combating terrorism in the country.<sup>13</sup>

During the initial months after September 11, an atmosphere of fear was fostered in Malaysia through the print and electronic media. For example, a Ministry of Information message on the KMM, repeatedly screened during prime time television slots, juxtaposed CNN footage of a woman shot in the head by the Taliban with footage of leaders of the opposition party PAS, suggesting it was the Taliban of Malaysia.

The Abolish ISA Movement (AIM) was also featured in one of the ministry's broadcast messages, suggesting the movement's efforts to bring an end to detention without trial had unwittingly colluded with and abetted the Islamic terrorists.

When news of the passage of the USA PATRIOT ACT hit Malaysia, the government trumpeted to the local press that the ISA had become an international blueprint of countering terrorists, from the United States to the Philippines.

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11 According to the Royal Malaysian Police Force, Kumpulan Militan Malaysia, sometimes called Kumpulan Mujahiddin Malaysia (or KMM), envisages the overthrow of the Malaysian government by way of violent means in order to establish an Islamic state in the country. Ten men were initially arrested and said to be members or former members of the main Islamist opposition party—the PAS. The leader of KMM is said to be Nik Adli Nik Aziz, the son of the spiritual leader of PAS and chief minister of the opposition-held state of Kelantan, Nik Aziz Nik Mat. On September 2, 2001, days after nine KMM members were sent to the Kamunting Detention Center on two-year detention orders, then Prime Minister Mahathir Mohammad reportedly said that the KMM had a pact with other Islamic groups in Indonesia and the Philippines to form Islamic states in Southeast Asia (Agence France Presse,). On September 29, 2001, Mahathir warned there would be more arrests of Islamic militants, and that one political party was veering towards "militancy." There is no doubt that Mahathir's statement was another pointed attack on PAS. The March 2002 by-election for a state assembly seat saw handbills printed in Chinese which detailed alleged "inhumane and despicable" crimes committed by the KMM and linked the former groups to PAS, which ran a candidate in the by-election. The KMM detainees had their detention orders extended for another two years on December 8, 2003, as did alleged members of Jemaah Islamiyah (JI) in the same and subsequent month.

12 Star, 5 August 2001

13 "Malaysia pledges co-operation in fight against terrorism," Agence France Presse, September 17, 2001.

The then-United Nations Special Rapporteur on the Independence of the Judges and Lawyers, Param Cumaraswamy, himself a Malaysian rights activist, voiced what had been in the minds of local activists when he said that the repeal of the ISA had become more difficult, especially when “old democracies” such as the United States, the United Kingdom, and Australia had now resorted to preventive detention themselves.

The United States—who were in the past opponents of laws providing for detention without trial and legislation that violates international human rights law and standards—are now seen diluting the same principles on grounds of combating terrorism.<sup>14</sup>

Days before Prime Minister Mahathir met President Bush in May 2002, an English-language daily, the Star dedicated the entire front page to its lead story, “U.S. Endorses ISA,” a reference to a meeting between the de facto Minister of Justice Dr. Rais Yatim and U.S. Attorney General John Ashcroft in Washington D.C. Rais was reported as saying:

I believe that after the meeting there will be no more basis to criticize each other’s systems, specifically the ISA, because if they do that, then the Patriot Act, which is quite similar in nature to the ISA, could come into a position of jeopardy itself....Ashcroft seemed to understand the existence, need and the future of the ISA in as much as we understand the Patriot Act.<sup>15</sup>

In the October 2002 Budget speech, the prime minister lauded the ISA as the “savior” of the nation and its national stability. In his national address during the Muslim celebration of Eid in November 2002, he reiterated this point. According to the national news agency, Bernama, Minister of Home Affairs Abdullah Badawi asserted that the terrorist threat in Malaysia was under control due to the use of preventive detention laws such as the ISA against suspected individuals.<sup>16</sup> The intensive state propaganda, the continuous use of the ISA, and external factors such as the international “war against terror” proved effective in shaping the Malaysian public’s perception on national security issues. The tide turned towards the retention of the ISA to meet alleged new threats. These developments since September 11, 2001, have encouraged the Malaysian public to adopt a more conservative stance on human rights issues.

The constant repetition by the government of the virtues of the ISA through newspapers and television news and the occasional ISA arrest of alleged militants,

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<sup>14</sup> Yoon Szu-Mae, *Combating Terrorism, Compromising Human Rights*, Analysis Malaysia, October 24, 2002.

<sup>15</sup> Sunday Star, May 12, 2002.

<sup>16</sup> BBC World Service Television interviewed Abdullah on October 30, 2002, where he added the following, “They want to topple the elected government through unlawful means, resorting to actions which are extra-constitutional, we have the constitution and therefore it is wholly right that we resort to preventive detention.” He also claimed that many countries were resorting to measures such as the ISA to act against groups such as Jemaah Islamiah (JI).

which get headline news treatment, serve as constant reminders to Malaysians of possible threats of terrorist attacks by homegrown groups.<sup>17</sup>

Even some traditional democrats and human rights advocates joined in the security campaign. In the wake of the September 11, 2001 attacks, the Chairman of the National Human Rights Commission (SUHAKAM), Musa Hitam, surprised human rights groups with a statement that he was “nationalistic” enough to realize that democracy and human rights should give way for the security of the country. More recently, SUHAKAM has reaffirmed its longstanding call for the repeal of the ISA while asserting the need for a new law to combat terrorism.<sup>18</sup>

Dr. Chandra Muzaffar, a former ISA detainee during Operasi Lalang, the widespread crackdown on social and political activists in 1987, and president of the International Movement for a Just World, said there needs to be an antistatutory law, as opposed to an antiterrorist law, but that the right to a fair trial must be upheld.<sup>19</sup>

Ramdas Tikamdas, president of the National Human Rights Society (HAKAM), too, has concluded that the ISA must be repealed immediately, even while suggesting that special measures are required to combat the threat of terrorism. He, however, posed the question as to whether preventive detention is indeed a necessary evil to protect democracy, arguing that conventional law, which is based on the concept of deterrence and punishment, may not be relevant when combating “suicide missions” and those who allegedly have weapons of mass destruction. Tikamdas concluded that if a preventive detention law is a necessary evil, it must include judicial safeguards and guidelines, with the detaining authority required to satisfy the court on its basis for detention, and with emergency legislation to have a sunset clause attached to it.<sup>20</sup>

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17 A classic example is that of the reporting by Malay Mail, a popular English-language tabloid. On September 18, 2002, just a year after the attacks, the headline news was, “100 JI Members At Large.” The Bali bombing occurred one month later, and was linked to JI with Malaysian connections.

18 See SUHAKAM Review of the Internal Security Act 1960, (2003).

19 Dr. Muzaffar's comments were made during discussions with the author in December 2002, at an anti-ISA forum and in his office in May 2003.

20 Ramdas Tikamdas, The Internal Security Act 1960, paper presented at the workshop entitled “National Security and Constitutional Rights in the Asia Pacific Region” at the Australian National University, October 8-9, 2002. Available at [www.hakam.org/statements.htm](http://www.hakam.org/statements.htm) (accessed February 23, 2004).

A major stumbling block in furthering civil liberties and campaigning against the ISA is the need to allay the Malaysian public's fears that respect for fundamental rights will not compromise safety and security. At this moment, human rights organizations are still seeking an effective approach to rights promotion in these new circumstances. SUHAKAM and a number of prominent rights activists continue to support the repeal of the ISA but have also suggested anti-terror legislation be adopted in its place to allay public fears. However there appears to be no consensus on this matter. All human rights groups and the Malaysian Bar Council, however, have come out to express their concerns over recent amendments to legislation specifically addressing "terrorist crimes."

### **Torture and Ill-Treatment of Post September-11 Detainees**

In January 2004, 31 ISA detainees, most of them classed as Jemaah Islamiyah (JI) and held in the Kamunting Detention Camp, wrote an 18 page document addressed to the National Human Rights Commission (SUHAKAM) detailing a catalogue of torture and ill-treatment while in detention. What is extraordinary is that this is the first time in which post-September 11 detainees have revealed what had gone on during their initial 60 days in detention and the nature of subsequent treatment in the camp.

They described being stripped naked, forced to stand for the duration of day-long interrogation sessions, being spat at by interrogators, and being forced to drink spittle. The detainees also claimed that they had their beards shaved or burned.

The detainees further claimed that they were threatened with acts of violence and the arrests of their families if they or their family members were to seek legal counsel or file habeas corpus applications. These detainees did, however, seek meetings with their lawyers.

In the same letter, they said that their detention orders were "twisted and fabricated" by the authorities and that the charges were unfounded, as they "never knew" or said anything about forming an Islamic state in Malaysia through violent means.

Human rights defenders who have been in the forefront in the campaign against national security laws and working on cases of alleged Islamic terrorists have been, to date, somewhat spared from social vilification and threats of intimidation or harassment from the government. This has been the trend since the early 1990s.

However, this is not to say that there have not been problems. The government has subjected the ISA detainees themselves and their families to tremendous pressure not to file avoid habeas corpus petitions challenging the legitimacy of their detentions. Family members have been visited by the police to warn them against consulting or cooperating with lawyers and human rights groups. Human rights groups still have no access to those in detention while lawyers are hard-pressed to gain access during the first 60 days of detention (see Box 1).

The government has tried to discredit the activities of human rights groups

by playing to the Malay-Muslim majority constituency. The main argument used throughout the years was that human rights are "Western concepts" that are alien to Malaysian society and not compatible with "Asian values" which require loyalty and

obedience to the government. This was recently reiterated by the de facto Justice Minister Dr. Rais Yatim in his keynote address at the Malaysian Law Conference held in Kuala Lumpur on December 12, 2003: “Not all rights through the United Nations are suitable for us. Our values as people living in the East must be considered. The ISA has been decided by the government in this context.”<sup>21</sup>

The Asian values argument to justify the ISA has, however, been made against the backdrop of the act’s origins in British colonial law. The post-September 11 environment, in turn, has led Malaysian authorities to revive both the Asian values rationale and, with no seeming contradiction, the value of new Western models. Western countries are now lauded for employing various forms of preventive detention, while Malaysia’s claims that preventive detention is necessary to keep terrorists at bay is represented as doubly validated. In September 2003, Dr. Rais Yatim said that the government had no intentions of releasing more than 100 alleged terrorists held under the ISA, even for the purpose of a trial for fear they would be a security risk. He justified this by using the example of the U.S. government’s detention of alleged terrorists in Guantánamo Bay.<sup>22</sup>

## Changes in Legislation since September 11, 2001

As the ISA has been lauded by Malaysian authorities, three new antiterror bills were introduced by the government in the September 2003 parliamentary session. They are the Penal Code (Amendment) Act 2003; the Anti-Money Laundering (Amendment) Act 2003; and the Criminal Procedure Code (Amendment) 2003.

The government justified these measures, which create new criminal offenses, as required to comply with the U.N. Security Council resolutions on counterterrorism measures and the International Convention for the Suppression of the Financing of Terrorism adopted by the United Nations General Assembly in 1999.<sup>23</sup> Of most concern to human rights organizations is the Penal Code (Amendment) Act 2003, which newly defines criminal offences as “terrorist” and the Criminal Procedure Code (Amendment) 2003, which would provide additional police powers for arrests without warrants and the interception of all forms of communication by order of the Public Prosecutor’s office.

The Criminal Procedure Code (Amendment) 2003 bill was withdrawn soon after it was tabled for further amendments by the government. However the Penal Code (Amendment) Act 2003 and the Anti-Money Laundering (Amendment) Act 2003 went

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21 Justice Minister Dr. Rais Yatim, quoted in Yap Mun Ching, “Sept 11 rendered consultation on terror laws impossible,” Malaysiakini.com, December 12, 2003.

22 Justice Minister Dr. Rais Yatim, quoted in Yap Mun Ching, “Suhakam’s Proposals on ISA and other Security Laws Being Reviewed,” Malaysiakini.com, September 9, 2003.

23 See Explanatory Statement of the Bills.

through their second and third readings, and were passed in early November. The Senate approved the two bills at the end of November.

## Problems Associated with the Bills

### The Penal Code (Amendment) Act 2003

A fundamental question that has yet to be answered by the government is this: Why should there be a new set of criminal offences for the act of “terrorism” when there are more than adequate existing laws to investigate, charge, and prosecute such activities?<sup>24</sup> An example cited by the Bar Council and human rights organizations which opposed these amendments was the government’s successful prosecution of what it termed the “terrorist activity” of persons associated with al-Maunah.<sup>25</sup>

The definition of what constitutes an “act of terrorism” is also problematic.<sup>26</sup> The definitions proposed under the new Section 130B subsection (2)(a) to (j) and subsections (aa) and (bb) are not only vague but also redefine previously defined criminal acts of terrorism. Actions include those that “involve serious bodily injury to a person”; “disruption of certain infrastructure, interference with essential services;” or “involve prejudice to national security or public safety.”

Each act of subsections (a) to (j) can also stand on its own as a “terrorist” act, lowering the threshold for the type of criminal activity that may be defined as an “act of terror.” In the case of *Public Prosecutor v Mohd Amin & Ors* (2002), in contrast, a series of associated and deliberate actions was required to constitute an act of “terrorism.”

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24 See E. Wong, *Civil Liberties and the Proposed Amendments to the Penal Code: Briefing Notes for Members of Parliament*, November 5, 2003; and Fahri Azzat, *Commentary on the Amendments to the Penal Code* [no date]. The existing laws include and are not limited to the following: *Abduction and Criminal Intimidation of Witnesses Act 1947* (rev. 1977); *Anti-Corruption Act 1997*; *Anti-Money Laundering Act 2001*; *Arms Act 1960*; *Aviation Offences Act 1984*; *Computer Crimes Act 1997*; *Corrosive and Explosive Substances and Offensive Weapons Act 1958* (rev. 1988); *Explosive Act 1957* (rev. 1978); *Extra-Territorial Offences Act 1976*; *Firearms (Increased Provision) Act 1971*; *Penal Code* (in particular Section 121); and the *Poison Act 1952*.

25 See *Public Prosecutor (PP) v. Mohd Amin & Ors* (2002) 5 CLJ 281.

26 Subsection (2) reads: “For the purposes of this Chapter, “terrorist act” means an act or threat of action within or beyond Malaysia that: (a) involves serious bodily injury to a person; (b) involves serious damage to property;

(c) endangers a person’s life; (d) creates a serious risk to the health or the safety of the public or a section of the public; (e) involves the use of firearms, explosives or other lethal devices; (f) involves releasing into the environment or any part of the environment or distributing or exposing the public or any part of the public to: (i) any dangerous, hazardous, radioactive or harmful substance; (ii) any toxic chemical; or (iii) any microbial or other biological agent or toxin; (g) is designed or intended to disrupt or seriously interfere with, any computer system or the provision of any services’ directly related to communications infrastructure, banking or financial services, utilities, transportation or other essential infrastructure; (h) is designed or intended to disrupt, or seriously interfere with, the provision of essential emergency services such as police, civil defence or medical services; (i) involves prejudice to national security or public safety; or (j) involves any combination of any of the acts specified in paragraphs (a) to (i), where the act or threat is intended or may reasonably be regarded as being intended to: (aa) intimidate the public or a section of the public; or (bb) influence or compel the Government of Malaysia or the Government of any State in Malaysia, any other government, or any international organization to do or refrain from doing any act, and includes any act or omission constituting an offence under the *Aviation Offences Act 1984* [Act 307].”

There is the danger, too, that a person, who may be more appropriately charged under other criminal provisions, would instead be charged as a “terrorist” because, as the bill currently stands, the latter will require a lower burden of proof and carry heavier penalties.

Of all the clauses in the amended bill, Section 130B (2)(i) (“involves prejudice to national security or public safety”) can be regarded as potentially the most dangerous. Here, acts of civil disobedience or industrial action, acceptable in any functioning democracy, can be construed as “terrorist” acts. Malaysia’s long history of using national security laws, whether they be the ISA, the Sedition Act, the Printing Presses Publications Act, and other repressive legislation, against political opponents was often centered on the government’s rationale that certain persons or organizations acted to the detriment of national security. The Malaysian Trade Union Congress (MTUC) expressed its alarm that pickets and strikes by workers or unions could from now on be deemed “acts of terrorism”<sup>27</sup> and prompted SUHAKAM to release a statement calling for legitimate expressions of dissent not to be prosecuted under the amended Penal Code.<sup>28</sup>

Lawyers and accountants in particular have voiced their objections to the broad terms of Section 130(O) of the Bill, which makes it an offence for any person to directly or indirectly provide or make available, financial services or facilities for the purpose of committing or facilitating the commission of a terrorist act, or for the purpose of benefiting any person who is committing or facilitating the commission of a terrorist act.<sup>29</sup> Justice Minister Dr. Rais Yatim said that there was a need for these amendments as those within professional bodies have been found to be connected to and aiding terrorists.<sup>30</sup> Organizations of legal and accountancy professionals have raised concerns about the implications of the new law for their respective professions.

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27 A. Sivanandan, Representative, Malaysian Trade Union Congress, public statement in a Bar Council, HAKAM, and SUARAM public forum, “Anti-Terrorism Laws and National Security,” Kuala Lumpur, December 8, 2003.

28 Suhakam, Press statement: “Penal Code Amendments – Chapter on Offences relating to Terrorism,” December 9, 2003.

29 § 130O (1), “Providing services for terrorist purposes:”

“Whoever, directly or indirectly, provides or makes available financial services or facilities: (a) intending that the services or facilities be used, or knowing or having reasonable grounds to believe that the services or facilities will be used, in whole or in part, for the purpose of committing or facilitating the commission of a terrorist act, or for the purpose of benefiting any person who is committing or facilitating the commission of a terrorist act; or (b) knowing or having reasonable grounds to believe that, in whole or in part, the services or facilities will be used by or will benefit any terrorist, terrorist entity or terrorist group; shall be punished: (aa) if the act results in death, with death; and (bb) in any other case, with imprisonment for a term of not less than seven years but not exceeding thirty years, and shall also be liable to fine.

(2) For the purposes of subsection (1), “financial services or facilities” includes the services and facilities offered by lawyers and accountants acting as nominees or agents for their clients.

30 Justice Minister Rais Yatim, keynote address to the 12th Malaysian Law Conference, quoted in Yap Mun Ching, “Sept 11 rendered consultation on terror laws impossible,” December 12, 2003, Malaysiakini.com.

## The Criminal Procedure Code (Amendment) 2003

The bill to amend the Criminal Procedure code is expected to be tabled for the second time in the next parliamentary session in 2004, with further amendments from the Public Prosecutor's office. There are two main concerns with the initial draft bill.

The first is the additional powers of the police, who may only need "reasonable grounds" to believe that an act of terrorism may be committed in order to arrest a person without the issuance of a warrant.<sup>31</sup>

The second is the granting of extraordinary legal provisions to the police to investigate "terrorist" acts, including through the interception of all forms of communication whether "received or transmitted by post or a telegraphic telephonic or other communication received or transmitted by electricity, magnetism or other means"<sup>32</sup> (Section 106A, Chapter XIII A Ancillary Investigative Powers in relation to Terrorism Offences). All that is needed is the authorization of the Public Prosecutors' office. What is lacking is any form of judicial consent or avenue for judicial review of such orders.

The human rights community is concerned that new powers of surveillance invite abuse of power that will compound past abuses. These concerns are driven by experience with the police intelligence unit, the Special Branch, which has had a long history of monitoring opposition leaders and social activists (and later detaining them under the ISA), without authorization from the Public Prosecutor or judicial oversight.

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<sup>31</sup> See Section "Powers of arrest:"

§ 106B "Any police officer may arrest without warrant any person who has committed or is committing or whom he has reasonable grounds for suspecting to have committed or to be committing a terrorism offence."

<sup>32</sup> Also see Section "Power to intercept communications and admissibility of intercepted communications:"

§ 106c (1) "Notwithstanding any other written law the Public Prosecutor, if he considers that it is likely to contain any information relating to the commission of a terrorism offence may authorize any police officer-to intercept, detain and open any postal article in the course of transmission by post; (a) to intercept any message transmitted or received by any telecommunication; or (b) to intercept or listen to any conversation by telecommunication.

(2) The Public Prosecutor, if he considers that it is likely to contain any information relating to the commission of a terrorism offence may: (a) require a communications service provider to intercept and retain a specified communication or communications of a specified description received or transmitted, or about to be received or transmitted by that communications service provider; or (b) authorize a police officer to enter any premises and to install on such premises, any device for the interception and retention of a specified communication or communications of a specified description and to remove and retain such device.

(3) Where any person is charged with a terrorism offence any information obtained in pursuance of subsection (1) or (2) whether before or after such person is charged, shall be admissible as evidence at his trial."

## Obstacles Before Human Rights Defenders in Malaysia

Human rights organizations in Malaysia today face new obstacles that may prove hard to overcome. More than anything else, it is the possibly unintended yet evidently negative results of U.S. foreign policies that appear now to be the biggest obstacles to the promotion and defense of human rights in Malaysia. The Malaysian government has welcomed both the “war against terror” and legislation such as the USA PATRIOT ACT as justifications for its own repressive laws and regulations.

The government has also consented to the establishment of an ASEAN-US Anti-Terror Center<sup>33</sup> in Kuala Lumpur. This move has been seen as accommodating Washington’s plans to firmly establish the South East Asian region as a “second front” against terrorism.

Soon after the announcement of the Anti-Terror Center, the government pushed through a plan for National Service—where youths who have graduated from high school must do compulsory military service of between six to nine months. This is an unprecedented proposal, ingraining in youth a perpetual mood of emergency.

It also appears that the use of the ISA will continue unabated. Two years after September 11, 2001, the government still uses the rationale that because other countries were warming to the use of detention without trial, it should be allowed to retain the act and the use of administrative detention (and to keep large numbers of detainees in custody without charge or trial). This was affirmed by the Ministry of Home Affairs in a written reply to a parliamentary question that a review of the ISA was being conducted but with the express intent of showing the necessity for “law and order” and retaining the ISA. The ministry preempted its conclusion when it said that “(T)he review is to make sure that the ISA will continue to be relevant and comply with government’s objective to ensure peace in the country.”<sup>34</sup>

In order to effectively derail the propaganda machinery of the state, which has effectively hypnotized much of the Malaysian population, one must first be able to discern the truth behind the government’s claims about Islamist “green terror” in Malaysia. This type of discourse is not new but one that has been revived and adapted since the time of the Communist insurgency in post World War II Malaya. Just as in the past, the “enemy” is elusive and amorphous.

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33 U.S. Secretary of State Colin Powell first mooted the establishment of the Southeast Asia Centre for Counter-Terrorism in Malaysia during his official visit to Kuala Lumpur in July 2002. The Malaysian government official agreed on the proposal, although as late as November 2002 the government claimed that they have yet to receive details on the proposal. In May 2003, the government announced the appointment of Zainal Abidin Zain, the Foreign Ministry Undersecretary for Southeast Asia and Pacific, as the director-general of the center. The center is said to focus on capacity-building, human resources development, and exchange of information to combat terrorism in the region, in partnership with the United States.

34 Ministry of Home Affairs, written reply to Member of Parliament, Ramli Ibrahim, September 23, 2003. See Beh Yi Lin, “ISA review: Changes unlikely, says Home Ministry,” Malaysiakini.com, September 23, 2003; reprinted at Suaram, available at [http://www.suaram.org/update/news\\_20030923-1.htm](http://www.suaram.org/update/news_20030923-1.htm) (accessed February 23, 2004).

Little evidence of terrorist activities or tendencies has been made available to the Malaysian public. None of the alleged Islamic extremists in custody has been charged in court. Several developments cast doubt on government claims on the nature of the terrorist threat: in mid-October 2002, the deputy minister for home affairs told Parliament that one of the accusations initially made by the government against the so-called Jihadi Gang currently incarcerated in the Kamunting Detention Camp—that they committed bank robberies to fund plots to overthrow the state—was simply not true. A SUHAKAM enquiry into the conditions of ISA detainees also heard several of the KMM detainees testifying that the police had, in fact, invented the existence of the group.<sup>35</sup>

In September 2003, 31 alleged KMM/JI detainees, after months of being promised an early release if they would not speak out or go to court, finally broke their silence in a joint statement released through their lawyers and claimed that the police and the government had concocted false charges against them: “The accusations are trumped-up for the sole purpose of justifying our continued detention and to appease the public by portraying the perception that the government is in control of us, the so-called and imagined ‘dangerous persons.’”<sup>36</sup>

Preventative detention of any kind, even with safeguards such as judicial review, is open to abuse. This is clearly shown in the manner in which the use of the ISA has evolved over the past four decades. Alternative security legislation, by way of the amendments to the Penal Code and the Criminal Procedure Code, is unlikely to reduce the propensity of such measures to abuse, despite the promise of an open trial for those charged under these laws.

Preventive detention, a form of administrative detention, is often accompanied by torture and other cruel, inhuman, or degrading treatment or punishment. By definition it denies detainees the right to a fair trial. The costs of the Malaysian human rights movement’s campaign against the ISA and other forms of preventative detention being rolled back will be serious and lasting.

In November 2003, a new prime minister took office in Malaysia. Abdullah Ahmad Badawi, who was and remains the minister for home affairs, has shown no hesitation in using the ISA, despite appearing to the public as a more benign, more open, and liberal-leaning prime minister than the previous one.

The Abolish ISA Movement, in its assessment of Prime Minister Abdullah’s first 100 days, pointed out that while there were 23 ISA releases, including all those said to be

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35 Leong Kar Yen, “KMM suspects put media on trial in Suhakam inquiry,” Malaysiakini.com, June 19, 2003, available at <http://www.malaysiakini.com/news/200206190016069.php> (accessed February 23, 2004).

36 The press statement was released through the law firm, Messrs. Chooi and Company, on September 20, 2003, and signed by 31 KMM/JI ISA detainees.

involved in al-Maunah, there were also 15 new ISA arrests and 12 ISA detainees whose detention orders have been extended for another two years.

AIM concluded: “The failure of the government in prosecuting detainees who are detained without trial in an open court would only give an impression to the public that the government of the day has no evidence against these detainees and whatever allegations made by the government are mere hearsay. This will undermine the credibility of the government and certainly does not help the government in fighting real crimes.”<sup>37</sup>

Malaysian citizens still risk being held in a permanent state of fear of the unknown where the terror of authoritarian rule is the norm.

## Acronyms

|                 |   |
|-----------------|---|
| ABIM            | Angkatan Belia Islam Malaysia   |
| AIM             | Abolish isa Movement  |
| HAKAM           | National Human Rights Society   |
| ISA             | Internal Security Act   |
| JI              | Jemaah Islamiah   |
| KMM             | Kumpulan Militan / Mujahiddin Malaysia  |
| MTUC            | The Malaysian Trade Union Congress  |
| NGO             | Nongovernmental Organization  |
| PAS             | Pan-Islamic Party   |
| PRM             | Malaysian People's Party  |
| SUARAM          | Suara Rakyat Malaysia   |
| SUHAKAM         | The National Human Rights Commission  |
| UMNO            | United Malay National Organisation  |
| UN              | United Nations  |
| USA PATRIOT ACT | Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act |

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37 AIM, Press statement, “A Report Card of the ISA under Prime Minister Abdullah Ahmad Badawi,” February 10, 2004.

# Russia



## Introduction

Russian authorities used the September 11, 2001 attacks to promote their image in the West as a country fighting terrorism so that criticism of abuses in Chechnya and elsewhere by Russian security forces would be swept aside. The events of September 11 and afterward in the United States helped legitimize the antiterrorist campaign of the Russian Federation, warts and all, as part of the international war against terrorism.

President Putin was one of the first heads of state to express his condolences to President Bush following September 11. And Russia immediately and actively became involved in the so-called “antiterrorist” coalition.

The desired result was quickly achieved. The world community became less concerned with human rights violations in Chechnya following September 11. In the spring of 2002, the United Nations (U.N.) Commission on Human Rights failed to adopt a Russia/Chechnya resolution (in contrast to its resolutions in 2000 and 2001), and the Chechen conflict faded from the agenda of this major international human rights forum. The United States and some European Union governments (particularly Italy and the United Kingdom,) started to send signals that they agreed that Russian policy in Chechnya was part of the general struggle against international terrorism.

Russia expert Rachel Denber summarized the turning away of the international community from the promotion of human rights in the Russian Federation in an article in Human Rights Watch’s World Report 2004:

Chechnya was placed on the agenda of the U.N. Commission on Human Rights, the highest human rights body within the U.N. system, but even there a resolution on Chechnya failed to pass. No government leader was willing to press for specific improvements during summits with Russian President Vladimir V. Putin. In late 2002 the Russian government closed the field office in Chechnya of the Organization for Security and Cooperation in Europe (OSCE). And to date the Russian government had still not invited U.N. special rapporteurs on torture and extrajudicial executions to visit the region. And unlike in other armed conflicts in

Europe, few foreign missions in Russia sought to gather first-hand information about continuing human rights abuses.<sup>1</sup>

At the same time, within the country, particularly through the use of state-controlled media (by 2002, all federal-level TV channels were under state control), the Chechen campaign was portrayed as part of the world community's fight against international terrorism, with Chechnya as one of the most important front lines in this joint struggle. Participation of foreigners in the Chechen rebel forces was emphasized.

In fact, the Russian authorities have successfully used the issue of international terrorism in Chechnya to draw public attention away from the necessity to look for a solution to the conflict. Efforts by human rights defenders to promote human rights and bring to the public's attention violations of human rights, particularly against the civilian population in Chechnya, face overwhelming obstacles. Real public concern over the atrocities committed by Chechen rebels in Russian cities, combined with the government's control of the media, has created a climate of fear which makes human rights advocacy increasingly difficult.

The correlation between national security and human rights was relevant for the Russian Federation long before the tragic events of September 11, with a serious negative impact on Russia's democratic development.

In 1991, as Russia began working towards building a democratic state, its leaders professed respect for human rights and fundamental freedoms. This process of democratic reforms practically from its very start has been accompanied by the use of military force as a tool for resolution of internal political crises.

In 1993, President Boris Yeltsin took radical steps to break an impasse with the Supreme Soviet of the Russian Federation (the parliament), then dominated by conservative forces that resisted democratic constitutional reform. Yeltsin issued Decree No. 1400, dissolving the Supreme Soviet and setting in motion a process to adopt a new Constitution.<sup>2</sup> A two week political debate ended in an armed clash. Dozens of armed supporters of the Supreme Soviet seized several governmental buildings and tried to gain control over the Moscow TV-Center. Military units were called in. The Supreme Soviet was shelled, killing dozens. Its surviving defenders and others in the building were subjected to beatings and other ill-treatment after being taken into custody. Many civilians were caught in the violence. As there has been no comprehensive independent investigation of the incident, and the number of those injured remains unknown.

In 1993, this assault on the Supreme Soviet was explained by the need to defend the interests of democracy, human rights, and fundamental freedoms. Russia then adopted the most liberal Constitution in its history, one of the most progressive constitutions in Europe from the point of view of respect for human rights. However, the experience of resolving an internal political conflict through military means would be repeated. Within little more than a year, under the banner of "restoring constitutional order," Russia was engaged in a

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1 Rachel Denber, "'Glad to be Deceived': the International Community and Chechnya," *Human Rights Watch World Report 2004*, available at [http://hrw.org/wr2k4/7.htm#\\_Toc58744956](http://hrw.org/wr2k4/7.htm#_Toc58744956) (accessed March 31, 2004).

2 Presidential Decree, On Multi-Stage Constitutional Reform in the Russian Federation, September 21, 1993, available at <http://www.ifes.ru/library/laws/president/edictN1400.html> (accessed February 20, 2004).

war against the self-proclaimed Chechen Republic of Ichkeria in which its armed forces committed mass killings of civilians and indiscriminate bombing and shelling.

The human rights defenders that tried to draw public attention in Russia and in the West to the disastrous human rights situation in Chechnya were blamed by the Russian authorities, the media, and the public for a lack of patriotism, betraying national interests, slandering the army, and collaborating with the separatists. From this point on, the relationship between the state and human rights defenders in post-Soviet Russia started to deteriorate. Former dissenters and human rights defenders, who in the early 1990s possessed a great moral authority within the circles of power and whose values were trumpeted by top-level officials, gradually became marginalized and lost their rapport with the authorities. In the first Chechen war, the primary justification given by the authorities was the necessity of defending the territorial integrity of the Russian federation. Fighting terrorism, when it was mentioned at all, was a secondary concern.

In June 1995, Chechen leader Shamil Basaev organized an assault on the Budenosvsk hospital in Stavropol, taking hundreds of patients and staff hostage. This was the first major terrorist attack confronted by post-Soviet Russian society and resulted in many deaths. Human rights groups condemned the hostage crisis and called on both sides to respect the lives of civilians.<sup>3</sup> The crisis ended four days later when the “Alfa” special antiterrorist unit of the Federal Security Service (FSB) stormed the building. Over 20 hostages died.<sup>4</sup> Despite strong protests from its enforcement agencies, the then-prime minister, Victor Tchenomyrdyn, called off the operations and turned to negotiations, resulting in the release of the majority of hostages.

From the mid-1990s, Russian authorities’ priorities were steadily moving towards issues of national security. On September 19, 1997, the State Duma (the lower house of the Parliament) adopted a repressive law on freedom of conscience and religion.<sup>5</sup> One of the rationales for this law was to protect national security interests. At the same time, the security services brought espionage charges against Russian citizens who exposed the threat of hazardous materials and worked to protect citizens’ right to a safe environment. The cases of Alexander Nikitin, Grigory Pasko, and Vladimir Soifer, each of whom was alleged to have violated national security law by disseminating information on ecological damage, were the object of major campaigning by Russian human rights defenders and by the international human rights movement.<sup>6</sup>

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3 See Physicians for Human Rights, “Medical Group Calls on Professional Medical Associations to Condemn Siege and Assault on Russian Hospital, Calls Acts War Crimes,” June 22, 1995; also Human Rights Watch, “European/Central Asian Overview: Russian Federation,” *Human Rights Watch Annual Report 1995*.

4 According to the testimony of the nursing staff, 25 civilians were killed in the operation.

5 Federal Law No. 125, On the Freedom of Conscience and Religious Organizations, September 26, 1997, available at <http://www.hrights.ru/text/akt/chapter15.htm> (accessed February 20, 2004).

6 Alexander Nikitin, an environmental activist and retired navy captain, was charged with treason in the form of espionage (article 64 of the Criminal Code) for his work on *The Northern Fleet – A Potential Source of Radioactive Contamination of the Region*, a report documenting nuclear contamination caused by Russia’s Northern Fleet. Arrested on February 6, 1996, Nikitin spent almost ten months in an investigation isolation ward in St. Petersburg before being released on his own recognizance in December, while the FSB carried on its investigation. In 1998, he was tried with treason, based on his violation of secret government decrees that were never publicly revealed. On December 29, 1999, following international pressure, the St. Petersburg city court acquitted Nikitin on every count. See, e.g., Human Rights Watch, Fact Sheet: “Nikitin Case,” (1998) available at <http://www.hrw.org/press98/oct/fact.htm> (accessed March 11, 2004); and American Association for the Advancement of Science, Human Rights Action: “Alexander Nikitin,” (updated 2004), available at [http://shr.aas.org/aaashran/victim.php?p\\_id=48](http://shr.aas.org/aaashran/victim.php?p_id=48) (accessed March 11, 2004). In 1997, the FSB Pacific Fleet Department accused Grigory Pasko, a military journalist, of divulging classified

The “Concept of National Security of the Russian Federation,” adopted in 2000, defined the issue of control over religious life as one of the priorities of the state, of which one aspect is “forming the moral education policy... [including] countering the negative influence of foreign organizations and missionaries” and “countering the cultural-religious expansion by foreign states into the Russian territory.”<sup>7</sup> Human rights defenders that strove to protect persecuted religious groups, the Jehovah Witnesses among others, were immediately accused of collaborating with “totalitarian sects.”

By the autumn of 1999, the issue of terrorism had become a serious concern after an unprecedented number of terrorist acts in Moscow and Volgodonsk and incursions into Dagestan by armed groups under Chechen leader Shamil Basaev’s command. Chechens were accused of responsibility for the explosions in Moscow and Volgodonsk. Fighting a war against terror became headline news. From late 1999, the issue was used to justify the strengthening of the executive branch, particularly law enforcement, and to curb democratic initiatives and civic freedoms.

A routine response to individual atrocities came into play, as each terrorist attack was followed by a massive police operation that targeted ethnic Chechens and Caucasians residing in large Russian cities.<sup>8</sup> These police operations included random identity checks, in particular targeting persons thought to look like Chechens or Caucasians, searches of residential premises without warrants, arbitrary arrests, and false criminal charges. Torture and other cruel, inhuman, or degrading treatment was a reported part of round-ups.

The second Chechen war started immediately after Basaev’s incursion into Dagestan.<sup>9</sup> The war was labeled a “counterterrorist operation” and continues to be considered so. The parliamentary campaign of *Edinstvo*, the ruling party, at the end of 1999, and Putin’s own presidential campaign in the spring of 2000, were based on the promise of “a small victorious war” and the determination to conquer terrorism.

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information after he reported on nuclear waste dumping. Pasko was charged with high treason through espionage. Though he was acquitted of this charge, he was sentenced to three years in prison for “abuse of his official position” in July 1999. Pasko appealed the verdict but, at a re-trial that ended in December 2001, he was sentenced to four years in prison. In January 2002, following international protests, the verdict was overturned and Pasko was released. See, e.g., [http://www.index.org.ru/mayday/pasko\\_a.html](http://www.index.org.ru/mayday/pasko_a.html) (accessed March 11, 2004); and The Gregory Pasko Defence Committee, available at <http://www.internews.ru/ngo/pasko/indexe.html> (accessed March 11, 2004). In July 1999, FSB officers in the Primorye territory obtained a court order to search nuclear physicist Vladimir Soifer’s apartment and his correspondence on the grounds that his investigation into the explosion of a Pacific Fleet nuclear submarine in the Sea of Japan represented “a threat to national and military security of the country.” The main evidence against Soifer was his correspondence with foreign colleagues. A criminal case was initiated against Soifer but did not reach a court of law. Later, on February 11, 2000, a district court in the city of Vladivostok found the FSB guilty of multiple violations of the law during the search of Soifer’s apartment. The FSB filed an appeal with the Primorye Territorial Court, but the appeal was declined. See, e.g., Anatoly Medetski, “Courts Say FSB Broke the Law,” *Valdivostok News*, February 18, 2000.

7 National Security Concept of the Russian Federation, approved by Presidential Decree No. 24, (January 10, 2000).

8 Here and further, the term “Caucasians” is used to refer to peoples of the Caucasus.

9 Basaev’s incursion into Dagestan started on August 1, 1999, with the main forces of up to 1,500 combatants entering the territory of the republic on August 7, and seizing several villages in Tzumandinsky and Botlikhsky districts. There were no federal troops in the region at the time, and the local police failed to control the situation. The Chechen government and President Maskhadov claimed that they had no influence over the combatants. On August 8, federal military detachments, including the air force and the Dagestan Republic Police Force entered the conflict zone. After several days of fighting, the combatants retained control over only two villages. By August 17, Federal Forces controlled all strategic points. The Russian government initially asserted that its only intention was to counter the incursion and drive the combatants out of Dagestan. Upon completion of the military operation in Dagestan, Russian troops moved in to the territory of Chechnya, marking the beginning of the second Chechen war.

The government insists that the “operation” conducted in the Chechen Republic is in accordance with the 1998 law “On Fighting Terrorism.”<sup>10</sup> The law was meant to regulate the localized, short-term use of police and military force in the circumstances where immediate reaction is required and there is not sufficient time to seek parliamentary approval for special measures. It was invoked in 1999 to deploy armed forces in the Chechen conflict without calling a State of Emergency or declaring a State of War, which in both cases requires parliamentary approval. Four years later, Russian forces engaged in the conflict continue to operate under the 1998 terrorism law. The Council of Europe has held that lack of clarity of language in the law could lead to human rights abuses, particularly with regard to those provisions that define conditions for the use of the armed forces to counter terrorist operations and establish accountability for the executors of antiterrorist operations.

Already during the first Chechen war, the authorities, and particularly the military, had hindered the efforts of human rights activists and journalists to objectively cover the situation in Chechnya. The policy of the authorities after September 1999, can only be interpreted as an attempt to introduce a blockade on information. The working conditions of human rights defenders and journalists have seriously deteriorated during the second Chechen war, with the risk to life and liberty they must face becoming significantly greater.

Particularly illustrative from this point of view are the cases of Victor Popkov, human rights activist, and Andrei Babitsky, journalist.

Victor Popkov became known during the first Chechen campaign for saving many Russian prisoners of war as well as many civilians, particularly women and children. Popkov successfully negotiated with both federal servicemen and Chechen field commanders. He regularly delivered humanitarian cargo to the republic. During the second Chechen war, Popkov often was arbitrarily detained by the security forces and his humanitarian activities were severely hindered by the Russian military.

In April 2001, Popkov was in Chechnya on a humanitarian mission, delivering medical supplies to the mountain villages. On April 11, when Popkov and his companion, a Chechen doctor, Rosa Muzarova, were leaving the village Alkhan-Kala, located in the district of Urus-Martan, their car was stopped by men in an unidentified white vehicle. They were told to step out of the car and were then shot. Both Popkov and Muzarova received serious wounds and their driver sustained a wound to the head.<sup>11</sup> Then, despite requiring immediate medical attention, Russian servicemen held them at a checkpoint for another hour, inspecting their identification papers and searching their car. Popkov died from his wounds in a military hospital in Krasnogorsk on June 2, 2002.

Andrei Babitsky, a correspondent with U.S.-funded Radio Free Europe/Radio Liberty (RFE/RL), was one of the few journalists that worked among the separatists’ armed forces during the second Chechen war.<sup>12</sup> On January 19, 2000, Federal Forces detained Babitsky

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10 Federal Law No. 130, On Fighting Terrorism, July 25, 1998, available at <http://www.hro.org/docs/rlex/terrorism/index.htm> (accessed February 20, 2004).

11 Both Dr. Muzarova and the driver recovered. See “Human rights activist and doctor wounded in Chechnya,” Prima News Agency, April 20, 2001, available at <http://www.prima-news.ru/eng/news/news/2001/4/20/18765.html> (accessed March 9, 2004)..

12 During the first Chechen war, such work had been a wide-spread practice of both Russian and foreign correspondents. It became next to impossible in the course of the second Chechen campaign.

for alleged collaboration with the combatants. He was held in the Chernokozovo “filtration” camp.<sup>13</sup> He was then handed over to a Chechen irregular unit controlled by the Federal Security Service, while Russian authorities claimed they had handed him over to rebels in exchange for Russian prisoners. Babitsky went missing until February 9, when he appeared in a videotaped broadcast on Russian Independent Television looking battered. Babitsky was finally released after sustained protests from Russian and international human rights organizations but was then rearrested. In October 2002, Babitsky was convicted and fined by a court on a charge of having had false identity documents but was then granted amnesty. Andrei Babitsky’s experience sent a very clear warning to Russian and foreign journalists – independent reporting on Chechnya practically disappeared from the press.

By September 11, 2001, Russia, using the protection of national security interests as a justification, had restricted human rights work, as well as the independent media. It became a routine for public officials and the state-controlled media to maintain that human rights defenders and journalists directly or indirectly assist terrorists and other forces trying to destroy the Russian State.

## Countering Extremist Activity

The most significant modification in Russian legislation on counterterrorism after September 11, 2001, is the 2002 law “On Countering Extremist Activities,”<sup>14</sup> which defines extremism to include “implementation of terrorist activity.”

The idea that that the country needed a special law to counter extremism became popular in Russian circles of power as early as the mid-1990s. However, given the lack of political agreement on which activities could be targeted as extremist and what measures should be taken to counter those activities, no legislation was adopted. With the pro-Putin majority in the State Duma, the need for political agreement between the parliamentary factions disappeared. The law to counter extremism was passed by the State Duma against the backdrop of a significant increase in the activity of Russian youth gangs and skinheads, often with violent nationalist and racist political agendas. Law enforcement officials pressed for the new laws, claiming they could not effectively fight extremism without a broader legislative framework.

The law “On Countering Extremist Activities” is deficient in two areas: the definition of extremist activities, which is vague and overly inclusive; and unreasonably harsh punishments, including the use of an extrajudicial mechanism for suspending the operations of organizations identified as “extremist.”<sup>14</sup> Although the law’s vague provisions may seriously limit its utility in countering racist violence, the law provides opportunities for the security services to persecute civil society organizations, religious associations, mass media, and even commercial companies under its broad terms. It is particularly disturbing

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<sup>13</sup> The term “filtration” is commonly used in Chechnya to indicate a holding place where people are brought to have their identity checked and possible connections with insurgents established. Detainees are routinely tortured and held for extended periods of time.

<sup>14</sup> Federal Law No. 112, On Countering Extremist Activities, July 25, 2002, available at <http://www.hro.org/docs/rlex/duma/41/ex6.htm> (accessed February 22, 2004).

<sup>14</sup> For more details, see A. Verkhovsky, “The Most Recent Legislative Initiatives: Draft-Law ‘On Countering Extremist Activities,’” *Nationalism, Xenophobia and Intolerance in Contemporary Russia*, pp. 124-130 (2002), available at <http://www.mhg.ru/english/1FB9294> (accessed February 22, 2004).

that the law “On Countering Extremist Activities” and corresponding modifications to the law “On Public Associations”<sup>15</sup> endow the state with excessive authority to limit the freedom of associations. The government now has the power to suspend the activities of a nongovernmental organization, for example, on the grounds that it is suspected of “planning, organizing, or conducting actions that undermine the security of the Russian Federation” (article 1).

The SOVA-Center for Information and Analysis, a Russian nongovernmental organization (NGO), recently researched the law’s application from the summer of 2002 to the present day.<sup>16</sup> They found that the law was not in practice widely used to counter extremist groups, but that it served as an effective repressive mechanism for selective use. The law was applied infrequently and sporadically, in several cases to restrict the work of genuine human rights groups.

Just prior to the adoption of the law “On Countering Extremist Activities,” two human rights NGOs from the town of Novorossiisk (Krasnodar territory), the “School of Peace” Fund and Novorossiisk Human Rights Committee, launched an informational campaign to draw media attention to a hunger-strike by Meskhetian Turks,<sup>17</sup> which began on June 22, 2002, in the village of Kievskoe in Krasnodar. On June 25, representatives of the two NGOs were requested to go to the regional capital, Krasnodar, for a meeting about the hunger strike with the head of the inter-ethnic relations department of the Krasnodar Territorial Administration. At the meeting, they were told the new “Extremist Activities” law would be used against them as soon as it was in force and against all those who disagreed with the politics of the Krasnodar Governor, Alexander Tkachev. The “School of Peace” Fund was suspended without invoking the anti-extremist law by administrative order. The two NGOs were threatened with closure.

Another well-known human right organization in Krasnodar, the Krasnodar Human Rights Center, had been threatened by the authorities for many years in different ways, including through the courts. With the adoption of the anti-extremist law, the Territorial Department of Justice suspended the activity of the center for six months, maintaining that its work was threatening the security of the state. Suspension or closure under previous legislation would have required a lengthy court battle. The experience in Krasnodar could be repeated in other regions of the Russian Federation. The broad language of the new law was criticized by both the U.N. Human Rights Committee and the U.N. Committee of Elimination of Racial Discrimination.<sup>18</sup>

Two other bills are currently under consideration by the parliament. After the October 2002 hostage-taking crisis in the Dubrovka Theater Center (Moscow), in which theater-

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15 Federal Law No. 82, On Public Associations, April 14, 1995, available at [http://www.ngopravo.ru/11/i4\\_48.htm](http://www.ngopravo.ru/11/i4_48.htm) (accessed February 22, 2004). The law itself cannot be defined as restrictive. It is its modification in connection with the law “On Countering Extremist Activities” that gives grounds for concern.

16 The report is available at SOVA-Center’s website – <http://www.sova-center.ru>.

17 An ethnic minority in the Russian Federation, deprived of access to a wide spectrum of civic, political, social, economic and cultural rights.

18 Concluding Observations of the Human Rights Committee, U.N. Doc CCPR/CO/79/RUS, November 6, 2003; Concluding Observations of the Committee on the Elimination of Racial Discrimination: Russian Federation, U.N. Doc. CERD/C/62/07, Sec. B, Art. 22, March 21, 2003, available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/08a9408084499c9ac1256d01003766d3?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/08a9408084499c9ac1256d01003766d3?Opendocument) (accessed February 23, 2004).

goers and actors died, President Putin sharply criticized the mass media. At his meeting with selected representatives of the press, he accused some in the media of intentionally neglecting the relevant agreements with the Ministry of Print and the instructions on coverage of the incident from the operational headquarters. Immediately afterwards, pro-governmental forces in the State Duma proposed amendments to the laws “On Fighting Terrorism” and “On Mass Media” to further restrict freedom of speech during counter-terrorist operations. An existing ban on propaganda or the justification of terrorism or extremism in the mass media and other information carriers would be extended to a general ban on information “serving to propagate or justify extremist activity, including information containing remarks by individuals aimed at precluding counterterrorist operations, propaganda and (or) justification of resistance to the conduct of an anti-terrorist operation.”<sup>19</sup> The application of such an amendment could be broader than it might appear on the surface—as the war in Chechnya is formally a counterterrorist operation conducted on the basis of the law “On Fighting Terrorism.” If such amendments are enacted, any attempt to organize a comprehensive discussion on the Chechnya issue in the press could be made punishable. With record-breaking speed, the amendments were approved by the State Duma and the Federation Council (Upper House of the Parliament). But apparently realizing that the legislation would appear too repressive, the authorities consulted leaders of key mass media outlets, including state owned media, and President Putin vetoed the bill. The draft amendments were forwarded to a parliamentary conciliatory commission.

The second bill—draft federal law no. 371610-3, “On Introducing Modifications and Additions in the Code of Criminal Procedure of the Russian Federation,” is directly aimed at broadening the mandate of law enforcement forces in the struggle against terrorism. The bill would extend the period for which a suspect under investigation for crimes of a terrorist character can be held without charge from the ten days (stipulated in Article 100 of the Code on Criminal Procedures) to 30 days.

As noted, the primary victims of the struggle against terrorism in Russia are Chechens and other Caucasians. During the hostage-taking tragedy in the Dubrovka Theater Center, from October 23 to 26, 2002, and in the weeks after, Moscow law enforcement agencies faced harsh criticism for failing to prevent the large-scale terrorist attack in downtown Moscow. Similar to the repercussions of an explosion that destroyed residential buildings in Moscow in the fall of 1999, the capital saw a wave of “checks” on Caucasians. Apart from traditional street identity checks, police visited apartments, searched, and arrested people, in particular, Chechens. The Moscow-based legal aid clinic of the Civil Assistance human rights organization alone received some 40 complaints against the arbitrary conduct by the police. According to the organization’s leader, Svetlana Gannushkina, six incidents of false accusations, mostly drugs-related, were registered. Other ethnic Chechens in Moscow were reportedly fired from their jobs while Chechen children were expelled from school.<sup>20</sup>

One of the most shocking cases was the arrest of Yakha Neskhaeva, a Chechen girl living in Moscow, who was among the hostages in the theater. In solidarity with her Russian girl friend, with whom she had come to see the musical, she did not reveal her Chechen identity

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19 “On the Modification of Article 4 of the Russian Federation’s ‘On Media’ and Article 15 of the Federal Law ‘On Fighting Terrorism,’” *gazeta.ru*, available at <http://www.gazeta.ru/parliament/info/laws/4860.shtml> (accessed February 22, 2004).

20 “Oppression of the Chechens in Moscow,” *Prima*, November 5, 2002.

to the attackers.<sup>21</sup> After the assault, she was taken to the hospital, then transferred from the hospital to jail hospital no. 20, and from there she was taken straight to a pre-trial investigation jail. She was fingerprinted, photographed, and her voice taped. She was incarcerated for ten days (a maximum term if no charge is filed). She was never interrogated, and was released without any charges being brought against her. There is every reason to believe that she was detained solely because of her ethnicity and released only because of the active involvement of a number of human rights organizations and highly professional lawyers.

Alikhan Gelagoev was arbitrarily detained on October 25, before the resolution of the hostage crisis. According to his account, a bag was put over his head while he was in the police vehicle and he was beaten. The policemen were shouting, “You hate us and we hate you! We will do you in!” In Moscow, the GUVÐ (the City Police Department) tried for hours to coerce him into signing a previously written confession that he was “an ideological organizer of the terrorist attack.” He was ultimately released only after he had signed a statement that he came to the Moscow GUVÐ on his own free will and that he had no complaints.

According to All-Russian Center for Public Opinion Monitoring (VTsIOM), 30 percent of the Russian population thinks that the “withdrawal of all Chechens from Moscow and other regions of Russia is the most effective way to ensure ‘security for people.’”<sup>22</sup> Russian human rights organizations have observed that in this context of hostility authorities do not take adequate measures to ensure the safety of members of minority ethnic groups. The Russian and international experience shows that after a major terrorist attack an outburst of interethnic tensions is inevitable unless special measures are taken. No such measures have been taken in Russia, while police operations based on crude racial profiling tend to exacerbate the generalized perception by large sectors of the public that all ethnic Chechens are suspect.

As the environment has become hostile for critics of Russian policy in Chechnya in Moscow and other metropolitan areas, the situation for human rights defenders in Chechnya and the surrounding region has become increasingly dangerous. The dangers are posed both by Russian government troops and security forces (and their Chechen allies) and by Chechen rebels who target for murder those suspected of collaboration with Russian authorities. It has become particularly dangerous for human rights organizations to work in Chechnya and Ingushetia since the election of the Moscow-backed candidate for president of the Chechen Republic, Akhmad Kadyrov.

In addition, “antiterrorist” measures and human rights abuses have begun to spill over into neighboring Ingushetia, where some 80,000 internally displaced Chechens have taken shelter since 1999. The highly contested election in October 2003 of Akhmad Kadyrov as president of the Chechen Republic,<sup>23</sup> coincided with the efforts of Russian authorities to return the refugees to Chechnya, a campaign that included armed raids, arbitrary

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21 From the very onset, the terrorists expressed readiness to release all Chechens, Georgians and Abkhazians.

22 VTsIOM, “Muscovites about Dubrovka Hostages,” available at (<http://www.vciom.ru>)

23 See Human Rights Watch, *Human Rights Overview: Russia* (2003). According to the report, all of the candidates running against Kadyrov dropped out shortly before the race. Also, government reports that an overwhelming number of voters elected Kadyrov were contested by eyewitness accounts that polling stations were “deserted.”

detentions, random searches, and in some cases beatings and other ill-treatment, resulting in the death of at least one person. While blocking human rights groups from monitoring events, Russian forces justified the raids as necessary to weed out terrorist insurgents hiding among the refugees, although neither weapons nor suspected rebels were reportedly found.<sup>24</sup> Chechen rebel groups also began to use Ingushetia as a battleground, resulting in the killing of several law enforcement officials and the downing of a Russian helicopter in 2002.<sup>25</sup> The increased violence and government blockades have made it dangerous and at times impossible for human rights groups to report from Chechnya or Ingushetia.

The fifth periodic report on the observance of the International Covenant on Civil and Political Rights (ICCPR) by the Russian Federation was reviewed by the U.N. Human Rights Committee in Geneva in October 2003. Akhmad Kadyrov, of the Russian delegation, protested that the critique by the committee's experts with regard to Chechnya was based on the untrustworthy evidence provided by NGOs, and that this was one-sided and biased information. He also claimed that all NGOs in the region that were not cooperating with him were collaborating with the terrorists and made other threatening allegations, including personalized ones, against Chechen human rights defenders.<sup>26</sup>

Since the mid-1990s, Russian authorities, in both practice and rhetoric, have been persistently moving away from the human rights agenda as required by the Constitution and from compliance with the international human right obligations of the Russian Federation. Human rights are increasingly undermined as if inimical to policies of national security, preserving territorial integrity, and other interests of the state. Under these circumstances, human rights defenders have been facing ever greater challenges and difficulties in their day to day work. It should be also emphasized that for Russian human rights defenders the two principal landmarks of this negative process were the first and the second Chechen wars, with the international repercussions of September 11 only compounding an already deteriorating situation. September 11, 2001, had a destructive impact on human rights work in Russia primarily because it marks the time that the international community began to close its eyes to human rights violations in Russia. The Russian Federation became an important strategic partner of the United States in the war against terror. As a result of the events of September 11 and their consequences, Russian human rights defenders lost much of the support of Western democracies that they had enjoyed since the period of Soviet dissent. These developments appear particularly dangerous today as Russia gradually becomes a more authoritarian state, with such key democratic institutions as independent media, free and fair elections, independent business, and independence of the legislative and judiciary under threat. At the moment, the principal hope of Russian human rights defenders is the renewed support of the international community in its dealings with President Putin, who came into power under the banner of fighting terrorism.

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24 See Human Rights Watch, *Spreading Despair: Russian Abuses in Ingushetia*, Vol. 15, No. 8(D) § II Background (September 2003), available at <http://www.hrw.org/reports/2003/russia0903/> (accessed March 9, 2004).

25 See Human Rights Watch, Open Letter to E.U. Heads of State and government, E.U. Foreign Ministers, E.U. Commissioners Prodi and Patten and High Representative Solana, October 14, 2003, available at <http://hrw.org/press/2003/10/eu101003-ltr.htm> (accessed March 9, 2004).

26 There is no official transcript of the session available, however, one of the authors of this report was present at the session.

## Acronyms

|        |  |
|--------|--|
| FSB    | Federal Security Service                             |
| GUVD   | City Police Department                               |
| ICCPR  | International Covenant on Civil and Political Rights |
| NGO    | Nongovernmental Organization                         |
| OSCE   | Organization for Security and Cooperation in Europe  |
| RFE/RL | Radio Free Europe/Radio Liberty                      |
| UN     | United Nations                                       |
| VTSIOM | All-Russian Center for Public Opinion Monitoring     |



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