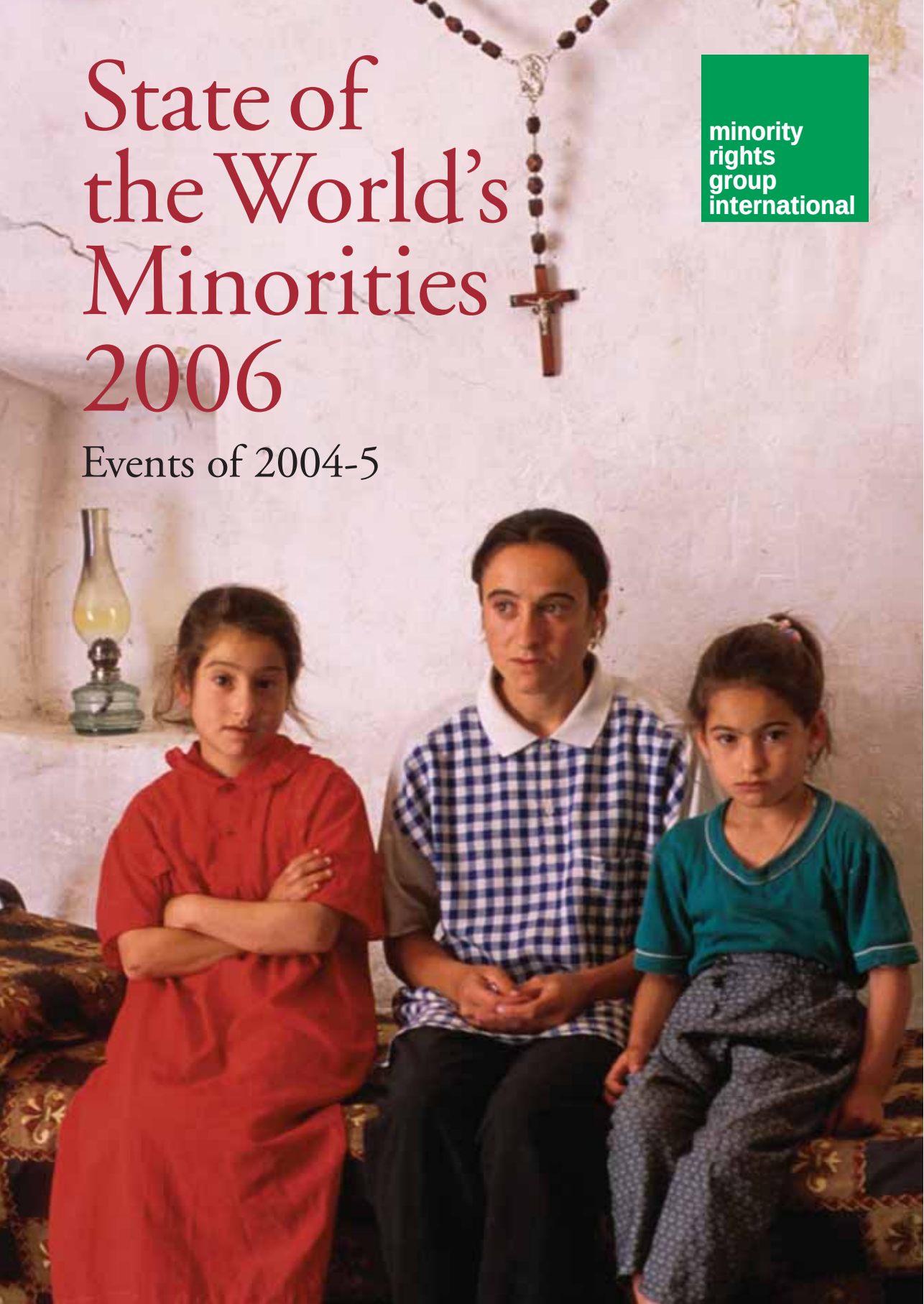
State of the World's Minorities 2006

Events of 2004-5



minority rights group international

State of the World's Minorities 2006

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Minority Rights Group International

Minority Rights Group International (MRG) is a non-governmental organization (NGO) working to secure the rights of ethnic, religious and linguistic minorities and indigenous peoples worldwide, and to promote cooperation and understanding between communities. Our activities are focused on international advocacy, training, publishing and outreach. We are guided by the needs expressed by our worldwide partner network of organizations which represent minority and indigenous peoples.

MRG works with over 150 organizations in nearly 50 countries. Our governing Council, which meets twice a year, has members from 10 different countries. MRG has consultative status with the United Nations Economic and Social Council (ECOSOC), and observer status with the African Commission on Human and People's Rights. MRG is registered as a charity and a company limited by guarantee under English law. Registered charity no. 282305, limited company no. 1544957.

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- Aceh: Then and Now
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- Economic, Social and Cultural Rights: A Guide for Minorities and Indigenous Peoples
- PRSPs, Minorities and Indigenous Peoples: An Issues Paper
- Preventing Genocide and Mass Killing

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Edited by Richard Green

With a preface by Juan E Méndez, UN Special Adviser to the Secretary-General on the Prevention of Genocide

Minority Rights Group International

Preface

Juan E Méndez, UN Special Adviser to the Secretary-General on the Prevention of Genocide

At the UN World Summit in New York in September 2005, the leaders of the world's countries unanimously agreed that 'the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to political and social stability and peace and enrich the cultural diversity and heritage of society'. It was an important endorsement of the value of diversity and a recognition that the protection of minorities makes a vital contribution to the stability of all our societies, at a time when both have been called into question.

In practice, the rights of minorities and indigenous peoples continue to be flouted. Governments in both the South and the North persist in labelling some people a threat simply because they are members of a minority. Individuals are targeted on account of the colour of their skin, their faith or even the way they dress or speak; whole communities are subjected to systematic discrimination. In extreme cases, such discrimination leads to mass killing or other crimes under international law.

As the UN Special Adviser to the Secretary-General on the Prevention of Genocide, I am all too aware that minorities or indigenous peoples are the most frequent targets of genocide. Over the past century, minorities have found themselves particularly vulnerable, whether from colonial exploitation, authoritarianism of different political hues, or ethnic or religious intolerance. In case after case they have found themselves excluded from the concept of the nation or state as formulated by ruling elites, and outside its protection, with tragic consequences.

My mandate refers not only to genocide but also to mass murder and other large-scale human rights violations, such as ethnic cleansing. My first task – working closely with the UN High Commissioner for Human Rights – is to collect information on potential or existing situations or threats of genocide, and their links to international peace and security. On the basis of that information, the Special Adviser acts as an early-warning mechanism to the UN Security Council and other parts of the UN system, including making recommendations on actions to be taken to prevent or halt genocide.

The emphasis on prevention in my mandate is very important, and accords with a general shift in the UN moving from a culture of reaction to a culture of prevention. Once mass human rights violations or an armed conflict are already underway, it is much more difficult for the international community to intervene successfully. If potential conflict can be prevented at an early stage, the advantage is immeasurable, being counted in lives saved as well as destruction avoided. But the prompt prevention of genocide or other mass violations – which can occur in peacetime as well as during armed conflict – requires us to be much more aware of the ongoing situations faced by minorities, and more sensitive to occasions when the discrimination they face deepens or becomes more systematic. This is an important element in the UN developing a much more coherent and comprehensive approach to the prevention of genocide and other mass abuses.

That is why I welcome this first edition of the State of the World's Minorities, as a major new contribution to our knowledge of disadvantaged or threatened communities. Effective monitoring of the situation of minorities and indigenous peoples around the globe provides an invaluable insight into the societies in which we live, and enables those of us working for human rights and conflict prevention at the UN to do our jobs better. More importantly, it is the first step towards ensuring that the human rights of minorities are protected in reality. ■

Introduction
Peoples under Threat

Mark Lattimer

With 2005 marking the 60th anniversary of the liberation of the Nazi death camps, the 90th anniversary of the destruction of the Armenians, the 30th anniversary of the inauguration of Pol Pot's 'Year Zero' in Cambodia and the 10th anniversary of the Srebrenica massacre, world leaders were invited on numerous occasions during the year to reflect on human capacity to engage in mass killing. In general their speeches were dignified, often touching, and always ringing with the resolution that 'never again' must such terrible events be allowed to happen. Some of these statements, by the representatives of states who hold a permanent seat on the UN Security Council, are quoted below. Any reference to situations of current concern was avoided.

The promises of 'never again', made by states in an unparalleled position of power in the world, beg a number of important questions. These include: Will it happen again? (or even, *Is* it happening again?) and What is being done to prevent it from happening again? Answers to these questions will be explored in the pages below.

Every genocide or episode of mass killing is unique, produced by a particular combination of human agency and socio-political circumstances at a given moment in history. Notwithstanding Primo Levi's point that 'It happened, therefore it can happen again', nothing has occurred in the last 60 years since the Second World War that resembles the Nazi Holocaust. But there have been several episodes of mass ethnic killing, and if the promise of 'Never again' means anything at all, it must indicate a commitment to prevent current or future attempts to destroy an entire people or engage in mass killing or other atrocities targeted at a particular group.

History has demonstrated that, in most cases, the targeted group will constitute a minority. Where the ruling elite has an ideology informed by ethnic or religious nationalism, minorities may find themselves defined outside the concept of the 'nation' or the 'people'. Politicians may use them as convenient scapegoats for social or economic ills. Territories rich in natural resources that governments wish to exploit may be inhabited by indigenous peoples who thus present an obstacle to the government. Territorial minorities who respond to marginalization by seeking a greater measure of self-governance may be subjected to policies of violent repression or even extermination.

Identifying risk factors for ethnic killing

Attempts to predict the occurence of genocide or mass killing, or at least to identify the main predisposing factors, have become much more sophisticated over the last decade. These generally started from the analysis of past episodes of mass killing to isolate social, political or economic factors that were common to all, or most cases. More systematic efforts to test various hypotheses, including through quantitative techniques, were pioneered in the mid-1990s by Helen Fein ('Accounting for Genocide after 1945: Theories and Some Findings', *Intl. Journal of Group Rights* 1, 1993), R J Rummel ('Democracy, Power, Genocide and Mass Murder', *Journal of Conflict Resolution* 39, 1995) and Matthew Krain ('State-Sponsored Mass Murder: the Onset and Severity of Genocides and Politicides', *Journal of Conflict Resolution* 41, 1997). Rummel's principal finding was the strong relationship between concentration of government power and state mass murder: 'In other words, power kills, and absolute power kills absolutely'. Krain accepted the importance of focusing on authoritarian regimes, but he argued that this did not help in predicting the onset of killing, or its severity, which were rather correlated with wars, de-colonization processes, extra-constitutional change and other 'openings in the political opportunity structure'.

Following the failure of the US and other members of the UN Security Council to take action to halt the Rwandan genocide in 1994, the Clinton administration launched a policy initiative on genocide early warning and prevention. The Central Intelligence Agency commissioned Professor Barbara Harff of the US Naval Academy, working with the US State Failure Task Force, to construct and test models of the antecedents of genocide and political mass murder and her results were published in 2003 ('Assessing Risks of Genocide and Political Mass Murder since 1955', *American Political Science Review* 97, February 2003). Her optimal model identifies six preconditions that make it possible to distinguish, with 74 per cent accuracy, between internal wars and regime collapses in the period 1955 – 1997 that did, and those that did not, lead to genocide and political mass murder (politicide). The six preconditions are: political upheaval; previous genocides or politicides; exclusionary ideology of the ruling elite; autocratic nature of the

'Never again': statements made during commemorations on the 60th anniversary of the liberation of the Nazi concentration camps, January 2005

…despite our fervent promises never to forget, we know that there have been far too many occasions in the six decades since the liberation of the concentration camps when the world has ignored inconvenient truths so that it would not have to act, or when it acted too late. …even when we may find it too difficult to act, we at least have an obligation to tell the truth. …we remain hopeful that when generations to come look back on this time, they will see that we were dedicated to fulfilling the pledge that arose from the ashes of man's inhumanity toward man: Never again.

Paul Wolfowitz
Deputy Secretary of Defense
United States of America

We must never forget the victims. We must never dishonour their memory by allowing the ugly poison of racial prejudice and hatred to hold sway again. We must remember above all the Holocaust did not start with a concentration camp. It started with a brick through the shop window of a Jewish business, the desecration of a synagogue, the shout of racist abuse on the street.

Tony Blair
Prime Minister
United Kingdom

Let us do everything we can so that people today, politicians and state leaders, are not ashamed for their words and for their deeds, so that we can be honest and open before everyone who helped to bring this victory closer at the price of their suffering, blood, tears and lives, before everyone who has remained here forever, in Auschwitz. And we are responsible for making sure that what happened here never repeats – never, nowhere and with no one.

Vladimir Putin
President
Russian Federation

To remember is to be present. But it also means to take action. …It is for that reason that France mobilized her energies to support the adoption of the Rome Statute [of the International Criminal Court] in 1998 and why she will continue to support the principle and the permanent implementation of international criminal justice. Some forms of interference are legitimate. Crimes against humanity must find refuge and respite nowhere. France will never fail to shoulder her responsibilities, on her national territory and in the international community, in order to prevent such returns to the shadowy darkness of history.

Jacques Chirac
President
France

China's ancient wisdom tells us that past events remembered can educate generations to come, that history is our mirror and guide and that true courage comes with the awareness of shame. …such tragedies should never again be allowed to happen. Good intentions are not enough. Efforts are required from all countries. … The responsibility for ensuring the common future of humanity rests heavily on the United Nations, whose role must be enhanced, not weakened, and whose authority must be upheld, not compromised. This is in the interests of the world's people; it is a duty of the world's Governments; and it is a responsibility of the world's statesmen.

Wang Guangya
Chairman of delegation
China

Paul Wolfowitz and Wang Guangya were speaking at the twenty-eighth special session of the UN General Assembly in New York, 24 January 2005 (see UN A/S-28/PV.1); Vladimir Putin and Jacques Chirac at memorial events at Auschwitz – Birkenau, 27 January 2005 ; and Tony Blair at a memorial event in London, 27 January 2005.

regime; minority character of the ruling elite; and low trade openness.

Harff recently applied a variant of the model to a list of countries identified as having serious armed conflicts or other political crises at the start of 2005, albeit using data from 2003 and 2002. In three states all but one of the risk factors were present: Sudan, Burma and Algeria. In Burundi, Rwanda and Ethiopia all but two of the risk factors were present, and in a further seven states all but three were present: the Democratic Republic of Congo, Uganda, Afghanistan, Pakistan, China, Angola and Sri Lanka (see 'Assessing Risks of Genocide and Politicide' in Monty G Marshall and Ted Robert Gurr, *Peace and Conflict 2005*, CIDCM, University of Maryland).

Focusing on countries in a state of ongoing conflict or crisis is interesting because most, although not all, episodes of mass ethnic or religious killing occur during armed conflicts. War provides the state of emergency, domestic mobilization and justification, international cover, and in some cases the military and logistic capacity, that enables massacres to be carried out. These factors were all present in the Rwandan genocide, as they are in the current crisis in Darfur in Sudan. Some massacres, however, occur in peacetime, or may accompany armed conflict from its inception, presenting a problem to risk models that focus too heavily on current conflicts. In addition, severe and even violent repression of minorities may occur for years before the onset of armed conflict provides the catalyst for larger scale killing, as the very different cases of the Jews in Nazi Germany and the ethnic Albanians in Kosovo in the 1990s illustrate.

The state is the basic unit of enquiry in most early warning models, rather than particular ethnic or religious groups at risk. This too has an important theoretical justification, in that governments or militias connected to the government are responsible for most cases of genocidal violence. Formally, the state will reserve to itself the monopoly over the means of violence, so that where non-state actors are responsible for widespread or continued killing, it usually occurs with either the complicity of the state or in a 'failed state' situation where the rule of law has disintegrated. Certain characteristics at the level of the state will greatly increase the likelihood of atrocity, including habituation to illegal violence among the armed forces or police, prevailing impunity for human rights violations, official tolerance or encouragement of hate speech against particular groups, and in extreme cases, prior experience of mass killing. In the cases of *inter alia* Sudan, Iraq, China and Indonesia, which all experienced repeated episodes of mass killing in the last half century, different groups were targeted by the state at different times. Egregious episodes of mass killing targeted principally at one group have also seen other groups deliberately decimated or destroyed, including the Roma and other groups under Nazi rule, Syriac Christians during the genocide of the Armenians in the Ottoman empire, and the Twa during the genocide of Rwanda's Tutsis.

However, some groups may experience higher levels of discrimination and be at greater risk than others in any given state. The Minorities at Risk (MAR) project developed by Ted Robert Gurr at the University of Maryland contains information on some 280 groups and includes a scale estimate of the political and economic discrimination they face. The principal measure of risk developed by the project relates to the 'risk of ethnic rebellion', however, rather than to the risk of mass killing. (The existence of an armed rebellion does of course increase the chances of violent repression against a group.)

One indicator that has been tested and discarded by a number of studies is the general level of ethnic or cultural diversity in a society. Krain did not find any correlation between 'ethnic fractionalization' and the onset of genocide or political mass killing. Similarly, neither of the patterns of ethnic diversity tested by Harff had any effect on the likelihood of mass killing (although she did find the minority character of the ruling elite to be significant). These findings are supported by research on the relationship between diversity and conflict. A widely-quoted World Bank report found some evidence to suggest that certain types of ethnic or religious population distribution are more prone to violent conflict than others: 'If the largest ethnic group in a multi-ethnic society forms an absolute majority, the risk of rebellion is increased by approximately 50 per cent' and 'A completely polarized society, divided into two equal groups, has a risk of civil war around six times higher than a homogenous society'. But the study concluded that 'Substantial ethnic and religious diversity significantly reduces the risk of civil war' (Paul

Collier et al., *Breaking the Conflict Trap: Civil War and Development Policy*, World Bank/OUP, 2003).

Peoples under threat 2006

Minority Rights Group International has used the advances in political science noted briefly above to identify, based on current indicators from authoritative sources, those groups or peoples most under threat at the beginning of 2006.

The overall measure is based on a basket of ten indicators, all relating to 2005. These include indicators of democracy or good governance from the World Bank, conflict indicators from the Center for International Development and Conflict Management, indicators of group division or elite factionalization from the Fund for Peace and the Carnegie Endowment for International Peace, the State Failure Task Force data on prior genocides and politicides, and the OECD country credit risk classification (as a proxy for trade openness). The detailed results are presented in Table 1 in the reference section, with a description of the methodology. The top fifteen results are also summarized below.

Killing is currently underway in a number of the countries on the list, including in at least four of the top six countries. In Iraq the immediate concerns are the violent repression of those communities considered as opponents of the US-supported government (Sunnis in particular); continued targeting of Shi'a communities by Sunni insurgents, and forced displacement or intimidation of smaller

Rank	Country	Group	Total
1	Iraq	Shi'a, Sunnis, Kurds, Turkmen, Christians, smaller minorities	22.04
2	Sudan	Fur, Zaghawa, Massalit and others in Darfur; Dinka, Nuer and others in South; Nuba, Beja	21.17
2	Somalia	Issaq, Darood (Puntland), Bantu	21.17
4	Afghanistan	Hazara, Pashtun, Tajiks, Uzbeks	20.69
5	Burma/ Myanmar	Kachin, Karenni, Karen, Mons, Rohingyas, Shan, Chin (Zomis), Wa	20.03
6	Dem. Rep. of Congo	Hema and Lendu, Hunde, Hutu, Luba, Lunda, Tutsi/Banyamulenge, Twa/Mbuti	19.61
7	Nigeria	Ibo, Ijaw, Ogoni, Yoruba, Hausa (Muslims) and Christians in the North	18.21
8	Burundi	Hutu, Tutsi, Twa	17.99
9	Angola	Bakongo, Cabindans, Ovimbundu	17.26
10	Indonesia	Acehnese, Chinese, Dayaks, Madurese, Papuans	16.54
11	Cote d'Ivoire	Northern Mande (Dioula), Senoufo, Bete, newly-settled groups	16.17
12	Uganda	Acholi, Karamojong	15.84
13	Ethiopia	Anuak, Afars, Oromo, Somalis	15.78
14	Russian Federation	Chechens, Ingush, Lezgins, indigenous northern peoples, Roma	15.64
15	Philippines	Indigenous peoples, Moros (Muslims)	15.52

minorities, including the Turkmen, Chaldo-Assyrians and other Christians. But there is also the threat of a larger civil conflict which would engulf all groups. In Sudan violent repression continues in Darfur, and in addition to the danger of collapse of the Comprehensive Peace Agreement with former rebel groups in the south, there also remains a threat to non-Arab groups in the centre and east of the country. In Burma the situation of a range of minority groups remains critical, particularly in Shan and Kayin (Karen) states, although largely unreported as international attention focuses on the plight of the political opposition in Yangon (Rangoon). In the Democratic Republic of Congo (DRC), a transitional process with a power-sharing government and the largest UN peacekeeping force in the world have decreased but failed to halt the killing, particularly in Ituri and the Kivus.

Côte d'Ivoire is the only state in the top fifteen which does not have a previous history of genocide or political mass killing, but the degree of ethnic polarization in the country and the prevalence of hate speech by political militias makes the situation extremely dangerous. It is notable that both Iraq and Afghanistan would almost certainly also have been high on this list five years ago, although the shift in the balance of power in both countries has brought with it a shift in the relative threat to particular groups. For Indonesia, the numerical result probably does not reflect the recent peace agreement in Aceh, although it is too early to say with any confidence that this will hold and other groups in the country remain under threat, notably in West Papua.

A range of situations are represented in the list, although repression of minorities by the state, sometimes in the context of a self-determination struggle, is by far the most common threat. In many cases there are also ethnic or religious killings perpetrated by armed opposition groups. Instances of communal violence are more rare, and often when they do occur (such as in the Hema/Lendu conflict in the DRC or as part of the Iraq conflict) it is with external involvement.

Peoples under threat are found in every major world region, although clearly concentrated more in some. Plotted on a map, an arc of danger can be seen stretching from the central belt of Africa, through the Horn, the Middle East, the Caucasus, Central Asia, and part of South Asia to South-East Asia. Some of the threats arise from sectarian conflict, although in most cases this is between co-religionists. There is thus little evidence here for a 'clash of civilizations', or a fault-line between the major world religions. However, some governments have used the 'war on terror' to justify the repression of their minorities and the long-term implications of this are becoming clearer. Besides the continued threat to global security posed by terrorism, there is a growing danger that operations undertaken as part of the international 'war on terror' will create a legacy of group grievance and instability. This phenomenon can be seen not just in Iraq and Afghanistan, but also in many other states on the list including the Russian Federation, Pakistan, central Asia and even in China and the Philippines.

Potential omissions to the full list in Table 1 were identified by taking the MAR data on group discrimination in 2003 and combining it with the data on current self-determination conflicts involving that group (see Table 2). The most significant case is the Palestinians in Israel and the Occupied Territories/Palestinian Authority. In addition to continued Israeli security operations and displacement due to the erection of the security barrier, the economic condition of the Palestinians has plummeted in recent years due to the conflict. Other situations that need to be monitored closely include that of indigenous peoples in Brazil, Mexico and Nicaragua, the Casamançais in Senegal, Lari in the Republic of Congo, Afar in Djibouti, Tuareg in Niger, and Malay-Muslims in Thailand, as well as Serbs and Roma in Croatia and Albanians in Macedonia.

Three groups in the European Union are identified with high rates of discrimination or potential conflict. It is interesting that these include non-citizen Muslims in France, the scene of recent disturbances in Paris and other major cities. The other two are the Roma in Greece, who have suffered a wave of forced evictions in 2004-5, continued low rates of education and literacy and an almost complete absence of Roma women from the labour market, and Catholics in the United Kingdom (Northern Ireland).

Preventing atrocities and protecting communities

The headline development over the last year concerning the prevention of mass atrocities was the agreement at the 2005 World Summit in September

of the 'responsibility to protect' populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility falls first on individual states, in respect of their own populations, and then on the 'international community, through the United Nations'. The UN has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means to help protect populations. However, the agreement also envisages the use of force in appropriate cases, stating that the international community is 'prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity' (UN A/60/L.1, paras 138-9).

This represents an advance in two major respects. Firstly, it provides support to those who argue that the purpose in the UN Charter of achieving international cooperation in promoting human rights, and the obligations of member states under treaties such as the Genocide Convention, should trump the caveat in article 2.7 of the Charter that 'nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State'. While the tension in international law between the principles of human rights promotion and non-intervention will subsist, the new responsibility to protect makes it clear that in cases of egregious abuse the principle of non-intervention is not absolute. States do not have the right to kill their peoples without interference.

It is important to note that the international community must implement its responsibility to protect first through diplomatic, humanitarian and other peaceful means, before considering the use of force. Although the willingness of the Security Council to authorize force is often considered essential when confronting the threat of genocide or mass atrocity, a wide range of possible non-violent preventive measures exist, including preventive diplomacy, conciliation and mediation, in-country human rights monitoring or observation, peace-building assistance, international exposure, international pressure, aid conditionality, and consideration of sanctions or other counter-measures, as well as measures under international criminal law to punish and deter perpetrators. As recent cases have demonstrated all too clearly, military force is a very blunt instrument and may not have the effect its promoters intend.

Secondly, the responsibility to protect covers not just genocide but also 'war crimes, ethnic cleansing and crimes against humanity'. A number of debates in the Security Council regarding humanitarian intervention, most notoriously in the case of Rwanda but also more recently in the case of Darfur, have focused on the obligations and powers in the Genocide Convention to prevent and suppress acts of genocide, inviting a protracted debate about whether a particular situation meets the legal definition of the crime. The inclusion in the responsibility to protect of other crimes under international law should help to make obsolete such wrangling over definitions – a periodic source of shame to the UN and baffling to the general public. It also means that the scope of the responsibility to protect matches the subject-matter jurisdiction of the International Criminal Court, bringing the preventive and punitive regimes for international crimes in line with each other.

Regarding the implementation of preventive mechanisms, the most noteworthy developments have been the establishment of two new posts, the UN Special Adviser to the Secretary-General on the Prevention of Genocide (a position with direct access to the Security Council) in 2004, and the Independent Expert on Minority Issues, appointed by the UN High Commissioner for Human Rights in 2005. Minority Rights Group International had lobbied extensively for the creation of these mechanisms, and they represent a major if belated recognition of the centrality of minority issues to both conflict prevention and to the prevention of mass or systematic human rights violations. Support from both within and outside the UN system will be critical to their success. The mandate and operations of these posts is described in more detail in this report under *International Institutions and Law*.

The World Summit formally initiated a major process of UN reform, less profound than that sought by Secretary-General Kofi Annan but nonetheless significant. The reforms include the

creation of two new organs – a Peacebuilding Council, and a Human Rights Council to replace the existing Commission on Human Rights – both of which hold potential for improving protection for minorities. Detailed proposals on the composition and functioning of the Human Rights Council are due early in 2006, and are expected to propose a standing body, unlike the current Commission which only meets for six weeks a year in ordinary session. Of particular importance is the ability of the new Council to develop a robust procedure for considering situations of mass or systematic violations, given that the current Commission mechanism for considering situations where there is a 'consistent pattern of gross violations of human rights', the 1503 procedure, has become thoroughly politicized and almost completely discredited. Given also the history of poor coordination between UN bodies, the links between the new bodies may be as important as anything they are empowered to do by themselves. The Human Rights Council, for example, should be able to refer situations for urgent action to the Peacebuilding Council or to the Security Council.

In the European region, the High Commissioner on National Minorities of the Organization for Security and Cooperation in Europe has continued to undertake effective conflict prevention work. The mandate of the High Commissioner is to provide early warning and, as appropriate, action at the earliest possible stage with regard to tensions involving minority issues which have the potential to develop into a conflict. The High Commissioner is empowered to conduct on-site missions and to engage in preventive diplomacy, promoting dialogue, confidence and cooperation. This involves regular first-hand contact with both minority and government representatives.

The UN Secretary-General has in the past remarked that other continents would benefit from a similar mechanism. While it is often not appropriate to export *in toto* European mechanisms elsewhere in the world, important features of the OSCE High Commissioner post could be replicated elsewhere. Regional mechanisms, for example in the context of the African Union, might be more readily accepted by states than UN involvement and would certainly have the potential to facilitate preventive action and confidence-building measures at an early stage in situations of tension involving minorities.

The work of Minority Rights Group International

Kofi Annan concluded his address to the Stockholm International Forum on 26 January 2004 with an honest appraisal of the international community's state of readiness to confront mass ethnic killing: 'I long for the day when we can say with confidence that, confronted with a new Rwanda or a new Srebrenica, the world would respond effectively, and in good time. But let us not delude ourselves. That day has yet to come and we must all do more to bring that day closer.' Despite the progress that has been made since he spoke, there remains what Annan identified as a lack of political will.

The ability to identify in advance situations where peoples are under threat, combined with faster reporting than ever of the onset of violence, means that states sitting on political bodies such as the Security Council can no longer claim that they were not aware of what was happening. And a growing public interest in the human cost of war and repression, greatly aided by the broadcast media as well as by non-governmental organizations (NGOs) in nearly every country in the world, has placed increasing pressure on politicians to respond. The dissemination of systematic information about the position of minorities is an essential part of this process and a strategic objective of Minority Rights Group International. Authoritative, independent sources of information about minorities are particularly important given the fact that minority issues often become highly politicized, whether in the context of national politics, bilateral relations between states, or in the international 'war on terror'.

It is not just in situations of open conflict that this work is necessary. Much of the daily grind of human rights monitors such as UN special rapporteurs or the UN High Commissioner for Human Rights consists of tracking violations against members of minorities, although they are not always recognized as such. Most gross violations of human rights committed in the world today are targeted at groups, frequently because of their ethnic or religious identity. At the same time, it is becoming increasingly accepted that the implementation of international standards on minority rights can defuse ethnic and religious tension, both inside countries and across borders. The Carnegie Commission on the Prevention of Deadly Conflict

concluded in 1997 that '...attempts at suppression [of ethnic, cultural or religious differences] have too often led to bloodshed, and in case after case the accommodation of diversity within appropriate constitutional forms has helped prevent bloodshed.'

Minority Rights Group International works with its partner organizations in over 50 countries, providing technical support to promote constitutional or legal reform, building the capacity of non-governmental organizations, campaigning against discrimination, promoting access to development opportunities, confronting the disenfranchisement of whole sectors of societies and their exclusion from decision-making. Education reform and land rights are a particular focus of this advocacy, as is countering the multiple discrimination faced by minority and indigenous women. The very fact that the marginalization suffered by many communities is routine means that their position is unlikely to receive international attention.

But communities in over a third of the countries where Minority Rights Group works have experienced mass killing in recent history. For many others, the threat is always there. Fear is an insistent component of the discrimination they face, and the long-term hopes for peace and stability in the countries where they live depend on that threat being lifted. ■

World

Global Trends and Developments

Asbjørn Eide

Minority rights as a condition for stability and peace

There were times when many believed that stability was best achieved through authoritarian rule and submission to dominant power. This has significantly changed, not least through the strong promotion of human rights since World War II. There is now a widespread understanding that stability is best secured when government is based on broad consent, and that consent must be forthcoming not only from the majority but from the various minorities in a society as well, which can only be achieved when their legitimate rights are properly protected.

As pointed out by Juan E Méndez in his preface to this volume, at the 2005 World Summit at the United Nations in September, the leaders of the world present stated that 'the promotion and protection of the rights of persons belonging to national or ethnic, religious, and linguistic minorities contribute to political and social stability and peace and enrich the cultural diversity and heritage of society' (A/RES/60/1 para. 130).

The document was an outcome of an intensive debate from 2003 on UN reform in the context of broader issues regarding ongoing transitions of world order. It followed the proposals for UN reform coming from the High Level Panel on Threats, Challenges and Change in 2004 and the Secretary-General's reform proposal *In Larger Freedom* in March 2005 (see *International Institutions and Law* below).

The text quoted above from the World Summit Outcome document replicates the preamble of the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities, and reflects the general consensus achieved over the last 15 years that stability requires a social contract where the rights of non-dominant groups are also taken fully into account. As such, it constitutes a significant trend, but how serious is the stated commitment, at the international and the national level?

In the context of UN reform, what does it imply in terms of UN action? To what extent does the international community, at the regional as well as the global level, follow up on this commitment? What resources does the international community deploy when crises emerge, and for how long can the international community sustain its involvement when the local parties do not manage on their own to reach sustainable peaceful accommodation?

Stability can be promoted through measures of prevention, through intervention in crises and/or through peacebuilding during transitional stages, whether the transition follows a violent crisis or a fundamental change in status or political system. The purpose of the following notes is to briefly review some recent trends in these respects.

Secondly but even more importantly: to what extent have states committed themselves to implementing minority rights in their own national systems? How can transitions be managed without spiralling into massive violence or even anarchy? To what extent are minorities prepared to use peaceful means in their endeavours to obtain greater respect for their rights? To what extent do different minorities tolerate other minorities and respect their rights?

Violent instability, crisis response and the role of the UN

From around 1990, numerous crises involving majority/minority relations arose out of the disintegration of the former Soviet Union and the former Yugoslav federation. Many of these crises arose from extreme nationalist policies pursued by political leaders and were seen as threatening by many minorities. Some of these conflicts still have not reached solutions which can guarantee sustainable stability (Bosnia, Kosovo). Some are frozen through a military stalemate (Nagorno Karabakh in Azerbaijan, South Ossetia and Abkhazia in Georgia). Others are still at a violent stage (Chechnya).

The conflicts in Eastern Europe are nevertheless now overshadowed by the numerous crises and enormous human suffering in several parts of Africa. In the early 1990s the worst were those in Burundi and particularly in Rwanda. The latter culminated in the genocide in 1994 where the UN was a passive and crippled onlooker. Minority and ethnic repression and unrest have been part of the problems in numerous crises such as those in Somalia, Sierra Leone and Liberia. The aftermath of the Rwanda crisis continues to have an impact today on the situation in the Democratic Republic of Congo (DRC), where the UN is now heavily involved.

In Sudan, conflicts have gone on for decades between the Arab and Muslim-dominated north and the African and Christian- or animist-dominated

south, punctuated by occasional peace agreements which were subsequently broken. At present a peace agreement has led to the establishment of a consociational government embracing the political leaders both in the north and the south, and a project for substantial autonomy in south Sudan. The UN has established a mission and deployed forces to facilitate stability during the transition in the south. In Darfur in western Sudan a humanitarian catastrophe of major proportions is still unfolding, in the context of a conflict that pits local tribes including the Fur, Zaghawa and Maasalit against Arab groups. The UN has had limited capacity to deal decisively with it.

Côte d'Ivoire, which was relatively stable until 2002, is now ravaged by conflicts at several levels which have brought the country near to anarchy. The present violent stages date back to September 2002, when a group of about 700 soldiers attempted a coup which failed. Soon the situation degenerated into a war between loyalist government forces and breakaway army troops, with two new insurgent groups attacking towns in the west. The main dividing line in the conflict was initially between those Ivorians who claim to be of 'authentic' local origin and those whose ethnic heritage is 'mixed', but during the three years since it erupted, the situation in the Ivory Coast has deteriorated into near-anarchy, with tribal clashes at the local level, with violent confrontations between students at the universities, and with extensive extra-legal executions and hostage-taking on both or all sides.

From peacekeeping to peacebuilding

During the Cold War, the UN developed the doctrine and practice of 'peacekeeping', essentially keeping two hostile parties away from each other. The major purpose at that time was to prevent the conflict from escalating into a major international conflict, which in the time of nuclear deterrence could have had devastating consequences.

From the early 1990s, the challenges facing the UN were completely transformed. On the one hand, there was no longer a Cold War and no significant risk of a major world-wide escalation. On the other hand, there were an increasing number of conflicts which were mainly internal in nature, to a large extent caused by ethnic tension which in turn was often manipulated by political leaders for their own particular purposes. Several of the conflicts degenerated into massive barbarous acts where the civilian population was the main target of ferocious armed action by the contending parties.

The UN was increasingly called upon or required to try to restore peace, but it was faced with an entirely new set of problems which could only be met by combining mediation and peacekeeping with humanitarian assistance and measures to recreate a modicum of rule of law. Issues related to human rights and minority protection had to be faced by mediators and peacekeepers. It was not an easy task: the UN was given very limited resources and power to address such tasks.

In the absence of real power, the mediators cannot achieve much more than to persuade the local parties to accept, with minor modifications, the solutions which the dominant actor in the conflict can tolerate, and the peacekeepers can do little more than to observe that the parties behave in accordance with the agreement.

There is a slow, but perceptible change in this attitude. The international community is showing more muscle and has started to make more demands for respect for human rights including minority rights. Some aspects of the Dayton agreement in Bosnia can be seen as a beginning of that process. While the constitutional agreement, to a large extent, can be seen as an appeasement of the dominant side (the Serbs), the establishment of an international presence and an internationally appointed High Representative with considerable powers provided for a slow and gradual peacebuilding process which could help to soften and gradually modify the rigid aspects of the peace agreement.

The changing approach is becoming even more apparent in the case of Kosovo. Following the NATO bombardment which forced the Serbian army out of Kosovo, a UN mission in Kosovo (UNMIK) was established there, working together with the international forces (IFOR). One of the main aims of UNMIK is to create the basis for the return of refugees and displaced persons, effective minority protection and the rule of law. In October 2005 the UN Security Council decided that negotiations could start on the future status of the territory. One of the conditions is that effective protection of minorities and the rule of law are consolidated before the final status can be determined.

Similar processes are ongoing in the UN missions now undertaken in Sudan, the Democratic Republic

of Congo and in Côte d'Ivoire. There is a clear trend towards more integrated missions where military force is combined with police functions, humanitarian assistance, legislative functions and the building of civilian institutions such as courts, prosecutorial offices and other aspects. The scope and content of the integrated mission depends on the functions given to it.

Among the challenges arising from this, there are at least two. Firstly, the UN has very limited resources at its disposal, in terms of qualified and available personnel as well as financial and logistical resources. The personnel deployed are rarely enough to prevent extensive human rights violations unless the parties themselves are willing to cooperate with the UN and have control over their own militant groups, which is not always the case.

The second problem is to ensure sustainability. No solution will be sustainable after the UN leaves the place unless it is perceived as legitimate and desirable by the dominant actors in the domestic setting. It is therefore essential that the laws and institutions brought into being during UN presence become country 'owned', and are found to be useful by the local actors. This, in turn, depends on whether the local actors recognize that stability can only be obtained if minority rights and human rights in general are upheld. To achieve such recognition and to create its institutional framework will be among the most important challenges faced by UN missions. The new UN peacebuilding commission which the World Summit decided in 2005 to set up will have to develop the guidelines for how this should be done and ensure that the relevant resources for it are made available.

International involvement in constitution-making and monitoring

There is a discernible trend towards international involvement in constitution-making. The clearest example is the constitutional system resulting from the Dayton agreement regarding Bosnia. From a minority rights perspective it was far from satisfactory, but appeared at that time to be the only possible option to halt the fighting. Quite clearly it will have to be modified when the conditions to do so are ripe, and the international community is very likely to have a role to play in that process of change. The UN, the Council of Europe and the EU are also likely to have a significant influence on the constitutional arrangements made for Kosovo, whatever the final status of that territory will be. Concerns about minority protection have been a major factor in the demands made by the international institutions.

In the constitutional processes in other parts of Central and Eastern Europe during the last 15 years, advice has been given and subtle pressure exercised by the Council of Europe, the EU and the OSCE. The Council of Europe's Venice Commission has had a significant role in this process, and minority issues have been given particular attention. The process is consolidated and given a more permanent basis through the monitoring of the implementation by European states of minority rights by the Advisory Committee on the Framework Convention for the Protection of National Minorities. At the time of writing, 38 European states have now ratified the Convention and thereby submitted themselves to monitoring, which in practice also involves country visits and a continuous dialogue with the Council of Europe.

The same tools are not yet available outside Europe. The special cases of Afghanistan and Iraq must be mentioned here. The incumbent governments were defeated as a result of external military attack. The subsequent constitution-making has been strongly influenced by the heavy international presence on their territory. It appears that peaceful group accommodation has been one of the aims of the constitution-making. Uncertainties may exist whether the constitutional arrangements will continue to hold when the external military presence withdraws.

Unfortunately, no effective monitoring mechanism for minority rights exists beyond Europe. As pointed out by Pentassuglia in his contribution below, the UN Working Group on Minorities has performed a vital role in creating awareness of minority rights worldwide, and has developed useful guidelines for group accommodation, but it has not been given the tools to monitor the actual performance by states with regard to the rights set out in the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities. The newly appointed independent expert on minority issues will fill some of the gap, but the mandate and the resources are extremely limited compared to the enormous needs to be met.

The 'war against terror' versus promotion of peaceful group accommodation

There is a justified fear that the 'war against terror' has been used as a pretext to repress political movements demanding stronger minority rights. It is important, however, to recognise that there are different situations which require different responses. There can be no doubt that, in some cases, movements pretending to represent the interests of non-dominant ethnic groups do engage in extreme and intolerable violence. An extreme case is that of the so-called Lord's Resistance Army in Uganda. It may have some roots in Acholi reaction to Southern dominance in that country, but it has evolved into one of the most cruel and savage terrorist organisations now existing. There is hardly any space for negotiations with the incumbent leadership of that organisation. Ways should nevertheless be found to accommodate legitimate concerns of the Acholi ethnic group within a future, stable Uganda. There are other cases where incumbent governments rely too strongly on military means and using the rhetoric of anti-terrorist, actions in place of genuine efforts at reconciliation and peaceful group accommodation. Particular mention should be made of the indigenous peoples who are seeking to protect their land and natural resources from further encroachment by aggressive entrepreneurs from the majority population, and who are met by governments with military force when their rights should rather have been protected.

Making use of the International Criminal Court

One remarkable new trend is that in no less than three of the above-mentioned situations, the International Criminal Court (ICC) has been given jurisdiction to prosecute alleged perpetrators of crimes under international law. The ICC follows the establishment in the 1990s of special tribunals for war crimes, crimes against humanity and the crime of genocide committed in the former Yugoslavia and in Rwanda.

Indictments for prosecution at the ICC have been made or are in preparation. Jurisdiction has been established in the case of DRC, in Uganda (targeting leading personalities in the Lord's Resistance Army) and in Sudan (Darfur). In two of the cases (DRC and Uganda), the situation was referred by the government concerned; in the third case (Darfur) the decision was made by the UN Security Council. The government of Sudan has indicated, however, that it will not cooperate with the ICC, which will create a difficulty in apprehending indicted persons.

There is an ongoing debate on how the use of the ICC will affect (1) the likelihood of an end to violence in the particular cases, (2) the establishment of a sustainable peace and (3) the behaviour of the actors in future conflicts, in terms of a possible deterrent effect. There are hopes and doubts with regard to each of these questions, but there can be little doubt that the trend is towards a reduction of impunity and more prosecution for gross crimes, whether carried out by agents of the government or by persons acting on behalf of rebel or opposition movements.

Regional differences

In the ethnic crises of the 1990s, the world's attention was primarily fixed on Eastern and South-Eastern Europe. With the exception of the Caucasus and Trans-Caucasian part of the former Soviet Union, stability has gradually been created, including growing acceptance and implementation by states of detailed legally-binding obligations on minority protection. Most of Europe is now unlikely to see a major resurgence of the types of conflicts we saw 10 to 15 years ago. In Africa and Asia, however, there is still a long way to go. The international instruments, including the UN Declaration on the Rights of Minorities, are weak and the prospects for more legally-binding documents are still slim. It can only be hoped that the lesson will be drawn from the current spate of crises that the rule of law and effective minority rights protection is the only road to human development, and that therefore better regional and global cooperation can be achieved in the areas of standard-setting, monitoring and enforcement. ■

Above: The graves of some of the 8,000 Bosniak (Muslim) men and boys killed in the Srebrenica massacre of July 1995. Andrew Telsta/Panos Pictures

International Institutions and Law

Gaetano Pentassuglia

Although neither the 1945 UN Charter nor the 1948 Universal Declaration of Human Rights contains provisions on minorities, the minority question has been on the UN agenda virtually since its inception. Such instruments do refer to the principle of non-discrimination, and the Sub-Commission which was established in 1946 as a subsidiary body to the Commission on Human Rights (CHR) did include 'protection of minorities' alongside 'prevention of discrimination' in its title. Article 27 of the International Covenant on Civil and Political Rights (ICCPR), adopted in 1966, recognizes the right of persons belonging to ethnic, religious or linguistic minorities to enjoy their own culture, to profess and practise their own religion, or to use their own language. Article 30 of the 1989 UN Convention on the Rights of the Child broadly reaffirms the gist of Article 27 rights. In 1992, a Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (UNDM), was adopted by the General Assembly, further expanding the scope of the UN protection of minority rights. Also, a Working Group on Minorities (WGM) was established in 1995 within the (then) Sub-Commission on Prevention of Discrimination and Protection of Minorities, primarily with a view to monitoring the implementation of the UNDM. Parallel to this, the protection of indigenous peoples has progressively brought to the fore distinctive questions pertaining to the treatment of indigenous identity. In 1989, International Labour Organization (ILO) Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries was adopted as a result of new thinking in this area. Other UN bodies, especially human rights structures, have become increasingly involved in the broad area of minorities, raising complex issues of human rights and conflict prevention. The Committee on the Elimination of Racial Discrimination (CERD) under the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) has renewed its efforts in this direction over the past few years, as will be considered below.

UN mechanisms and activities

Reports

As a follow-up to the outcome of the UN Millennium Declaration, adopted by all member states in 2000 (GA Resolution 55/2), the Secretary-General convened in 2003 a high-level panel of eminent persons to provide him with a comprehensive view of the threats being faced by the international community and how they should be addressed. In December 2004, the High-Level Panel submitted its report to the Secretary-General, and through him, to the member states (A/59/565). In March 2005, the Secretary-General himself delivered another major report, entitled *In Larger Freedom: Towards Development, Security and Human Rights for All* (A/59/2005), drawing on the High-Level Panel report as a source of inspiration and in preparation for the review Millennium Summit to be held in New York in September of the same year. Both these reports offer thoughts and perspectives that affect the position of minorities within a wide framework for collective security and human rights.

Some of them may be mentioned here. For example, the UN is urged to build upon the experience of regional organizations such as the Organization for Security and Cooperation in Europe (OSCE) 'in developing frameworks for minority rights and the protection of democratically elected governments from unconstitutional overthrow'. The protection of minorities is thus made part of wider preventive efforts linked to notions of democracy and the rule of law. The Panel argues for strengthening the UN's mediation role, particularly in the context of peace negotiations and national reconciliation mechanisms; as the cases of Northern Ireland, Israel/Palestine and others show, both areas of action most often involve minority issues, ranging from basic demands for equality to complex autonomy arrangements within wider self-determination processes. It may be useful to recall here that in its Advisory Opinion on *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* of 9 July 2004 (http://www.icj-cij.org), the International Court of Justice, *inter alia*, reaffirmed the importance of self-determination and the extra-territorial scope of human rights protection. The Panel's report also argues for greater consultation with civil society, especially women, in peace processes, thereby echoing the notion of participation rights as a typical theme of contemporary international instruments on minority and indigenous rights. Interestingly, national leaders and parties are encouraged to make use of the option of preventive deployment of peacekeepers in the event of mounting tensions, following the example of

preventive deployment of UN personnel in the former Yugoslav Republic of Macedonia in 1992. In that case, the UN presence was meant to defuse minority tensions in the border areas between Albania and the Federal Republic of Yugoslavia.

While leaving unexplored the option of preventive deployment, the Secretary-General's report from 2005 does draw on the Panel's in relation to at least three issues. First, both reports argue for an intergovernmental Peace-building Commission to coordinate and sustain the efforts of the international community in post-conflict peace-building, though the *In Larger Freedom* report does not view the commission as an early-warning mechanism but rather a forum focusing on institution-building and financing. It should also be noted that the latter report emphasizes the strengthening of the rule of law, and suggests the creation of a Rule of Law Assistance Unit in the proposed Peace-building Support Office. Most of these latter elements are reflected in the terms of reference of the Peace-building Commission which was finally adopted by the UN Millennium Summit of September 2005 (A/60/L.1).

Second, as suggested by the Panel, the Secretary-General upholds the use of force authorized or mandated by the Security Council to stop, or possibly even prevent, genocide, ethnic cleansing and/or other serious violations of human rights and humanitarian law, especially those deriving from internal conflicts. Although the criteria of legality of coercive action under Chapter VII of the Charter, spelt out by the Panel, remain a matter of concern in the Secretary-General's assessment, both reviews importantly characterize those atrocities as 'threats to international peace and security' in the sense of the Charter. Remarkably, neither of the reports discusses the permissibility of armed intervention undertaken by states to protect an oppressed minority or any other population group, in the absence of Security Council authorization to that effect; instances of this type include the military operation 'Provide Comfort' conducted in 1991 to protect the Kurdish minority of Iraq, and the 1999 NATO action in Serbia to protect the Albanian minority of Kosovo. The UN Millennium Summit of September 2005 confirmed the notion of using force, where necessary, under Chapter VII; clearly, UN-backed military force designed to protect an oppressed minority group complements a wide range of non-coercive actions that are permissible under the Charter.

Third, the Secretary-General's report endorses the Panel's proposal for replacing the Commission on Human Rights with a smaller standing Human Rights Council. The proposal, subsequently endorsed by the UN Millennium Summit of September 2005, will perform a key peer review function in respect of the whole spectrum of human rights standards, including minority rights. The procedural and substantive contours of this proposal will be finalized within one year of the New York summit.

A stronger human rights dimension to this debate, with obvious implications for minorities, is being provided by further inputs on both enforcement and substantive or conceptual levels. The Secretary-General ultimately appears to provide a broad framework for linking the security issue, which is prioritized in the Panel's report, to appropriate development and human rights policies and strategies, reaching out to the essentials of democracy and the rule of law. While the balancing of individual and collective interests as part of these approaches may prove difficult and complex, it is clear that the physical protection of groups constitutes an indispensable precondition for all of them.

Action plan against genocide

Article 1 of the UNDM sets out a fundamental duty on all states to protect the existence of minorities, involving a basic protection against genocide in the sense of the UN Convention on the Prevention and Punishment of the Crime of Genocide of 1948. As violence erupts, and local civilians become the direct targets of human rights violations, minority groups may, and do, become particularly exposed to deliberate killing because of their ethno-cultural origin.

On 7 April 2004, at a special meeting to observe the International Day of Reflection on the 1994 Genocide in Rwanda, UN Secretary-General Kofi Annan announced the launch of an action plan to prevent genocide. The action plan consists of five points including: (1) preventing armed conflict as a usual context for genocide; (2) protection of civilians in armed conflict, especially through reinforcing UN peacekeeping forces for that purpose; (3) ending impunity through judicial action in both national and international courts; (4) information gathering and early warning by creating

a new post of Special Adviser on the Prevention of Genocide, who will report to the Secretary-General, and through him, to the Security Council on possible measures designed to prevent or halt genocide; and (5) swift and decisive action, including the use of military force, when prevention, despite all efforts, fails.

By expanding on his previous report on the *Prevention of Armed Conflict* (S/2001/574), the measures called for by the Secretary-General's action plan will prove instrumental, to a greater or lesser extent, in effectively safeguarding the physical integrity of minorities. Central to the Secretary-General's action plan is the appointment of a Special Adviser on the Prevention of Genocide, whose mandate and activities are briefly outlined below.

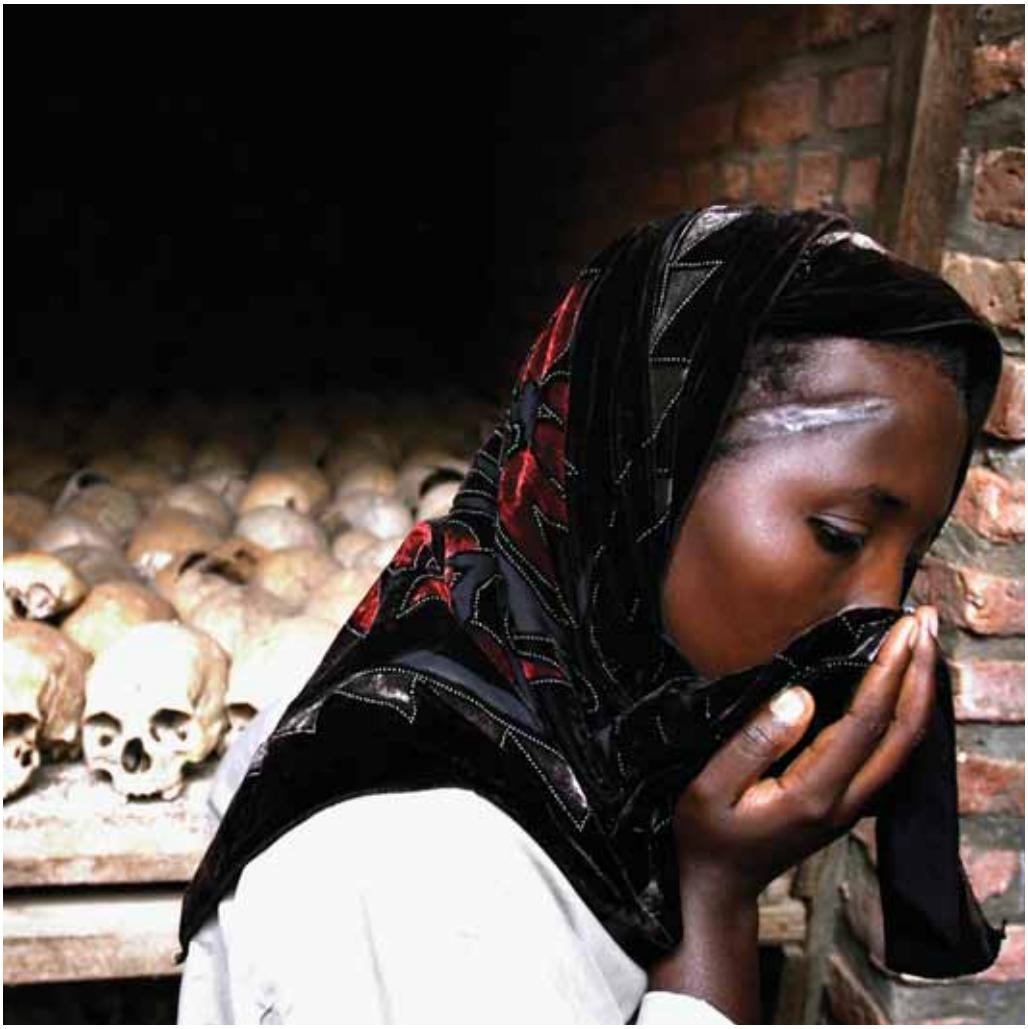
Special Adviser on the Prevention of Genocide

Following the presentation of the action plan, the Secretary-General decided to appoint Juan Méndez of Argentina as his Special Adviser on the Prevention of Genocide. The establishment of this post is based on Security Council Resolution 1366 (2001). Though concerned more generally with the prevention of armed conflict, Resolution 1366 (2001) specifically acknowledged the failure to avert tragedies such as the genocide in Rwanda and the Council's resolve to prevent the recurrence of such tragedies; and encouraged the Secretary-General to bring to the attention of the Council early warning or prevention cases, particularly those arising from ethnic, religious and territorial disputes, as well as cases of serious violations of international humanitarian law and human rights law.

In a letter dated 12 July 2004 addressed to the president of the Security Council (S/2004/567), the Secretary-General clarified that the special adviser will collect information on gross violations potentially leading to genocide; will act as an early warning mechanism to the Security Council by submitting cases and making recommendations on actions through the Secretary-General; and will liaise with the UN system in order to enhance relevant information gathering and management.

A few aspects of the mandate are worth highlighting. First, the position is of a purely advisory nature, which implies that the Special Adviser depends on the decisions of the political organs, primarily the Security Council. His role is essentially to provide reliable information and concrete suggestions at the appropriate time and let the international community decide whether or not to take action. In other words, he does not have formal authority to act *proprio motu* to prevent or halt massacres such as those committed against the Tutsi in Rwanda and the Bosnian Muslims in Srebreniça. However, his responsibility does not necessarily end once he has produced recommendations to the Security Council through the Secretary-General. Indeed, he may well help frame political decision-making by means of diplomatic activities in his relations with both UN and regional actors. Second, the special adviser gives priority to conflicts involving ethno-cultural elements and is guided by the definition of genocide provided by the Genocide Convention. It should be stressed, though, that the crime of genocide as defined by this Convention and embraced by international customary law requires an intent to destroy in whole or in part a national, ethnic, religious or racial group. However states may deny responsibility for genocidal activity by denying such an intent; or it is often the case that such an intent, or the even the existence of a protected group, cannot be easily proven, though recourse could be made to inferences from facts. These difficulties were especially analysed by the International Tribunal for the Former Yugoslavia in the *Jelisić* case (IT-95-10), and the Trial Chamber of the Rwanda Tribunal in *Akayesu* (ICTR-96-4-T, 1998), and were brilliantly captured in the Report of the International Commission of Inquiry on Darfur of January 2005, pursuant to Security Council Resolution 1564 of 18 September 2004. At the same time, the crucial goal of preventing genocide makes it necessary for the Special Adviser to consider situations that are only at risk of degenerating into genocide, as well as other large-scale human rights violations, such as ethnic cleansing. In terms of human rights standards, the scope of monitoring is thus not limited by the notion of genocide per se and reaches out to wider issues that are equally of relevance to minorities.

Third, information gathering is consequently not confined to raw data on ongoing actions that seemingly amount to genocide, but rather extends to so-called 'actionable information', that is, practical information providing warning factors such as attacks on ethnic groups, discriminatory practices



Above: Rwanda genocide survivor visiting the memorial to the victims in Nyamata. Sven Torfinn/ Panos Pictures

or incitement to violence. The special adviser may receive information from any source, in particular from the UN system, but also from states and non-governmental organizations (NGOs). Fourth, as an early warning mechanism broadly inspired by the experience of the High Commissioner on National Minorities established by the OSCE, the special adviser will need to develop constructive dialogue with governments and encourage harmonious relations between the international and domestic systems of criminal justice in connection with evidence of genocide and/or related violations of human rights and humanitarian law. In this respect, the office of the Special Adviser uniquely combines political elements in the realm of peace and security with a clear human rights mandate (virtually absent in the OSCE High Commissioner's terms of reference). Enjoying access to member states is likely to prove vital to collecting first-hand information and engaging states in effective cooperative efforts.

At the time of writing, no comprehensive report had been issued by the special adviser reviewing his initial performance, though he had sent recommendations to the Secretary-General, and through him, to the Security Council on the situations in Darfur, Sudan, the Democratic Republic of Congo, and Côte d'Ivoire. These recommendations are all specific and practical. For example, in the case of Côte d'Ivoire, the national authorities are urged to condemn racial or religious hatred and media-induced violence, to end impunity (warning against possible referral to the International Criminal Court, and to renew commitment to cease-fire agreements. Their actual impact should not be exaggerated. While recommendations on, and visits to, Darfur by the Special Adviser contributed to building up international pressure, it was the 2005 Report of the Commission of Inquiry that proved crucially influential in persuading the Security Council to refer the case to the ICC. It should be added, that this Commission found that no genocide had occurred in Darfur.

OHCHR reports on minority issues

As is widely known, General Assembly Resolution 48/141 created the post of the Office of the High Commissioner for Human Rights (OHCHR) with a view to meeting challenges to the full realization of human rights and to preventing as much as possible their violations. Empowered by a broad mandate in 1993, the OHCHR has become increasingly involved in minority issues from the perspective of the implementation of the UNDM and the maintenance of peace. The most recent ramifications of its approach are manifold. Through a dedicated advisory and technical assistance programme, the OHCHR has already supported, at the request of governments, actions in the area of human rights, including minority rights. In its 2005 annual report to the CHR, it called for further strengthening of the provision of technical assistance by making available qualified expertise on minority issues, both in the context of constitutional and legislative developments and as a means of facilitating dialogue between governments and minority groups on issues of identity and development. In essence, the OHCHR's vision mirrors the Secretary-General's advocacy for a complex strategy whereby peace, democratic and developmental processes intersect with, and reinforce one another.

With this in mind, several specific OHCHR activities should be noted. Since 2003, the OHCHR has organized joint training workshops for persons belonging to national or ethnic, religious and linguistic minorities, in cooperation with Minority Rights Group International (MRG). The minority representatives mostly receive training on international human rights law, share views with NGOs on networking with UN bodies, and are advised on the preparation of statements or other interventions to be made before the Working Group on Minorities. Broadly similar in terms of human/minority rights training, a Minority Fellowship Programme was set up by the OHCHR in 2005, especially benefiting young minority women and men. The distinctive feature of this programme lies in an effort to enable minority members to provide information and knowledge within their own communities, and to develop a 'minority profile and matrix' as a useful tool for contributing information on minorities to UN bodies in the language of international human rights norms and principles.

Inspired by Article 9 of the UNDM, which calls for greater cooperation among the various agencies and organizations of the UN on the realization of the rights and principles set forth therein, an inter-agency meeting was convened by the OHCHR in

2004 with a view to discussing ways and means of better integrating minority issues into relevant UN programmes (encompassing the Millennium Development Goals), including at the country level. Several suggestions were made in that context, covering the streamlining of existing mechanisms and the establishment of new ones. A follow-up inter-agency meeting has been planned, while country-level activities are being supported by the OHCHR in liaison with UN Country Teams and the United Nations Development Programme. At the same time, both the 2004 report submitted by the OHCHR to the CHR and the conclusions of the above inter-agency meeting, highlighted the need to set up a special procedure focusing entirely on minority issues, especially from the perspective of conflict prevention and the handling of complaints. As a way of facilitating discussion on this issue and addressing related concerns at the regional level, the OHCHR has organized regional meetings in South-East Asia and South Asia, in Africa and the Americas. The most recent ones were held in Central Asia (Bishkek, Kyrgyzstan) and South Asia (Kandy, Sri Lanka) in autumn 2004. Minority representatives pointed to the importance of regional early warning mechanisms, particularly in Asia and Africa, somewhat echoing the call for new, OSCE-style security structures dealing with minority issues contained in the High-Level Panel's report of 2004. For its part, the OHCHR convened a workshop on minorities and conflict prevention and conflict resolution in June 2005 in order to explore ways to increase the participation of minorities in UN preventive mechanisms, inter-agency initiatives and the (then) proposed Peace-building Commission.

Another strand to the OHCHR current work on minorities is furthering cooperation with existing special procedures (i.e. special rapporteurs and working groups) and treaty bodies, such as the Human Rights Committee (HRC) and the CERD. Apart from developing proposals for a major restructuring of this cooperation, the OHCHR is planning to sustain efforts at information gathering of specific relevance to minorities in the context of the various procedures. It has been suggested that lack of adequate information on minority issues often precludes a timely identification of issues and thus effective monitoring, unless primary sources are provided by minority representatives themselves. It is probably fair to note that UN special rapporteurs have increasingly raised questions affecting minorities, most notably in the 2004 reports of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance on racism and the situation of Muslims and Arab peoples in the world (E/CN.4/2004/18; E/CN.4/2004), and the 2004 report of the Special Rapporteur on Torture (E/CN.4/2005/62/Add.1), covering allegations of torture involving members of minorities.

OHCHR 2005 plan of action

Overall, the activities being conducted by the OHCHR on the protection of minorities reflect, on a smaller scale, the line taken by the High Commissioner in its 'Plan of Action: Protection and Empowerment' presented in May 2005 as a response to a specific request from the Secretary-General in his report *In Larger Freedom*. In the language of this comprehensive action plan, 'protection' stands for ensuring better implementation of standards, while 'empowerment' is being regarded as a way of making people able to claim their rights and making governments live up to their human rights obligations. In minority rights terms, empowerment goals are what underlie, for example, the assistance, training and/or advice being delivered to minority representatives and governments through several of the above-mentioned initiatives. Proposals for strengthening the protection of the rights of minorities, for example by means of a new procedure and increased cooperation with existing mechanisms, meet the primary OHCHR concern, that is, the effective enjoyment, by all, of all human rights within a genuine democratic framework. Remarkably, the 2005 plan of action takes the lead in affirming that any meaningful conception of democracy based on human rights standards must safeguard 'the rights, interests and "voice" of minorities'; 'real democracy is absent' – it is stated – if these rights and other basic freedoms are denied. The explicitly declared link between democracy and minorities is noteworthy, as it can add an important dimension, on a conceptual and operational level, to the promotion of democracy emphasized in the Secretary-General's report.

Independent expert on minority issues

One point repeatedly made by the OHCHR was that although existing UN procedures and

mechanisms can and do take account of minority issues within the scope of their mandates, they cannot guarantee a sustained focus on the situation of minorities. For structural or functional reasons, both thematic and country-specific mandates are inevitably unable to cover the full range of concerns relevant to minorities. The treaty bodies, such as the HRC, only occasionally deal with minority complaints and consider state reports typically every five years, so it is difficult for them to make a timely identification of issues. As will be seen in the next section, the WGM itself cannot hear individual complaints, nor can it act as an early warning mechanism, let alone rapidly react to crisis situations. Several actors, including governments and NGOs, suggested that a special procedure should be established, though they appeared to prioritize either conflict prevention goals, or the protection of the rights of minorities through the taking up of allegations of human/minority rights violations, or a combination of both.

As a result of this debate, and following further consultations with member states, the CHR passed Resolution 2005/79 in April 2005 requesting the OHCHR to appoint an independent expert on minority issues for a period of two years. The expert's mandate would consist in promoting the implementation of the UNDM, based on existing international standards and national legislation; identifying best practices and possibilities for technical assistance through the OHCHR at the request of governments; applying a gender perspective; cooperating closely with existing UN structures and regional organizations; as well as considering the views of involved NGOs in respect of the matters pertaining to his or her mandate. The CHR's proposal was approved by ECOSOC (the UN Economic and Social Council) in July 2005, and the OHCHR subsequently appointed Ms Gay McDougall as the first UN Independent Expert on Minority Issues.

The terms of the mandate appear to be a hybrid combination of standard-implementation priorities, especially by way of supporting the OHCHR technical assistance programme, and wider preventive concerns, in the context of existing or prospective work relevant to minorities generated by UN structures (e.g. the special rapporteurs, the Special Adviser on the Prevention of Genocide, the proposed Peace-building Commission, or the OHCHR). The endorsement of a gender perspective is all too fitting, given the more marginalized position of women within and outside their own communities. The Independent Expert will not act – contrary to earlier suggestions – as a special representative of the Secretary-General, but her mandate contains little detail on specific activities. The Independent Expert is required to submit annual reports on her activities to the CHR, including recommendations for effective implementation strategies. The overarching objective of the new procedure would seem to be the strengthening of the protection of minorities worldwide, in constructive consultations with governments and taking into account information from NGOs. Coordination of the Independent Expert with existing UN procedures and mechanisms will be key, though a degree of overlap is likely to be unavoidable. The challenge is to achieve or maximize 'vertical coordination' (focusing on the nature of minority issues), while at the same time preserving the dynamic substance and structure of the entire supervision system.

Working Group on Minorities

The WGM, established as a subsidiary body of the (then) Sub-Commission on Prevention of Discrimination and Protection of Minorities under ECOSOC Resolution 1995/31, held 11 annual sessions between 1995 and 2005, reviewing the implementation of the UNDM and considering ways and means of improving the protection of minorities in general. Thematic areas taken up by the WGM include the enjoyment of fundamental human rights, language and participation rights, autonomy and self-determination, as well as issues relating to distinctive types of minorities that are broadly defined by ethno-cultural elements (e.g. religious groups, nomads, pastoralists, hunter-gatherers). As the only UN forum for discussing minority issues open to all actors involved, the WGM has proved especially useful in securing a channel for minority representatives to voice their grievances and to bring them to the attention of their own governments. Through a wide range of working papers and a Commentary on the UNDM prepared by its Chair, Mr Asbjørn Eide, the WGM has made an important contribution to the development of standards applicable to minorities. Also, it has sponsored or organized thematic

seminars and regional meetings covering the African, South American and Asian continents, further exploring a range of substantive and institutional issues attached to local circumstances.

In spite of this, an external review of the first 10 years of WGM work undertaken in 2004 by Mr Tom Hadden from Queen's University Belfast noted that the ad hoc nature of WGM proceedings and the fact that the WGM may not decide or make recommendations on individual cases or disputes had made it difficult for it to generate a sustained focus on both standard-interpretation priorities, particularly in terms of their implementation at the domestic level, and constructive dialogue between minorities and governments. In an attempt to identify future policy objectives for the WGM, this report made an important distinction between issues concerning the protection of basic human rights for all, including members of ethno-cultural minorities, and those issues underlying positive obligations on states to protect the identity of such groups. It was suggested that the WGM should prioritize this second strand by furthering discussion on the UNDM in relation to those pro-active aspects of protection, such as constitutional and legislative recognition of minority communities, effective participation in decision-making, or education rights, whose implications remain unclear in the context of that declaration and other minority rights instruments as well. More structured proceedings were called for, dealing with one special theme each year and with a view to preparing regional guidelines, general comments or codes of good practice designed to supplement the UNDM. It was also emphasized that the WGM should encourage minority groups to make better use of existing UN and regional adjudication and non-judicial procedures, which can trigger governmental action, remedy a specific violation or address the root causes of violations.

At its 10th session in March 2004, the WGM agreed that, in order for it to achieve further progress on minority issues, a continuing involvement of minority representatives was of vital importance. In 1999, it requested the establishment of a voluntary fund to assist in the participation of minorities in its own annual sessions; this proposal was endorsed by the CHR (Decision 2004/114) and ECOSOC (Decision 2004/278) in 2004. A proposal by the WGM for declaring an international year and a decade for the world's minorities, endorsed by the Sub-Commission in 2003, was noted by the CHR in its decision 2004/115, which called upon the relevant UN agencies and organizations to contribute to the realization of the UNDM. CHR Resolution 2005/79, passed in April 2005, commended the role of the WGM and amended its mandate so as to allow the WGM to hold annual sessions of three consecutive days, focusing on dialogue with NGOs and the newly appointed Independent Expert on Minority Issues. Although a constructive relation with the latter will importantly help synergize the work relating to the implementation of the UNDM, it should be noted that the duration of WGM sessions has been reduced, raising the question whether this might weaken, rather than streamline, the impact of this body.

The WGM held its 11th session from 30 May to 3 June 2005. It agreed, *inter alia*, to develop cooperation with the Independent Expert on Minority Issues, and to encourage the holding of further regional or sub-regional meetings. Also, it recommended the Sub-Commission to consider supporting a study on the utility and advisability of an international convention on the rights of persons belonging to minorities, and the UN peacekeeping and peace-building structures to mainstream minority issues into their own fieldwork.

Reporting procedures

As is widely known, independent expert committees established to monitor compliance with human rights treaties of a universal character, such as the HRC and the CERD, constitute an important resource to raise the profile of supervision, generally by considering reports which parties are required to submit periodically on the implementation of the obligations of the relevant treaty.

In 2004 and 2005, the HRC reviewed several reports submitted by states under Article 40 of the ICCPR, some of which involved minority issues under relevant provisions. For example, following consideration of the fifth periodic report of Finland, the HRC regretted that the state party had only partially implemented its views in the case of *Anni Äärelä and Mr Jouni Näkkäläjärvi v. Finland* (Communication No. 779/1997), in which reindeer breeders of Sami origin bringing a claim under Article 27 (minority rights) before domestic courts were found to have been victims of a breach of

Article 14 para. 1 (due process of law). Concerns were also expressed in respect of the treatment of the Roma minority and the position of the Sami as an indigenous people, in the light of both Article 1 (self-determination) and 27 ICCPR. Poland was singled out for protective gaps in the area of anti-discrimination law and the protection of the Roma community. Interestingly, the HRC called upon the state party to adopt legislation which fully complies with Article 27 in relation to the recognition of minorities as such, and the right to use their own languages before administrative authorities where their numbers allow (in conjunction with the anti-discrimination clause in Article 26). The review of the first periodic report of Greece concluded that there had been failures to protect the rights and freedoms of minority religious communities and to improve the situation of the Roma. More importantly, the HRC urged Greece to review its practice in the light of Article 27, especially in relation to the ethno-cultural minorities other than the Muslims in Thrace that remained unrecognized under domestic law, particularly those groups which use the appellation 'Turk' or 'Macedonian' in their associational names.

The HRC has adopted general comments consolidating the results of discussions, on general human rights issues and specific minority questions, generated by the reporting procedure, including General Comments Nos 18 (non-discrimination), 22 (freedom of thought, conscience and religion), 23 (rights of minorities), 25 (participation rights), 27 (freedom of movement), 28 (equality of rights between men and women) and 29 (derogations during a state of emergency). In May 2004, the HRC also adopted General Comment No. 31 on the Nature of the General Legal Obligation imposed on States Parties to the Covenant, replacing earlier General Comment No. 3. Paragraph 9 of this General Comment confirms the collective dimension of Article 27 rights, and other provisions of relevance to minorities, such as those in Article 18 (freedom of thought, conscience and religion) and Article 22 (freedom of association).

The CERD was particularly active in 2004 and 2005 from the perspective of minority-related issues under the ICERD. By way of illustration, it should be noted that the CERD took up typical minority themes – such as non-discrimination and intercultural understanding – mostly in relation to Roma groups and immigrant communities, as well as the impact on minority groups of measures affecting their own identity and traditional titles to land. In the latter respect, it addressed recommendations to the Lao People's Democratic Republic and Suriname regarding, respectively, certain resettlement policies and mining activities that apparently interfered with the lifestyle and/or traditional rights of specific ethnic or indigenous groups. The issues of eviction and massive displacement were also taken up during a meeting held by CERD in 2004 with the Special Rapporteur on Adequate Housing, in which the situation of indigenous peoples in general, and in the Americas in particular, emerged as a serious matter of concern. Restrictions on, or extinguishment of customary titles over indigenous land contained in the 1998 amendments to the Native Title Act of Australia and the New Zealand Foreshore and Seabed Act 2004 were questioned as being incompatible with the ICERD. Failure to guarantee access to court, in order to seek rights recognition or redress, was equally highlighted in this context.

Numerous general recommendations have been adopted by the CERD that deal, wholly or partially, with minorities. They include General Recommendations XXI (right to self-determination), XXIII (rights of indigenous peoples), XXVII (discrimination against Roma), and XXIX (descent-based discrimination). In addition, General Recommendation XXX on Discrimination against Non-Citizens was adopted in 2004, while a Declaration on the Prevention of Genocide was approved by this body in 2005. General Recommendation XXX recalls that state parties are under an obligation under the ICERD to guarantee equality between citizens and non-citizens in the enjoyment of human rights to the extent recognized by international law, and that any distinction based on citizenship must be reasonable and objective. Prior debates on this theme emphasized the ambiguous relationship between racial discrimination and nationality, in that the former often hides itself behind the granting or denial of the latter, or behind rights classifications that arbitrarily use citizenship as a parameter. The prohibition of discrimination based on nationality was also reaffirmed by the UK House of Lords in the context of detentions of foreign nationals suspected of being responsible for terrorist activities

(*A v Secretary of State for the Home Department* [2004 UKHL 56, Judgment of 16 December 2004). Basic human rights must be enjoyed by everybody without any distinction, as was stressed by the Inter-American Court of Human Rights (IACHR) in an advisory opinion delivered in September 2003, and reflected in several parts of the CERD recommendation, especially in respect of the enjoyment of economic and social rights. Although this principle concerns a wide range of individuals and groups, from traditional minorities to immigrants, refugees and asylum-seekers – as illustrated by the case of *Haitians and Dominicans of Haitian Origin in the Dominican Republic* in which the IACHR condemned the state for, inter alia, discriminatory practices regarding access to citizenship (http://www.corteidh.or.cr) – there can be little doubt that discrimination with regard to access to citizenship especially affects the enjoyment of minority rights by entire generations of long-term residents belonging to traditionally established communities. Apart from making general provision for access to citizenship, General Recommendation XXX exhorts state parties to prevent practices denying the cultural identity of non-citizens, such as making citizenship conditional on a change of one's minority name or other forms of assimilation.

The issue of genocide was discussed by the CERD with the Special Adviser on the Prevention of Genocide in a meeting held in 2004, following the Secretary-General's above-mentioned initiative on the 10th anniversary of the Rwanda Genocide. In 2005, the CERD used its early warning and urgent action procedure, previously resorted to for the Rwandan situation itself, to bring the unfolding crisis of Darfur, Sudan to the attention of the Secretary-General, and through him, to the Security Council, urging the deployment of an enlarged African Union force under Security Council mandate to prevent *inter alia* the risk of genocide. The Declaration on Prevention of Genocide was adopted in the wake of these renewed UN efforts. Beyond touching upon general issues, such as support for the special adviser, interaction between UN human rights structures and the Security Council, use of force to stop genocide and other crimes against humanity, and greater involvement of UN and regional peacekeeping forces, the Declaration makes a contribution to the conceptual dimension of genocide in ways that expose an overall link between that crime and minorities. Indeed, reference is made to genocide as being often supported by unequal laws and practices based on race, colour, descent, or national or ethnic origin, the lack of recognition of the multicultural nature of most societies, and forms of extinctions resulting from situations of economic globalization that severely affect disadvantaged communities, in particular indigenous peoples. It should be noted that, as a result of this Declaration (operational paragraph 3), the CERD adopted in August 2005 a follow-up decision containing indicators of patters of systematic and massive racial discrimination, most of which – such as the systematic official denial of the existence of particular distinct groups, or policies of segregation and assimilation – are of obvious relevance to minorities. In this context, this decision also refines the CERD early warning and urgent action procedure. More generally, multiculturalism was discussed by the CERD in its 2005 sessions with a subtext of minority rights, which may well open up the prospect for working in subsequent sessions towards a general recommendation on relevant minority issues.

Other UN treaty bodies that have addressed aspects of the issue of minorities include the Committee on the Elimination of Racial Discrimination Against Women (CEDAW), established under Article 22 of the 1979 Convention on the Elimination of All Forms of Discrimination Against Women, and the Committee Against Torture (CAT), which was established under Part II of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984. CEDAW has mostly highlighted forms of discrimination suffered by women outside and within their own communities. For example, Lebanon was asked to produce detailed information on the various personal law regimes along religious lines affecting women, while the situation of Roma women in Croatia was the subject of substantial criticism. As regards Turkey, concern was also expressed about women and girls whose first language is not Turkish in respect of discrimination in access to education and the impact on the ban on wearing headscarves in schools and universities. Access of minority women to education is a recurrent theme in other CEDAW concluding comments, while overarching questions include underdevelopment

and poverty as well as practices of violence against women, such as 'honour killings', that are rooted in certain social and cultural patterns within the relevant groups. Explicit or implicit references to women within groups defined by ethnicity or other elements can be found in several CEDAW general recommendations, particularly General Recommendations 14 (female circumcision), 19 (violence against women), 23 (political and public life), 21 (equality in marriage and family relations) and 25 (temporary special measures). In 2004 and 2005, the CAT reviewed allegations of ill-treatment of members of minorities, and lack of investigations into such allegations, which may have amounted to torture. For example, ill-treatment and other forms of abuse disproportionately affecting Roma communities, as well as the lack of effective investigations, were reported in the case of Bulgaria and Greece. It may be useful to note in this connection that, in *Nachova v. Bulgaria* (Judgments of 26 February 2004 (Chamber) and 6 July 2005 (Grand Chamber), Applications Nos 43577/98 and 43579/98), the European Court of Human Rights held that the failure to conduct an investigation into possible racist motives behind the killing of two young Roma conscripts by a military policeman was in breach of Article 14 of the European Convention on Human Rights (ECHR), in conjunction with Article 2 (right to life). A similar line might arguably apply to the possibility of racially motivated lack of investigations raising issues under Article 3 ECHR (torture).

Indigenous peoples' rights

While frequently benefiting from international minority rights instruments, indigenous peoples have long claimed greater protection in their own right that reflects their distinctive historical situation and way of life. A number of UN mechanisms have been developed over more than a decade to that effect. All of them importantly involve indigenous groups and organizations as observers, information providers, and/or institutional actors. Any attempt to engage in a specific and retrospective description of each of those would go far beyond the purpose of this short overview. Therefore, the following will only sketch out what such mechanisms are, what sort of activities they conducted in 2004 and 2005, what is the wider context in which they should be situated.

Three major forums are currently available for a fairly comprehensive analysis and discussion of indigenous issues: the Working Group on Indigenous Populations (WGIP), established in 1982 within the (then) Sub-Commission on Prevention of Discrimination and Protection of Minorities with a view to considering developments regarding the human rights of indigenous populations and the evolution of standards; the Permanent Forum on Indigenous Issues (PFII), established in 2000 as an advisory body to the ECOSOC with a mandate to discuss indigenous issues related to economic and social development, culture, the environment, education, health and human rights; and the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples (SRIP), appointed in 2001 by the CHR as a complementary structure pursuing the strengthening of human rights protection for indigenous peoples.

The WGIP held 23 annual sessions between 1982 and 2005, and completed in 1993 a Draft Declaration on the Rights of Indigenous Peoples. In the 2004 and 2005 sessions, the WGIP addressed a variety of issues pertaining to indigenous groups and focused on conflict resolution mechanisms and the international and domestic protection of traditional knowledge. It is interesting to note that, as the only UN mechanism devoted to indigenous issues with a standard-setting mandate, the WGIP is presently engaged in the drafting of guidelines relating to indigenous peoples' heritage and the crucial principle of free, prior and informed consent. The CHR passed Resolutions 2004/57 and 2005/49 firmly supporting the WGIP work, despite concerns expressed by some governments over its continuing effectiveness. The PFII held four sessions between 2000 and 2005, the last two of which were primarily concerned with the situation of indigenous women (2004) and the achievement of the Millennium Development Goals in relation to indigenous peoples (2005). The issue of dominant cultural models and how they relate to the identity of indigenous women is noteworthy, also in connection with an earlier report submitted in 2002 by the Special Rapporteur on Violence Against Women with regard to cultural practices in the family that are violent towards women (E/CN.4/2002/83). Achieving quality and culturally appropriate primary education for indigenous

children was one of the major topics discussed by the PFII in 2005, and the subject of recommendations to member states, the UN system and indigenous organizations.

These and other key areas of work have been taken up by the SRIP, Mr Rodolfo Stavenhagen of Mexico, in his annual reports to the CHR. In essence, he engages in thematic research, pays visits to countries of concern, and considers communications addressed to him by indigenous organizations, other NGOs or UN procedures in respect of alleged violations of the human rights of indigenous peoples. In 2004 and 2005 he produced useful reviews of the situation of indigenous peoples in the context of the administration of justice and education, highlighting encouraging trends (e.g. recent judicial decisions recognizing the human rights of indigenous communities or indigenous customary laws), and the challenges ahead. He is also developing patterns of dialogue with governments through 'allegation letters' or 'urgent appeals' transmitted to governments for consideration. In 2005 he offered a preliminary follow-up overview of his country visits, while a study regarding best practices to implement his recommendations will be prepared under paragraph 9 of CHR Resolution 2005/51. Initially appointed for three years, the SRIP's mandate was renewed for an additional period of three years by the CHR in 2004.

Most of these activities were triggered by the proclamation of an International Decade for Indigenous Peoples (1995–2004) by the UN General Assembly. Following a report by the Secretary-General on the preliminary review by the Coordinator of the International Decade of the World's Indigenous People on the activities of the UN system in relation to the Decade (E/2004/82), the General Assembly decided in December 2004 to proclaim a Second International Decade of the World's Indigenous Peoples, beginning on 1 January 2005. In this connection, CHR Resolution 2005/49 urged member states to adopt a declaration on the rights of indigenous peoples as soon as possible.

And indeed, indigenous groups' issues have long been reviewed by an open-ended inter-sessional Working Group established by CHR Resolution 1995/32 and ECOSOC Resolution 1995/32 with the sole purpose of precisely elaborating a draft declaration on the rights of indigenous peoples, on the basis of the 1993 text adopted by the WGIP and endorsed by the Sub-Commission. Although the Working Group was not able to reach consensus on a final text during the course of the first International Decade of the World's Indigenous Peoples – a major objective pursued by that initiative – it has apparently contributed to clarifying the problems that require further consultation with governments and indigenous representatives. Matters of concern include, among many others, the nature of the rights to be protected, the implications attached to the recognition of the right of self-determination, and the scope of land rights. A reference to the exercise of indigenous rights 'collectively and individually' – somewhat in line with the language of minority rights instruments – has been introduced in the draft with a view to combining the original exclusive focus on collective rights with established international human rights of individuals. Self-determination is being mostly defined by internal elements (Article 31), though many indigenous communities fear that this would limit the right broadly stated in Article 3. A comprehensive or 'package deal' approach is being attempted in order to address this. Land rights represent a parallel issue of contention, raising complexities in terms of recognition of current indigenous ownership or use of lands and resources, and determination of historic land claims. At its 10th session, the Chairman-Rapporteur of the Working Group, Mr Luis-Enrique Chávez of Peru, submitted a proposal to be considered during the 11th session that will be held in November and December 2005. No matter the outcome of this and future debates about the draft declaration, ILO Convention No. 169, which revises the earlier (but still in force) Convention No. 107 on Indigenous and Tribal Populations, remains the only treaty on indigenous peoples. By focusing on the protection of their social and cultural practices as well as values through the key notions of consultation and participation, Convention No.169 broadly covers a variety of issues, including elements of autonomy and self-government, land use and settlement procedures. An ILO programme to promote this Convention has been in place since 1996, supporting governmental actors and involved NGOs; its main recent focus is on Africa and Asia, in an attempt to replicate the ever growing adhesion to Convention No. 169 in the Americas.

Case Law under the ICCPR and ICERD

Over the past 15 years, the HRC has considered a number of cases concerning minority rights under the complaints procedure established by the First Optional Protocol to the ICCPR. As a specific provision on minorities, Article 27 has provided the legal context for these cases, though, as stated above, other more general provisions, such as those in Articles 18 (freedom of thought, conscience and religion) and 22 (freedom of association), may raise minority-related issues. In line with earlier HRC jurisprudence on 'collective communications', the 2004 HRC General Comment No. 31 states that the fact that communications are restricted to those submitted by, or on behalf of, individuals does not prevent such individuals from claiming that actions or omissions affecting legal persons or other collective entities amount to a violation of their own rights. In the recent case of *George Howard v. Canada* (Communication No. 879/1999, Views of 26 July 2005), the HRC further reaffirmed the point, but found that the author had failed to establish that he had been authorized to represent before it other (or even all) members of his First Nation in Canada.

In terms of substance, non-forced assimilation, enjoyment of the traditional way of life or aspects of it, including protection against erosion of the sustainability of traditional economic activities as part of minority 'culture' as well as consultation with minority members on decisions affecting them, have figured so far among the major themes of HRC case-law under Article 27. In *Jouni Länsman, Eino Länsman and the Muotkatunturi Herdsmen's Committee v. Finland* (Communication No. 1023/2001, Views of 17 March 2005), which built upon an earlier communication from 1996 brought by Sami reindeer herders of Finland, the HRC concluded that the effects of past, present and planned logging activities in the affected area were not serious enough as to justify a violation of Article 27. Questions of fact often prove controversial. In *George Howard*, the HRC was unable to draw independent conclusions based on factual circumstances, in respect of whether restrictions on the author's permissible fishing activities amounted to a breach of Article 27. A similar line was taken in the already cited case of *Anni Äärelä and Mr Jouni Näkkäläjärvi v. Finland*, which led the HRC to conclude that it was not in a position to find a breach of Article 27. One may wonder, though, whether there is in fact a mismatch here between inability to determine factual elements and conclusions to the effect that no breach of Article 27 has occurred. When minority regimes are in place, issues of limitations may also arise. In *Walter Hoffman and Gwen Simpson v. Canada* (Communication No. 1220/2003, Views of 25 July 2005), the authors, English-speakers of Quebec, complained about the provisions in the Charter of the French Language which required the 'marked predominance' of French on outdoor signs. The case was declared inadmissible due to a failure to exhaust local remedies. Nevertheless, the claims added to a string of earlier cases before the HRC in which provisions of the Charter of the French Language had been found in breach of Article 19 para. 2 (freedom of expression).

Whereas Article 27 rights seek to respond to specific ethno-cultural concerns, general human rights matters frequently highlight overarching parameters against which the position of minority groups can be assessed from a variety of perspectives. The following provides illustration of some such ramifications.

The recent case of *Raihon Hudoyberganova v. Uzbekistan* (Communication No. 931/2000, Views of 5 November 2004), did not raise an issue under Article 27. Rather, it exposed the problematic question – affecting both traditional minorities and immigrant communities – of defining the terms of accommodation of (religious) diversity in multicultural societies. The author was a Muslim student at the Tashkent State Institute for Eastern Languages. In her second year at the Institute, she began wearing a headscarf. Shortly thereafter, the Institute banned the wearing of religious garb – like the headscarf of the author – and closed the Institute's prayer room. Students were harassed and 'invited' to study at the Tashkent Islamic Institute in lieu of Tashkent State Institute. The author was eventually excluded from the Institute as a result of her refusing to comply with the ban. The HRC found that the freedom to manifest one's religion encompasses the right to wear clothes or attire in public that is in conformity with the individual's faith or religion. Interestingly, it also held that restricting access to education on religious grounds may constitute one form of direct coercion inconsistent with Article 18 para. 2. While not

prejudging the state party's right to limit expressions of religion under paragraph 3, or academic institutions' right to autonomously run their own affairs, the HRC concluded that the administration's ban on religious dress was in breach of Article 18 para. 2. This case may be contrasted with that of *Leyla Şahin v. Turkey* (Chamber Judgment of 29 June 2004, Application No. 44774/98; currently pending before the Grand Chamber), in which the European Court of Human Rights held that forbidding the applicant, a young practising Muslim student, to wear the Islamic headscarf when attending the University of Istanbul did not breach the right to freedom of religion in Article 9 ECHR (or Article 2 of Protocol No. 1 regarding right to education), but rather protected the 'rights and freedoms of others' and the 'maintenance of public order'. Along the more liberal lines of the HRC, a British Court of Appeal in the case of *R on the application of Shabina Begum v. The Headteacher and Governors of Denbigh High School* ([2005] EWCA Civ 199, Judgement of 2 March 2005), found that a school in Luton had violated the right to education and to manifest religious beliefs in refusing to allow a Muslim girl pupil to wear the Islamic *jilbab*. On the whole, this jurisprudence seems to suggest that whether interference with the manifestation of personal religious belief is permissible very much depends on the context in which the relevant restrictions are applied, and whether any reasonable and objective justifications for them can be established by the state. Even so, factual elements are subject to contestable readings, further compounding the process of interpretation.

The CERD's docket under the complaints procedure established under the ICERD remains considerably smaller than that of the HRC. However, the CERD has increasingly provided important perspectives on racial discrimination that impact on the general situation of minorities. In the case of *Stephen Hagan v. Australia* (Communication No. 26/2002, Opinion of 20 March 2003), brought by an individual of Aboriginal descent, the CERD did not find a violation of the ICERD. Still, it observed that the display of racially derogatory or offensive terms on public signs could constitute racial discrimination even if those terms had not been regarded derogatory or offensive for an extended period of time.

In *L.R. et al. v. Slovak Republic* (Communication No. 31/2003, Opinion of 7 March 2005), the CERD found that an act of indirect racial discrimination attributable to the state party had occurred as a result of a municipal council revoking, on the basis of a discriminatory petition submitted to it, a previously approved resolution that instructed the local mayor to draw up a project aimed at securing governmental finance set up to alleviate housing problems of the Roma community. In addition to the issue of indirect discrimination (under Article 2 para. 1 (a)), the case turned on an impairment to the recognition or exercise of the right to housing, in breach of Article 5 para. e (iii), and a failure to provide an effective remedy (Article 6). Earlier cases had addressed the issue of racial discrimination in relation to the right to housing (*F.A. v. Norway*, Communication No. 18/2000) and the right of access to any place or service intended for public use (*M.B. v. Denmark*, Communication No. 20/2000), recalling the states parties' duty to take measures in order to prevent racially motivated discrimination in the private sector.

In the recent case of the *Jewish community of Oslo et al. v. Norway* (Communication No. 30/2003, Opinion of 15 August 2005), the CERD held that a breach of Article 4 (incitement to racial discrimination and racial hatred) and Article 6 had occurred as a result of a commemorative speech openly targeting the local Jewish community, including the authors, which had been delivered by a representative of a neo-Nazi organization. This decision came in contrast with an earlier judgment of the Supreme Court of Norway that found the speech in question to be compatible with the right to freedom of expression under Norwegian law. The CERD embraced the jurisprudence of the HRC and the European Court of Human Rights in that the existence of particular domestic laws may result in the authors being a 'victim' of a violation as long as they are directly affected, even though no specific course of action has been taken against them. Interestingly, the decision provided a broad interpretation of 'groups of individuals' in respect of the 'victim' requirement in Article 14 ICERD to include communications from affected organizations or groups. The procedural point, though, begs the question whether strict 'class actions' (inadmissible, for example, under the ICCPR) can match any specific group rights actionable under the ICERD. One may wonder whether the ICERD complaint

procedure would benefit by allowing forms of collective representation (i.e. via associations etc.) on behalf of individual victims.

Conclusions

The recent UN work on minorities, human rights and security has produced multiple dimensions whose interrelation is becoming increasingly apparent. The UN is seeking comprehensive, 'holistic' approaches to minority issues while still serving the cause of justice and democracy for whole societies. Protective deficiencies have been identified and attempts are being made to overcome them through new institutional means. Indigenous groups have been most effective in using such provisions as Article 27 ICCPR to advance some of their claims, but the whole indigenous question strives to find its own way into an autonomous system different from minority rights. Conflict prevention and long-term implementation objectives are being prioritized. Complaint procedures help enhance the understanding of a range of minority issues in international human rights law, though the adoption of more ambitious substantive minority regimes awaits further consideration and wider political backing. ■


TUNISIA
MOROCCO
ALGERIA
LIBYA
EGYPT
Western Sahara
MAURITANIA
MALI
NIGER
ERITREA
SENEGAL
THE GAMBIA
GUINEA-BISSAU
GUINEA
CHAD
SUDAN
DJIBOUTI
BURKINA FASO
BENIN
NIGERIA
SIERRA LEONE
CÔTE D'IVOIRE
TOGO
GHANA
ETHIOPIA
LIBERIA
CENTRAL AFRICAN REP.
CAMEROON
SOMALIA
UGANDA
SAO TOME AND PRINCIPE
EQUAT. GUINEA
KENYA
GABON
REP. OF THE CONGO
RWANDA
BURUNDI
DEM. REP. OF THE CONGO
INDIAN OCEAN
TANZANIA
ANGOLA
MALAWI
ZAMBIA
ATLANTIC OCEAN
MOZAMBIQUE
ZIMBABWE
MADAGASCAR
NAMIBIA
BOTSWANA
SWAZILAND
LESOTHO
SOUTH AFRICA

Africa

African Institutions and Minority Rights

Rachel Murray

The ACHPR

The African Charter on Human and Peoples' Rights (ACHPR), which provides the main system for protection of human rights in the continent, has a number of methods in place to ensure that states comply with the variety of rights protected in it. These are carried out by its Commission and include the examination of reports submitted by states party to the Charter, taking decisions on complaints alleging violation of rights, adopting resolutions and creating special rapporteurs and working groups on thematic issues.

The Commission has concerned itself with only a few minority issues (mainly resulting from responding to cases that have been submitted to it by NGOs) and has not undertaken a comprehensive review of the situation of minorities across the continent. Thus, it is only in certain countries where minorities have received attention.

Burundi

In cases submitted between 1989 and 1993 (Communications 27/89, *Organisation Mondiale Contre la Torture and Association Internationale des Juristes Democrates et al. v. Rwanda*), the Commission was made aware of serious and massive violations against Burundian nationals, the Tutsi and others in Rwanda. As the government did not give a 'substantive response' to the complaints, the Commission went ahead to find violations of various rights in the Charter. It held that 'the denial of numerous rights to individuals on account of their nationality or membership of a particular ethnic group clearly violates Article 2'. Furthermore, where Rwandans were killed because of their membership of an ethnic group, this violated the right to life under Article 4 of the Charter. Despite these findings, however, it is extremely concerning that the Commission had a matter of such seriousness before it and only published its decision on these cases in 1996, two years after the genocide in Rwanda and over six years after the Commission received the first case.

Mauritania

In a series of cases relating to the situation in Mauritania between 1986 and 1992, discriminatory treatment of ethnic groups in the country, including Moors, Soninke, Wolofs, Hal-Pulaar and Haratines, was alleged. The Commission went on a mission to the country in 1996 and concluded that:

'… to hold … that slavery remains a living reality which touches 60% of the population of Mauritania is not credible… That which is common and conforms with reality, is the persistence of the vestiges of slavery. The executive and judicial powers cannot be reasonably accused of not acting in conformity with the spirit and the letter of the 1981 abolition law'.

However, in its decision on the cases in 2000 the Commission held 'for a country to subject its own indigenes to discriminatory treatment only because of the colour of their skin is an unacceptable discriminatory attitude' and violated Article 2. The Commission also looked at Article 17 of the Charter, which refers to the right of an individual to take part in the cultural life of their community, to confirm that 'language is an integral part of the structure of culture … to deprive a man of such participation amounts to depriving him of his identity'. It did not find sufficient evidence in this case to find a violation of this provision.

Besides applying the rights in the Charter which related to individuals, the Commission also used the peoples' rights provisions to find that unprovoked attacks on black Mauritanian villages violated the right of a people to live in peace and security under Article 23 of the Charter, and the domination of one people by another could violate Article 19 of the Charter.

Nigeria

An important and groundbreaking decision which related to the impact of oil exploration on the Ogoni population in Nigeria (Communication 155/96, *The Social and Economic Rights Action Center and the Centre for Economic and Social Rights*) was decided by the Commission in 2002. Even though it took the Commission six years to reach a decision on this case, it eventually held that not only had there been violations of the Ogoni population's rights to life, health, property and family, but also their right, as a people, to disposal of their natural resources and to a general satisfactory environment. Although not expressly in the Charter, the Commission also found violations of rights to housing and to food. It called on the government, among other things, to stop all the attacks on the Ogoni community and ensure adequate compensation was paid to victims of the violations.

More recently, in a Resolution on Nigeria in June 2004, the Commission condemned 'ethnic and religious violence' in Yelwa, Plateau State and Kano State and the resulting loss of life and creation of internally displaced persons. It deplored the violations and called on the authorities to bring the perpetrators to justice and comply fully with the ACHPR.

Senegal

As a result of a case submitted in 1992 alleging violations in Casamance, the Commission decided to visit Senegal in June 1996. Its report, however, seemed unwilling to make any pronouncement on violations, yet rejected the arguments of both the separatists and the government as 'lacking pertinence'. It did say with regard to 'equality of citizens and communities, it is clear that this means not a mathematical equality, but above all an equality of participation in the administration of public affairs'. It recommended that a dialogue had to be begun between the parties to ensure the 'continuity of the people of the unified Senegalese state'.

Sudan

A series of cases came before the Commission between 1990 and 1992 relating, among other matters, to allegations of oppression and persecution of Sudanese Christians and religious leaders and those of a non-Muslim faith. In the final decision on the cases published only in 2000 the Commission found numerous violations of the Charter including Articles 2 and 8. The Commission held:

'… while fully respecting the religious freedom of Muslims in Sudan, the Commission cannot countenance the application of law in such a way as to cause discrimination and distress to others. … When Sudanese tribunals apply Shari'a, they must do so in accordance with the other obligations undertaken by the State of Sudan. Trials must always accord with international fair-trial standards. Also, it is fundamentally unjust that religious laws should be applied against non-adherents of the religion. Tribunals that apply only Shari'a are thus not competent to judge non-Muslims, and everyone should have the right to be tried by a secular court if they wish.'

The Commission has paid some attention to the situation in Darfur. Adopting a resolution in 2004, it 'deplores the ongoing gross human rights violations' in the region, including the large number of internally displaced persons and it sent a fact-finding mission to the country in July 2004. Although it is of concern that the mission report has yet to be released, the Commission has sent a request for provisional measures to the government, that it ensure the security and safe return of internally displaced persons, and protection of women.

Many have given credit to the other African Union (AU) organs for the particular attention they have paid to the situation in Darfur, including deploying a peacekeeping mission in the region whose tasks include monitoring the security of internally displaced persons and protecting civilians under imminent threat.

Zambia

The mass expulsion of over 500 West Africans from Zambia in February 1992 was held by the Commission to violate their rights to non-discrimination in Articles 2 and 12(5) of the Charter. When the government claimed that the action was not discriminatory because other foreign nationals were also subject to the same treatment, the Commission held that it:

'will not dispute that the Zambian state has the right to bring legal action against all persons illegally residing in Zambia, and to deport them if the results of such action justify it. However the mass deportation of the individuals in question here, including their arbitrary detention and deprivation of the right to have their cause heard, constitute a flagrant violation of the Charter.' (Communication 71/92, Rencontre Africaine pour la Defense des Droits de l'Hommes v. Zambia)

The Commission was also asked in 1998 to consider whether the requirement in Zambian law that those wishing to contest the office of the president have to prove that both their parents are Zambians by birth or descent was discriminatory (Communication 211/98, *Legal Resources Foundation v. Zambia*). Eventually adopting its decision in 2001, the Commission found violations of Articles 2, 3 and 13(1) of the Charter, urging the government to bring its laws in conformity with the Charter and to report back to the Commission on implementation. It was not willing, however, to apply Article 19, stating that:

'to do so would require evidence that the effect of the measure was to affect adversely an identifiable group of Zambian citizens by reason of their common ancestry, ethnic origin, language or cultural habits. The allegedly offensive provisions … do not seek to do that'.

Zimbabwe

The Commission has really paid little attention to the situation in the country. Partly this could be explained by the presence of the former Attorney General of Zimbabwe on the membership of the Commission (Mr Andrew Chigovera was the Deputy Attorney General when he took up his post in the Commission in 1998). The Commission has not decided any communication against the country in recent years. It did undertake a mission in spring 2001 and its report, released in January 2005, noted simply that Zimbabwean society was 'highly polarized', recognized that land reform was the 'prerogative of the government of Zimbabwe' and that 'human rights violations had occurred' in the country.

Thus, although the Commission may have examined in some detail the situation of ethnic groups in some states, limited attention has been paid to the situation of minorities in others, beyond NGOs making statements at the sessions and brief questions being asked of states during the examination of their reports (e.g. the Republic of Congo was asked in 2001 about the minority Twa group and how their children were educated, noting that education should be accessible to all in society).

Thematic considerations

Beyond looking at specific countries, the Commission also looks at some thematic issues. Unfortunately, despite being lobbied heavily to do so, it did not manage to produce a position paper for the World Conference Against Racism and has paid little attention to the issue of racial discrimination in its work, beyond the cases discussed above. Its most important contribution from the perspective of any thematic work, however, is the creation of the Working Group on Indigenous Populations/Communities and the report it recently adopted. The 2003 *Report of the African Commission's Working Group on Indigenous Populations/Communities* discusses in general terms difficulties faced by various groups, namely, the Hadzabe in Northern Tanzania, the Ogiek in Kenya, Twa of Central Africa and the Great Lakes, the Khoesan of Southern Africa, the Barabaig of Tanzania, the Maasai of Tanzania and Kenya, the Berbers of Algeria, the Ogoni of Nigeria, the Karamojong of Uganda, the Tuareg and Fulani of Mali, the Pokot of Kenya and Uganda and Omotic groups in Ethiopia. Significantly, the report attempts to outline 'characteristics of indigenous peoples in Africa'. These include: their cultures and ways of life differ considerably from the dominant society and that their cultures are under threat; survival of their particular way of life depends on access and rights to their traditional land and the natural resources; they suffer from discrimination and marginalization; they often live in inaccessible regions; and they are subject to domination and exploitation within national political and economic structures. These have been seen as making an important contribution to the development of rights for indigenous peoples in international law.

African Union

The African Commission operates under the auspices of the African Union. The African Union's founding instrument, the Constitutive Act, makes significant reference to human rights among its Principles and Objectives, and it is therefore to be presumed that its organs and some of its other institutions will have some remit over human rights matters. While the primary focus for human rights concerns is likely to remain with the African Commission on Human and Peoples' Rights, it is worth briefly outlining some other organs of the African Union which may have relevance to those working in minority rights. Although the Assembly of Heads of State, Executive Council of ministers, and Permanent Representatives' Committee will oversee all aspects of the Constitutive Act, and therefore human rights-related issues, the secretariat of the AU, the AU Commission, plays a particularly important role in this regard. The African Union Commission is composed of eight Commissioners, one of whom is the Commissioner for Political Affairs who has a specific remit on democratization, governance, human rights and the rule of law, including refugees and internally displaced persons. The African Union has also recently launched its Economic Social and Cultural Council (ECOSOCC), an advisory body to be composed of a large number of social and professional groups

including civil society organizations to liase with the African Union. In addition, the newly established Peace and Security Council of the African Union has also undertaken some important work including sending missions to some countries, such as Sudan, and has noted in this context human rights violations and 'inter-tribal violence'.

Also under the remit of the African Union are a number of other treaties which may be of relevance to minorities. These include the African Charter on the Rights and Welfare of the Child, enforced through its own Committee, which can receive reports from states parties and hear cases against them. This Charter contains provisions relating to non-discrimination and obligations of states towards 'the special needs of children living under regimes practising racial, ethnic, religious or other forms of discrimination' (Article 26(2)). In addition, the Convention Governing the Specific Aspects of Refugee Problems in Africa, although not having any enforcement mechanism, gives a broadened definition of a refugee than that found in UN treaties, and provides for protection in terms of asylum and non-refoulement. An additional Protocol to the ACHPR, on the Rights of Women in Africa, although not yet in force, also provides for rights of non-discrimination and to a positive cultural context.

Subsumed under the African Union has been NEPAD (the New Partnership for Africa's Development). States can voluntarily submit to its African Peer Review (APR) Mechanism to assess their implementation of NEPAD's objectives and the standards applied in this regard include reference to human rights; in particular the 'equality of all citizens before the law', 'equality of opportunity for all' and 'promotion and protection of the rights of vulnerable groups'. The APR Panel has finalized reviews for Ghana and Rwanda and the review process in some other countries is still ongoing.

Conclusion

Overall, therefore, the approach of the African organs illustrates some positive contributions to the protection of certain minority groups and the development of international law in this area. However, what the African Commission on Human and Peoples' Rights and the other African Union organs have not done is look at minority rights in a detailed or comprehensive fashion. The African institutions could play an important role in the promotion and protection of minority rights if they were to take the initiative to develop a coherent response to particular countries and a set of standards on the issue of minority rights. ■

Africa

Julia Maxted

Algeria

In April 2004 President Abdelaziz was re-elected to a second term as president in a landslide victory. He promised to devote himself to seeking 'true national reconciliation' and to heal the divide between the Berbers and the Algerian state. Berbers had threatened to boycott the elections over their demand that the Tamazight language should have equal status with Arabic.

Berbers

Ethnic Berbers account for between a third and a fifth of Algeria's population of 30 million, and they have campaigned for greater rights since the country won independence from France in 1962. In January 2005 the government announced that agreement had been made with the Berbers on the 'El-Kseur platform' – a reference to a list of Berber demands drawn up after the unrest in 2001. The list included calls for greater investment in the Kabylie region and for official recognition of Berber music, culture and their language, known as Tamazight. Several aspects of the new agreement, such as making Tamazight an official language and cutting the number of security forces in Kabylie, were not agreed in detail.

Angola: Cabindans

Cabindans are concentrated in Cabinda Province, which is separated from the rest of Angola by a strip of land belonging to the Democratic Republic of Congo (DRC). A separatist movement for independence for Cabinda has been in existence since 1961, and Front for the Liberation of Cabinda (FLEC) was formed in 1963. Despite huge oil reserves, Cabinda itself is very poor and has little economic development. Cabindans feel exploited by the central government and foreign oil companies. Conflict continues between separatist fighters and the government and large numbers of government troops continue to be stationed in the province.

On 27 February 2005 a rally took place pressing for self-rule. It was attended by several tens of thousands of Cabindans and coincided with the 120th anniversary of the treaty of Simulabuco that brought Cabinda under Portuguese rule in 1885. Though many refugees have returned to Angola following the end of the civil war with Unita, some Cabindan separatist movements have refused to end the armed struggle and many refugees consider the situation too insecure to return from DRC and Congo (Brazzaville).

Botswana

San

Since 1997 the Botswana government has been resettling San hunter-gatherers from their traditional homelands in what is now the Central Kalahari Game Reserve (CKGR) to resettlement camps in order to set aside the game reserve for wildlife and tourism development. The resettlement areas are crowded, lack basic sanitation and health care and do not contain sufficient resources to sustain hunter-gatherer livelihoods, and the socio-economic status of those resettled has declined since resettlement. The possibility of diamond reserves in the Kalahari sets up further potential for conflict between the government's economic development policies and San's claim to their homeland.

Legal cases

In June 2004 the San won the right to have a case challenging the resettlement re-opened. The right to live and hunt in the CKGR is the crux of the application by 243 San bushmen to overturn their relocation outside the game sanctuary by the Botswana government. The action began in April 2002, seeking a ruling that the government's termination of basic services to those who refused to leave the CKGR was illegal. The government cut water, food and health services in January 2002, arguing that it was too expensive to reach out to the small communities scattered around the game reserve.

Côte d'Ivoire

The country has been divided between north and south – between rebels and the national-army since conflict broke out in September 2002 with rebel New Forces largely made up of Northern Mandé (Dioulas) and Senoufos, representatives of the two major ethnic groups in the north, accusing successive southern Baoulé-dominated governments of discriminating against northern Muslims and those of foreign origin. The rebels quickly took the Muslim north but French troops prevented them reaching the main city, Abidjan. A power-sharing 'government of unity', outlined in a January 2003 peace agreement brokered by France, never lived up to its name. In March 2004, in protest at the killing of 120 people during a banned opposition march in

Abidjan, the New Forces and Alassane Ouattara's Rally of the Republicans, which draws its support from the mainly Muslim north of Côte d'Ivoire, withdrew from government. A UN report said the security forces had singled out suspected opposition supporters – Muslims and foreigners – to be killed.

In July 2004 a new peace agreement was reached and the boycotters rejoined the government. Under this deal, new laws making it easier for those of foreign origin to get Ivorian citizenship and run for the presidency were to be introduced by the end of September 2004 with disarmament to follow two weeks later. The laws were eventually passed, but the rebels said they had been watered down so much it made no difference, and so they refused to disarm. In November 2004 the army bombed the rebel stronghold of Bouake and also killed nine French peacekeepers. The French retaliated by destroying the Ivorian air force, sparking anti-French riots in Abidjan fomented by the state media, which backed the president.

There are 6,000 French troops and 4,000 UN troops in the country maintaining a 1,200 km long buffer zone between the two sides. A peace deal leading to elections was signed in Pretoria in April 2005, following which some rebel ministers took up their seats again in a power-sharing government. President Laurent Gbagbo agreed to overrule the Constitution, which requires presidential candidates to have two Ivorian parents, and let Mr Ouattara contest elections. This has long been a key rebel demand and a spokesman for Mr Ouattara's RDR party said it 'opens the way for peace'.

However, a lack of cooperation has delayed preparations for the election, which was to have been held in October 2005 and UN Secretary-General Kofi Annan confirmed on 8 September that presidential elections would not take place on 30 October as originally planned. Both the rebels and opposition parties have rejected the poll, saying it could not be free and fair at that time. New Forces rebels are unhappy with legal reforms on identification, nationality and electoral laws. Numerous militias who support President Gbagbo are still to be dismantled. The rebels and the opposition want a transition government to be formed without President Gbagbo before elections can be held.

Democratic Republic of Congo

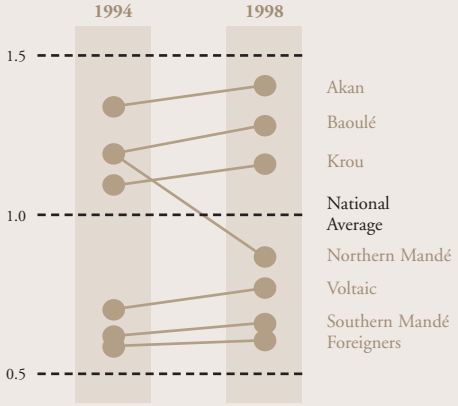
Ethnic Tutsi/Banyamulenge

Congolese Tutsi are concentrated in the eastern Democratic Republic of Congo (DRC) provinces of North and South Kivu, and were initially incorporated into the Belgian Congo when part of the historical Rwandan kingdom was divided by the drawing of colonial borders. Questions of land use and ownership, and citizenship underlie many of the conflicts among ethnic communities in eastern DRC – complicated by laws that are poorly written or inconsistently applied.

Disputes between groups of Rwandan (Hutu, Tutsi and Banyamulenge) origin and Congolese of other ethnic groups worsened after the war between Hutu and Tutsi in Rwanda spilled across the border into DRC (then Zaire) in 1994. The Hutu-led Rwandan government carried out a genocide of

Côte d'Ivoire: Shift in prosperity of different ethnic groups
Socio-Economic Prosperity Index, relative to national average

Source: Langer; UNDP, 2005



Tutsi civilians in 1994 and then was defeated by the Tutsi-led Rwandan Patriotic Front (RPF), which drove soldiers of the former army and members of a genocidal militia, the Interahamwe, into exile in the DRC and other neighbouring countries. The army of the RPF-led government invaded the DRC in 1996 and in 1998 to attack these former soldiers and militia, saying they posed a continuing threat to Rwandan security. The second invasion sparked a war that caused the loss of an estimated 3.8 million people, the great majority in eastern DRC.

Rwanda withdrew its troops in 2002 and the Congolese government promised to disarm the armed Hutu groups, but failed to do so. In 2004 Rwanda intervened or threatened to intervene in the Congo three times, each time aggravating disputes between Congolese with Rwandan origins and Congolese of other ethnic groups.

In May and June 2004 troops loyal to RCD-Goma, led by Congolese Tutsi and Banyamulenge officers, mutinied against their Forces Armées de la République Democratique du Congo (FARDC) commanders and on 1 June 2004 briefly took control of the important South Kivu town of Bukavu. Some RCD-Goma soldiers committed widespread abuses against the civilian population before leaving the town and the province in the face of opposition by other FARDC troops and pressure from the international community. With this military withdrawal from South Kivu, RCD-Goma lost political and administrative control over the province and became increasingly determined to retain its hold over North Kivu, the last bastion of its power. FARDC troops also committed abuses during the fighting, including summary executions of Banyamulenge civilians. Fearing reprisals and feeling vulnerable after the departure of their RCD-Goma protectors, thousands of Banyamulenge fled to Burundi or Rwanda.

On 13 August 2004 more than 160 refugees, most of them Banyamulenge, were massacred at Gatumba in Burundi by Burundian Hutu rebels, possibly with the assistance or support of others. On 24 September 2004 crowds in the town of Uvira stoned the refugees as they tried to return to DRC and attacked the MONUC (UN Mission in the Congo) troops protecting them.

Minority rights

On 14 May 2005 a new Constitution, with text agreed by former warring factions, was adopted by the National Assembly. The Constitution limited the powers of the president, who will serve a maximum of two five-year terms, and allows a greater degree of federalism. It also recognizes as citizens all ethnic groups at independence in 1960. This article is a recognition of the citizenship of ethnic Tutsis. Elections were due to be held before the end of June 2005 under the terms of a peace deal, but MPs have backed a six-month delay. Voter registration problems, clashes in the east and government in-fighting prompted the postponement.

Twa

War crimes and crimes against humanity, including persecution, murder, forcible population transfer, torture, rape and extermination, have been committed against the Twa in the eastern DRC. These crimes have taken place since the start of the second war in 1998 and continue up to the present. Twa are believed to be the first inhabitants of the equatorial forests of central Africa and now live in a number of African states. In the DRC the Twa also call themselves Bambuti, particularly in Ituri.

For forest-dwelling communities, hunting game remains a dominant occupation, and also plays a leading role in the construction of Twa identity and cultural life. Throughout the region, the Twa experience extreme marginalization in society. Typically living in villages furthest from the roads (sometimes as much as half a day's walk from the nearest road), they have virtually no access to basic services and utilities and are denied development assistance. At the same time, they have found themselves pushed out of their forests in the name of conservation in the Kahuzi-Biega and Virunga national parks, effectively alienated from their livelihood as well as their cultural and spiritual heritage. Discrimination by other ethnic groups is ingrained.

The Twa in Ituri and the Kivus have never taken up arms during the armed conflicts in the eastern DRC, but they have nonetheless been targeted by armed groups. Both the location of their villages in the forest, and their knowledge of forest paths and hunting skills, have made them vulnerable to being coerced by different armed groups operating in the forest into acting as trail-finders and to hunt game, and have then found themselves subject to revenge attacks by opposing armed groups.

Institutionalized disregard for the rights of the Twa, and the lack of seriousness with which complaints of abuse are treated, have meant that all armed groups in the eastern DRC have been able to prey on Twa villages with impunity, looting and raping at will. Where the Twa have been forcibly displaced from their villages, they have frequently had to live for prolonged periods unprotected in the forest, exposed to wild animals, disease and starvation.

Between October 2002 and January 2003, before they joined the power-sharing interim government in June 2004, rebel groups MLC and RCD-N jointly carried out a premeditated, systematic campaign of attack against the civilian population of Ituri, which they named 'Effacer le tableau' ('Erasing the Board'). The objective of the campaign was to gain control of the territory, including the strategic surrounding forests, and to plunder its resources, using the terror created by grave human rights abuses as a weapon of war. Encompassing the civilian population in general, the fact that the campaign specifically targeted the Twa for mass killing and the severe deprivation of other fundamental rights, by reason of their supposed supernatural powers and knowledge of the forest, indicates the commission of the crimes against humanity of persecution and extermination.

International initiatives

A report by the Minority Rights Group International (MRG), entitled *Erasing the Board*, documents the findings of an international research mission into crimes under international law committed against the Twa by the MRC and RCD-N, RCD-Goma, ex-Forces armées rwandaises (FAR) and Interahamwe in the eastern DRC.

The International Criminal Court (ICC) based in The Hague has jurisdiction over crimes committed in the DRC since 1 July 2002, following the ratification of the Rome Statute of the Court by the DRC on 11 April 2002. On 19 April 2004 the president of the DRC referred the situation of crimes committed in the DRC to the ICC's Prosecutor. The Prosecutor has subsequently announced that he is preparing indictments against certain militia leaders operating in Ituri.

Egypt: Copts

The Copts are indigenous Egyptian Christians, the vast majority belonging to the Orthodox Church. They live throughout Egypt but are concentrated in Alexandria, Cairo and the urban areas of Upper Egypt (southern Egypt) and represent around 5–10 per cent of the total population. Copts believe themselves to be the descendants of Egypt's ancient Pharaonic people. They were first converted to Christianity with the arrival of St Mark in Egypt in AD 62. The Muslims arrived in AD 640, but did not constitute a majority until about three centuries later, mostly due to the conversion of the Egyptian populace. As Dhimi or 'peoples of the Book', Copts are tolerated under Islamic law.

Copts are predominantly prosperous city dwellers engaging in commerce and the professions, but complain of discrimination in the workplace and restrictions on church construction. Periodic fear of forced conversions to Islam has provoked protest.

Right: Internally displaced people flee ethnic violence in Côte d'Ivoire, June 2005. Luc Gnago/Reuters


COUGARS

The latest protests took place on 9 December 2004 at the Coptic Orthodox Cathedral in Cairo. Protesters clashed with police and a number of Copts were detained pending investigation.

On 20 December 2004 Coptic Pope Shenouda III was prompted to go into seclusion at a monastery in protest against the treatment of Copts, declaring he would not resume his duties until those arrested had been released. Copts' primary grievances are their political and cultural marginalization within Egyptian society and the seeming inability of the Egyptian government to protect them from attack by Islamic militants.

Eritrea

There is continuing tension with Ethiopia, with large numbers of troops being deployed by both Ethiopia and Eritrea within 20–40 km of the border.

Compulsory military service has led to the repression of minority religions, particularly members of religions which refuse to participate in national service.

Members of Pentecostal Christian churches have been arrested for possession of Bibles or for communal worship. Jehovah's Witnesses have been especially mistreated. Some have been detained for a decade for refusing to participate in national service, even though the official penalty is incarceration for no more than three years. Amnesty International, in a report released on 19 May 2004, reported that people avoiding conscription, political prisoners and members of minority churches were singled out for detention and torture. In September 2004 the United States designated Eritrea as a country of 'particular concern' for its intolerance and mistreatment of adherents of minority religions. The Eritrean government defended its practices on the grounds that the unrecognized churches had failed to register, but the US State Department report noted that some of the religious groups had applied for registration in 2002 and that the government had issued no registration permits since the registration regime was imposed.

Ethiopia

Political developments

Elections held on 15 May 2005 were widely considered to be a test of the ruling party's willingness to bring democracy to the country. Election results show Prime Minister Meles Zenawi's Ethiopian People's Revolutionary Democratic Front (EPRDF) retained its majority, but opposition parties gained many seats. The final official results are not due to be announced until 23 September 2005. Several days of violence followed the parliamentary elections and around 40 people were killed when police fired on protesters. A European Union report said the 15 May parliamentary elections failed to meet international standards and complaints were not handled well. The two main opposition groups maintain they won, and are threatening to boycott parliament unless a unity government is formed. Land ownership and good governance were important election issues.

Oromo

Although some international observers have acknowledged that Ethiopia has made progress on the road to democracy, concerns have been raised over alleged human rights abuses. A report by the New York-based Human Rights Watch (HRW) released on 10 May 2005 said that regional authorities and security forces continue to suppress political dissent in the southern Oromia state. Oromia is home to the Oromo ethnic group and, along with Addis Ababa, has been the centre of dissent against the EPRDF. HRW declared that the pervasive pattern of repression and abuse in Oromia, home to 32 per cent of Ethiopians and the biggest region, would ensure that elections would be a 'hollow exercise'. With the continued insurgency in the south, even Oromo unaffiliated with militant and violent organizations are still targeted and subject to governmental abuse and detention.

Anuak

Ethiopia's Gambella People's National Regional State (Gambella) lies on the Sudanese border in the south-west of the country. Nuer and the Anuak are the two largest groups in the region, the third-largest population group consists of people the indigenous groups refer to as 'highlanders,' or 'habasha,' terms which group together all migrants from other parts of Ethiopia and their descendants.

The region has attracted government interest, largely because of its natural resources. Gambella is the best-watered region of Ethiopia and has large tracts of uncultivated land, along with deposits of gold and oil. Petronas, Malaysia's state-owned oil corporation, has acquired exploration rights in

Gambella, and China's Zhongyuan Petroleum Exploration Bureau (ZPEB) has begun seismic exploration activities in Gambella under a subcontract from Petronas.

Forced resettlement by the Derg (the military ruling council) in the 1980s generated a massive influx of some 60,000 highlanders to the region. All of the resettlement villages were located on land that the Anuak claimed as their own. At the same time, Nuer refugees from the Sudanese civil war began fleeing into Gambella, with many Nuer refugees then claiming Ethiopian citizenship and settling permanently in Gambella. The result has been that the Anuak are now a minority and greatly outnumbered by Gambella's Nuer population. There are persistent ethnic tensions – some traditionally Anuak lands are now inhabited almost exclusively by Nuer – and the most frequent outbreaks of ethnic violence in Gambella have pitted the Anuak against the Nuer. Many Anuak also bitterly resented the arrival of the highlanders and a number of ambushes attributed to armed Anuak have left scores of highlander civilians dead.

Gambella's long and porous border with Sudan is a source of perennial concern to federal authorities. The Oromo Liberation Front (OLF) managed to infiltrate fighters into Ethiopia through Gambella in 2002, reportedly with the help of the Eritrean government; forces led by a former Derg official have succeeded in destabilizing some areas along the Sudanese border; and the Anuak-led Gambella People's Liberation Front (GPLF) has launched raids into Gambella from bases in southern Sudan.

A report, *Targeting the Anuak*, published by Human Rights Watch in March 2005, alleges that the Ethiopian army has been killing, raping and torturing people in Gambella since the end of 2003. The federal government assumed de facto control over the regional government, and has stationed several thousand more Ethiopian National Defence Force troops in Gambella since December 2003. Almost all of those soldiers are highlanders and identify themselves as such in the context of highlander–Anuak ethnic conflict. The primary reason for the large military presence in Gambella appears to be an effort to eliminate armed Anuak groups in the region and assure the security of areas under exploration for oil. The Ethiopian military has undertaken operations aimed at rooting out armed Anuak and Nuer groups operating in Gambella, some of which are based in southern Sudan. Gambella currently has no regional president and no Anuak representative in the House of People's Representatives, as both sought asylum abroad in early 2004.

Great Lakes region: Twa

Twa are the indigenous forest dwellers of central African countries such as Burundi, Rwanda, DRC, Gabon and Cameroon. Numbering some 500,000 in all, Twa number roughly 60,000 in Burundi and 25,000 in Rwanda, comprising 15 per cent of the population in each country.

A central element of recent Twa history is the deeply entrenched discrimination and marginalization they experience from neighbouring ethnic groups. This has increased as the Twa have become alienated from their forests and have been forced to live on the margins of the dominant society. The Great Lakes region has witnessed civil conflicts and wars, famines and population movements over several centuries, and, as documented in a Minority Rights Group International (MRG) report entitled *Twa Women, Twa Rights in the Great Lakes Region of Africa*, these have contributed to the fragmentation of Twa populations and their social systems. The intense political conflicts between the dominant Hutu and Tutsi groups in Rwanda over the last 50 years, culminating in the killing of 800,000 Tutsis, moderate Hutus and Twa during the Rwandan genocide in 1994, and the ongoing violence in Burundi and DRC between many armed factions, have increased the vulnerability of the Twa and other so-called 'Pygmy' groups.

A new Constitution was passed in Burundi on 1 March 2005 by an overwhelming majority, which includes a formula for power-sharing between the Hutu and Tutsi and is intended to end 12 years of bloody conflict. Twa leaders claimed that Twa are marginalized by both groups. They have been displaced from their natural forest environment without compensation and they face poverty, persistent starvation, a lack of education and health care, social isolation and exclusion from decision making. Their right to forest land where they have lived for four centuries is not recognized, and their vulnerable minority status makes it difficult to press their governments for lands or to acquire land under customary title or legal title.

In March 2005 some 600 Twa fled from Burundi to Rwanda to escape persecution and hunger. They experienced intimidation by ethnic Hutu, who accused the Twa of voting against the new power-sharing Constitution and of being allied to Tutsi. Most fled from drought-hit north-eastern Kirundo Province.

Kenya

The Kenyan government has reneged on previous promises and removed all references to marginalized groups, minorities, pastoralists and hunter-gatherers from the proposed new Kenyan constitution document to be voted on in November 2005. A statement from MRG on 6 August 2005 revealed that important gains for Kenya's poorest and most vulnerable peoples achieved during a three-year constitutional review process have now been stripped from the document, leaving them furious and betrayed. Representatives of minority and marginalized groups called for the reinstatement of important provisions and warned that they would refuse to be governed by the present constitution if enacted.

In July 2005 unrest flared in Nairobi when parliament amended the draft document to ensure that extensive executive powers remained in the hands of President Mwai Kibaki. Kenyan human rights groups see this as undermining the pursuit of equality, social justice and participatory democracy. References to minority and indigenous groups have been removed from provisions that had previously satisfied their demands for recognition of their identity and rights in chapters on values and principles of nationhood, a bill of rights, representation of the people, and devolution of power. The Centre for Minority Rights and Development (CEMIRIDE) had previously welcomed provisions that, if implemented, would have promoted their rights, including through affirmative action programmes. Land rights protection and clear anti-discrimination provisions allowing full participation in public, economic and social affairs have all been removed, despite previous guarantees.

A joint statement signed by representatives of Kenya's minorities and marginalized groups stated:

'While a good constitution should be a bastion for the marginalized, vulnerable and the weak, this proposed new constitution ensures that the lot of the poor remains unrecognized and further exposed to the whims and machinations of the mighty.'

Risks and threats

A 2005 report by MRG and CEMIRIDE, Kenya, *Minorities, Indigenous Peoples and Ethnic Diversity*, demonstrated growing inequalities between communities and the intolerable situation faced by some communities, including the Turkana, the Endorois and the Ogiek. The total development budget for famine-hit Turkana in 2004–5 was 94.6 million Kenyan Shillings, less than one-sixth of the budget for the relatively prosperous and famine-free Nyeri district (689.69 million Kenyan Shillings), the home district of the Kenyan president. In Turkana district, 159 children per 1,000 die in infancy compared to a national average of under 100 per 1,000, and there is only one medical doctor for a community of over 180,000 people. Muslims have been labelled as 'terrorists' and face restrictions on their religious freedoms and other rights. Several Muslim NGOs have been banned and many live in the most famine-affected provinces where they face poverty and insecurity.

Land ownership issues in the Rift Valley have remained unresolved since colonial times, when pastoral groups such as the Maasai and Kalenjin were ousted to make way for British settlers. The Maasai are seeking to regain land given to settlers in 1904 and 1911, a move which has met with an aggressive response from the government. In August 2004 Kenyan riot police used tear gas to disperse more than 100 Maasai protesters in the capital, Nairobi. The Kenyan police said they used force because the protest was illegal. The Maasai are demanding the return of farmland leased to British settlers 100 years ago. The original lease expired on 15 August 2004 on 1 million hectares of land, but the government refuses to recognize the colonial-era agreement.

Legal cases

A case brought before the African Commission for Human and Peoples' Rights (ACHPR) by the Endorois people of Kenya over their eviction from their ancestral lands was declared admissible in May 2005. The Commission will now make a judgment on the merits of the case. The Endorois were removed from their lands to create the Lake Bogoria National Park without consultation or compensation, and are now battling for their rights and to save their environment from the effects of recent mining activities. The recent success of the

Endorois marks the first time that the Commission has considered the merits of an indigenous land rights case.

Morocco

Western Sahara

Western Sahara has a population of about 250,000 and another 160,000 Saharawis live in refugee camps in southern Algeria, where they have been for up to 26 years as Morocco continues to claim it has the right to administer Western Sahara. That claim is not formally recognized by any country and the UN classifies Western Sahara as a 'non-self governing territory'.

The country's oil reserves have become a factor in the struggle. The US and other major consumers are looking for alternative sources to the Middle East and West Africa is seen as both relatively stable and having a straight route to refineries on the US eastern seaboard. The Rabat authorities have granted exploration and exploitation licences in the Western Sahara region under its administration to US, French and British companies.

On 24 May 2005, the first North African heads of state summit for over 10 years was abandoned when Morocco objected to Algeria's reiteration of its support for Polisario (the movement fighting for independence of Western Sahara). Also in May 2005, Polisario's chief negotiator told Reuters News Agency that it was considering resuming the armed struggle if there was no breakthrough in the UN led peace talks within six months. The current deal on the table provides for the Western Sahara to be given self-rule for a period of four to five years. After that, its long-term residents and the refugees in Algerian camps would vote in a referendum to choose whether the territory is to be fully integrated with Morocco, continue to have autonomy within the Moroccan state or become independent.

This plan has been accepted by Polisario but rejected by Morocco. The Polisario Front accused the Moroccan government of ferocious repression following disturbances in May 2005. Trouble broke out in the main city of the disputed territory, Laayoune. Moroccan authorities say the Polisario instigated politically motivated riots; the independence movement counters that the demonstrations were peaceful protests against Morocco's intransigence in the long-running dispute. Arrests followed in what an official for the UN mission in Western Sahara, MINURSO, which has spent more than US$6 million trying to settle the dispute since the cease-fire, said were the most serious disturbances in six years. In July 2005 a Moroccan court jailed 12 Western Saharan separatists, following the violent protests.

Berbers

Dispossession of natural resources has also sparked protests by Morocco's Berber population. After Mohamed VI ascended the throne, Morocco changed the Hydrocarbon Code, raising the interest of foreign companies. At the beginning of 2000, Shell signed five licences for marine exploitation over an area of 9,000 square km in the Moroccan Atlantic. During the same period, the US Company Lone Star Energy signed three exploitation licences for the Talsint region over an area of 6,000 square km, and another three reconnaissance licences – two of which were opposite Larache city.

Lone Star is extracting oil from the large oil fields, thought to contain 20 billion barrels of crude, near the town of Talsinnt, in south-eastern Morocco. The oil field lies about 160 km from the Algerian border. The oil well is heavily guarded and a military escort is required to reach the site. Berbers, who comprise 60 per cent of the Moroccan population, say any revenue collected should benefit them. During French colonization, a decree enabled the government to appropriate communal Berber lands. Independence has not changed this and the impetus towards dispossession continues.

Namibia

Caprivians

The Namibian government has faced allegations of human rights violations and unlawful arrest in the trial of 12 alleged Caprivi separatists charged with treason. At the start of the trial in September 2005, the state had to prove whether the court had the right to prosecute 11 of the accused, who claim to have been unlawfully arrested.

The 12 are the second group of alleged secessionists facing charges of high treason after disturbances in eastern Caprivi in 1998–9, which the government alleges were attempts to secede the barren, semi-arid region.

The first group of 120 Caprivians is currently appearing before the High Court in Grootfontein, 430 km north of Windhoek, in a case that began in

October 2003. They allegedly belonged to the Caprivi Liberation Army, which attacked government installations in a raid on the regional capital, Katima Mulilo, leaving 12 people dead in August 1999.

Ten of the second group of 12 claim they had been bona fide refugees in the Dukwe refugee camp in central Botswana until they were 'forcibly and unlawfully arrested' and handed over to the Namibian police. The accused claim that they crossed into Botswana illegally between 1998 and 2001 to escape from 'persistent harassment' by members of the Namibian police and defence force. They were arrested between September 2002 and December 2003 by Botswana authorities and handed over to the Namibian police.

In affidavits the 10 claim that 'the apprehension and abduction from Botswana, the transportation to Namibia and the subsequent arrest and detention in Namibia is in breach of international law, and wrongful and unlawful'. The authorities argue that the suspects were deported from Botswana after violating their asylum conditions and the UN Convention on the Status of Refugees by returning to Namibia.

San

San are the earliest inhabitants of what is now Namibia. The Namibian government has been accused by the National Society for Human Rights (NSHR) of systematically ignoring the deteriorating situation of the San minority over the past 15 years. On 31 August 2005 the country's former social services minister and new Deputy Prime Minister Dr Libertine Amathila said she was 'shocked to discover' that the San communities were living under virtual slavery conditions. Further, in an attempt to 'refute' criticism that it had taken the government 15 years to realize that San peoples are grossly marginalized, Dr Amathila, in a nationally televised report on 27 September 2005, maintained that 'The Opposition parties are actually the ones responsible for this situation. The South Africans, they were fighting with, are the ones who destroyed the San communities, in the first place.'

The NSHR has called upon the Namibian government to make reparations to the San peoples, including a public apology; guaranteed protection of San human rights in the future; restoration, rehabilitation and compensation in the form of free and adequate health care; free and adequate pre-primary, primary, secondary and tertiary education; free and adequate housing; immediate access to social services, such as pensions for senior citizens and persons with disabilities; immediate recognition of all San traditional authorities and their right to profess and enjoy their traditions; and immediate and full recognition of all San human rights.

Nigeria

Niger Delta

The Niger Delta is the main oil-producing region of Nigeria, which is the largest oil producer in Africa, and the fifth-largest oil producer within the Organization of Petroleum Exporting Countries (OPEC). However, little of this wealth is distributed within the Niger Delta, or to the Nigerian people as a whole. Economic and social rights, such as the right to health and the right to an adequate standard of living, remain unfulfilled for many Nigerians.

The Nigerian Federal Government is the prime beneficiary of the revenue earned from selling the crude oil abroad. As the international oil price goes up, the state's share of the total oil revenue increases under a formula with companies. In spite of this injection of revenue and resources, the Nigerian Federal Government has invested little of these resources in the Niger Delta, where the oil-producing communities reside. Poverty in this area is widespread. Roads are in a constant state of disrepair; power outages are frequent; the water available is of poor quality and is often contaminated; schools are almost non-existent; and state-run hospitals and clinics are under-equipped or short-staffed, or both. In 40 years of operation, oil companies have left large areas of the Niger Delta unusable for farming, due to frequent oil spills, leakages, and the effect of gas flaring or other accidents.

Many of the traditional responsibilities of the state are fulfilled in parts of the Niger Delta by transnational oil corporations operating there, such as providing basic services or building infrastructure. For the communities, oil companies appear as external players who are taking the wealth from the region, sharing it with the federal government and providing little in return. Further, the companies are seen as operating on the traditional lands of the communities without consulting them, or consulting them inadequately. When communities object to specific projects, or ask for more

compensation, the companies create divisions within the communities by supporting one faction, usually the chief and groups/gangs associated with the chief, who then forcibly secure the compliance of other community factions who may be opposed to the project. In many instances, the grievances turned into outright antagonism leading to frequent instances of abduction of company officials, sabotage of company property, and violence targeting companies. The companies have turned to the state security forces, which in some cases have used force, often arbitrarily and disproportionately, against individuals. The easy availability of small arms in the region has made the situation more serious. Calculations by Amnesty International based on local and international media reports, show that the number of people killed in the Delta, Rivers and Bayelsa States in 2004 up to and including incidents late August, could be in the region of 670.

Between February and April 2005 thousands of Ogoni and members of other minority communities were evicted from their homes in a Port Harcourt shantytown. The Rivers State government and the Nigerian Agip Oil Company (NAOC) have been accused by the communities of demolishing their waterfront homes to facilitate planned company expansion and relocation from Lagos to Port Harcourt waterside, without notice or compensation. Some residents suffered a second displacement since they were living in the shantytown following earlier destruction of their village homes due to military activities in Ogoni territories.

The demolition was completed in April 2005 despite strong opposition from residents' groups and human rights organizations including the Movement for the Survival of the Ogoni People (MOSOP). They stated that the shantytown, known as Agip waterside or 'Ogoni Village', had been demolished with inadequate notice and no compensation for residents, many of whom had lived in the shantytown for over 10 years. According to MOSOP, residents have been left to fend for themselves by the Rivers State government, and have been forced to move to other shantytowns or return to villages where their future is uncertain. On 9 April one resident was reportedly killed in an attack by youths, while a number of others were left with machete wounds. Reports have indicated police involvement in the harassment and the arbitrary arrest of residents. Agip has denied any involvement in the demolition and clearing of the land, which borders its existing premises.

International initiatives

MRG supported the attendance of a representative of the evicted communities at the UN Working Group on Minorities in Geneva on 30 May 2005 and joined Nigerian human and minority rights groups in calling on the Rivers State government for a full investigation into the demolitions and evictions and the actions of government authorities, the police and the Agip Oil Company.

Rwanda

When the rebel Rwandan Patriotic Front (RPF) took control of the country in 1994, ending the genocide, the economy and infrastructure were in ruins. An estimated 800,000 people, mostly Tutsis, had been slaughtered. Three million Hutu refugees fled to neighbouring countries, among them the perpetrators of the genocide, who turned themselves into a rebel force menacing Rwanda's borders. While up to 20,000 Hutu rebels remain in DRC, 4,000, including their leader, have now voluntarily disarmed. Most refugees have come home and access to education and health services has rapidly increased.

Despite multi-party elections in 2004, the ruling RPF so far remains the only political force. For the RPF, Rwanda's violent recent history means democracy must be balanced with certain controls if further conflict is to be avoided. The second-largest party after the RPF was banned in 2004 – accused of trying to promote ethnic divisions. But critics say the RPF-led government is using the past to justify a de facto one-party state.

The government has made significant efforts to promote unity among Tutsis and Hutus. However, ethnicity is still a potentially divisive issue. As a rebel movement fighting the previous regime, the RPF had its base among Tutsi exiles in neighbouring Uganda. And perceptions remain that the RPF-led government is Tutsi dominated. Tutsis occupy the most important positions in the army and in the civil administration, and are the greatest beneficiaries of the important posts in the economy. There are fears that a sense of political and economic exclusion will lead to growing resentment among Hutus.

Rwanda has more people per square kilometre than any other African country, and its increasing rural population is farming progressively smaller parcels of land. Some analysts fear a potentially explosive mix – between this growing rural poverty and urban resentment at lack of political freedoms. Unless there is some way for voices of dissent to be legitimately expressed, the tendency to resort to violence will increase. Analysts suggest that the way in which the RPF government responds to demands for greater political freedom, and more equitably shared economic opportunities, will determine how far Rwanda's current stability is maintained in the long term.

South Africa: Zulu

On 10 September 2005 thousands of Zulu girls gathered in Nongoma in northern KwaZulu-Natal (KZN) Province, to participate in 'Umhlanga', the annual reed dance ceremony celebrating virginity. The traditional gathering took place in the wake of controversy surrounding the soon-to-be-outlawed testing of virgins: the Children's Bill was approved by parliament in July 2005 and, if passed by the National Council of Provinces, the legislation will impose an outright ban on the custom.

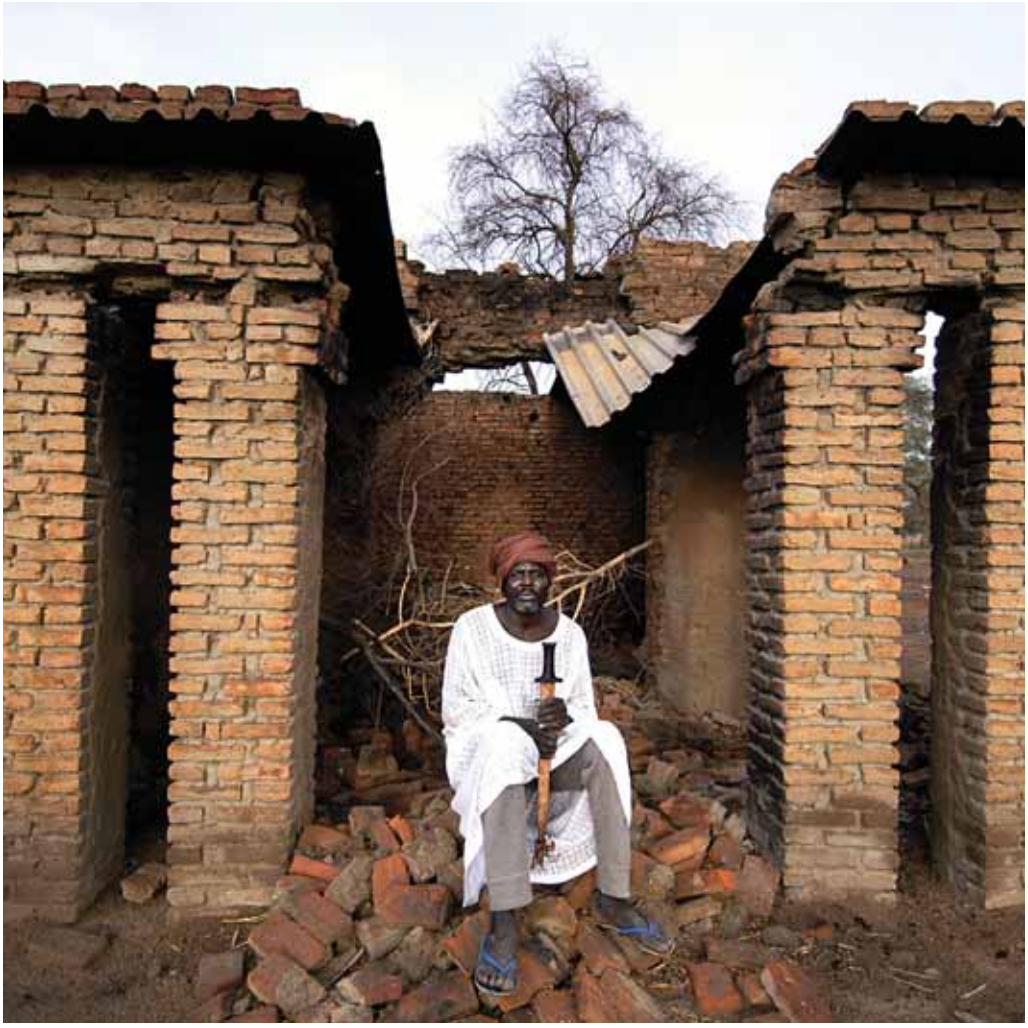
Zulu King Goodwill Zwelithini lashed out at the government, saying he was opposed to the ban, while traditionalists and other groups vowed to defy the law. Traditionally, although young girls were often tested privately in their own homes, the focus was not on the inspection – there was a high spiritual value placed on virginity, instilled through instruction by older women. After falling into disuse, the practice made a comeback around 10 years ago when the HIV/AIDS pandemic began to take hold. According to Dr Jerome Singh, head of the Bioethics and Health Law Programme at the Centre for the AIDS Programme of Research in South Africa (CAPRISA) at the University of KwaZulu-Natal, the move to prohibit the inspections has exposed the ideological clash between culture and human rights. Critics have argued that the practice violates children's rights: their right to privacy, bodily integrity and dignity.

The Commission on Gender Equality, which has been at the forefront of advocacy efforts to halt the practice, described the test as 'discriminatory, invasive of privacy, unfair, impinging on the dignity of young girls and unconstitutional'. The debate has become politicized. Zulus see this as an elaborate conspiracy to undermine Zulu culture. While in office, former deputy-president Jacob Zuma was reported as having encouraged girls to take the test as a way of curbing the spread of HIV/AIDS and reducing the prevalence of teenage pregnancy. However, by placing sexual responsibility on the girls, virginity testing had ignored the gender dynamics contributing to the pandemic and had become part of the problem: testing failed to address male sexuality and responsibility, and the high levels of gender violence in the country.

Sudan

Darfur

Open warfare erupted in Darfur Province in February 2003 when two loosely allied rebel groups, the Sudan Liberation Movement/Army (SLA) and the Justice and Equality Movement (JEM), attacked military installations. The rebels, made up of predominantly African sedentary tribes such as Fur, Zaghawa and Massalit, seek an end to the region's chronic economic and political marginalization. They also took up arms to protect their communities against a 20-year campaign by government-backed militias recruited among groups of Arab extraction in Darfur and Chad. These 'Janjaweed' militias have over the past two years received greatly increased government support to clear civilians from areas considered disloyal. Aerial bombardment, militia attacks and a scorched-earth government offensive have led to massive displacement, indiscriminate killings, looting and mass rape, all in contravention of Common Article 3 of the 1949 Geneva Conventions and other provisions of international law that prohibit attacks on civilians. The government, however, denied any connection to the Janjaweed militia, calling them 'thieves and gangsters'. While the conflict has a political basis, it has also acquired an ethnic dimension in which civilians were deliberately targeted on the basis of their ethnicity, and an economic dimension related to the competition between pastoralists (generally Arab) and farmers (generally non-Arab) for land and water. To date some 2 million people are estimated to now live in camps, having fled their homes, and at least 180,000 are thought to have died during the crisis, mostly through starvation and disease; 200,000 have fled to neighbouring Chad.



Above: Old man in front of the ruins of his shop in the destroyed village of Terbeba. After Janjaweed militants attacked the village he evacuated his family across the Chadian border to a refugee camp. Sven Torfinn/ Panos Pictures

Both sides have been accused of committing serious human rights violations, including mass killing, looting, and rapes of the civilian population. However, the better-armed Janjaweed quickly gained the upper hand. By the spring of 2004, several thousand people — mostly from the non-Arab population — had been killed and as many as a million more had been driven from their homes, causing a major humanitarian crisis in the region. The crisis took on an international dimension when over 100,000 refugees poured into neighbouring Chad pursued by Janjaweed militiamen, who clashed with Chadian government forces along the border. More than 70 militiamen and 10 Chadian soldiers were killed in one gun battle in April.

Chad brokered negotiations in N'djamena leading to the Humanitarian Ceasefire Agreement between the Sudanese government and JEM and SLA. The African Union formed a Ceasefire Commission (CFC) to monitor observance of the 8 April cease-fire. In early July 2004, UN Secretary-General Kofi Annan and (then) US Secretary of State Colin Powell visited Sudan and the Darfur region, and urged the Sudanese government to stop supporting the Janjaweed militias. The African Union and European Union sent monitors in July to monitor the cease-fire but the Janjaweed attacks did not stop.

On 23 July 2004 the United States Sentate and House of Representatives passed a joint resolution declaring the armed conflict in the Sudanese region of Darfur to be genocide and calling on the Bush administration to lead an international effort to put a stop to it. On 30 July, the UN gave the Sudanese government 30 days to disarm and bring to justice the Janjaweed, under UN Security Council Resolution 1556; if this deadline was not met in 30 days, it expressed 'its intention to consider' sanctions. Resolution 1556 also imposed an arms embargo on the Janjaweed and other militia. Sudan warned Britain and the United States not to interfere in its internal affairs.

In August 2004, the African Union sent 150 Rwandan troops in to protect the cease-fire monitors; however, 'their mandate did not include the protection of civilians'. They were joined by 150 Nigerian troops later that month. Peace talks, which had previously broken down in Addis Ababa on 17 July, were resumed on 23 August in Abuja. The talks reopened amid acrimony, with the SLA accusing the government of breaking promises that it made for the little-respected April cease-fire.

The UN's 30-day deadline expired on 29 August, after which the Secretary-General reported on the state of the conflict. He noted that the Janjaweed militias remained armed and continued to attack civilians (contrary to Resolution 1556), and militia disarmament had been limited to a 'planned' 30 per cent reduction in one particular militia, the Popular Defence Forces. He also noted that the Sudanese government's commitments regarding their own armed forces had been only partially implemented, with refugees reporting several attacks involving government forces. He advised a substantially increased international presence in Darfur 'in order to monitor' the conflict. However, he did not threaten or imply sanctions, which the UN had expressed its 'intention to consider' in Resolution 1556.

On 9 September 2004, the (then) US Secretary of State Colin Powell declared to the US Senate that genocide was occurring in Darfur, for which he blamed the Sudanese government and the Janjaweed. This position was strongly rejected by the Sudanese Foreign Affairs Minister Najib Abdul Wahab. The UN, like the African Union and the European Union, has not declared the Darfur conflict to be an act of genocide. If it had constituted an act of genocide, international law is considered to have allowed other countries to intervene.

Also on 9 September 2004 the US put forward a UN draft resolution threatening Sudan with sanctions on its oil industry. This was adopted, in modified form, on 18 September as Resolution 1564, pressuring the Sudanese government to act urgently to improve the situation by threatening the possibility of oil sanctions in the event of continued non-compliance with Resolution 1556 or refusal to accept the expansion of African Union peacekeepers. Resolution 1564 also established an International Commission of Inquiry to look into human rights violations, and to determine whether genocide was occurring. In the wake of this resolution, the peacekeeper force was to be expanded to 4,500 troops.

On 15 October the World Health Organization estimated that 70,000 people had died of disease and malnutrition in Darfur since March. On 2 November the UN reported that Sudanese troops had raided the Abu Sharif and Otash refugee camps near Nyala in Darfur, moving a number of

inhabitants and denying aid agencies access to the remaining inhabitants inside. Meanwhile, the Abuja talks continued, with attempts made to agree on no-fly zone over Darfur in addition to a truce on land and a disarmament of the militias.

On 9 November the Sudanese government and the two main rebel grous, the SLA and JEM, signed two accords in Abuja aimed toward short-term progress in resolving the Darfur conflict. The first accord established a no-fly zone over rebel-controlled areas of Darfur – a measure designed to end the Sudanese military's bombing of rebel villages in the region. The second accord granted international humanitarian aid agencies unrestricted access to the Darfur region.

Despite these accords, violence in Sudan continued. On 10 November – one day after the accords – the Sudanese military conducted attacks on Darfur refugee villages in plain sight of UN and African Union observers. On 22 November, alleging that Janjaweed members had refused to pay for livestock in the town market of Tawila in northern Darfur, rebels attacked the town's government-controlled police stations. The Sudanese military retaliated on 23 November by bombing the town.

On 25 January 2005 the International Commission of Inquiry on Darfur report to the UN Secretary-General found the government of the Sudan and the Janjaweed responsible for serious violations of international human rights and humanitarian law amounting to crimes under international law, however, the government of Sudan had not pursued a policy of genocide in Darfur. The Commission identified 51 individuals responsible for the violation of human rights and recommended immediate trial at the International Criminal Court (ICC).

On 29 March Security Council Resolution 1591 was passed, strengthening the arms embargo and imposing an asset freeze and travel ban on those deemed responsible for the atrocities in Darfur. It was agreed that war criminals would be tried by the ICC and on 5 April it was reported that the UN had given the ICC the names of 51 people suspected of war crimes. The Sudanese president snubbed the UN resolution, declaring that he 'shall never hand any Sudanese national to a foreign court'.

The UN released a new estimate of 180,000 in April 2005 of those who had died as a result of illness and malnutrition in the 18 months of the conflict. It did not attempted to estimate the number of violence-related deaths. Médicins sans Frontières' Dr Paul Foreman was arrested by Sudanese authorities over the publication of a report detailing hundreds of rapes in Darfur. Claims began to surface that the Bush administration's noticeable toning down of its description of the situation in Sudan – it stopped calling the Darfur conflict a genocide, and claimed that UN death toll estimates may be too high – was due to increased cooperation from Sudanese officials towards the 'War on Terrorism'.

The SLA and JEM announced in May 2005 they wanted to resume peace talks. After a period of several months without attacks, concern was raised in September 2005 by the commander of the African Union peackeeping force over an increase in banditry and a number of attacks on humaniatian workers and aid convoys by Darfur's largest rebel movement, the SLA. On 15 September 2005, a series of African Union-mediated talks began again in Abuja with representatives of the Sudanese government and the two major rebel groups participating in the talks. The Sudanese Liberation Movement faction refused to be present. The rebel groups in Darfur appeared to be splintering and the African Union mission said the Sudan Liberation Army was destabilizing the region and jeopardizing peace talks with the Khartoum government.

Political developments

On 31 December 2004 the parties to the north–south warfare in Sudan signed accords making a peace deal to end 21 years of fighting. The agreement included a permanent cease-fire and protocols on wealth- and power-sharing agreements. The conflict pitted the Muslim north against Christians and animists in the south, leaving some 1.5 million people dead. The government and the southern rebels have agreed to set up a 39,000-strong army comprising fighters from both sides. They agreed that the south should be autonomous for six years, culminating in a referendum on the key issue of independence. The Sudanese People's Liberation Army (SPLA) accepted that Sharia could remain in the north. Sudan has become an oil exporter and both sides have agreed on the key issue of how to share out the revenue, which mostly comes from the south. The SPLA has secured a large share of Sudan's oil money and government jobs. On 9 July 2004 John Garang, leader of the SPLA

was sworn in as vice-president but died three weeks later in a helicopter crash on 30 July. Salva Kiir took over as southern Sudan's leader following the death of John Garang and was sworn in as Sudan's vice-president in Khartoum.

Uganda

In July 2005 parliament approved a constitutional amendment, which scrapped presidential term limits. Voters in a referendum overwhelmingly backed a return to multi-party politics.

Acholi

The Lord's Resistance Army (LRA), formed in 1987, is a rebel paramilitary group operating mainly in northern Uganda. The group is engaged in an armed rebellion against the Ugandan government in what is now one of Africa's longest-running conflicts. It is led by Joseph Kony, who proclaims himself a spirit medium and apparently wishes to establish a state based on his unique interpretation of biblical millenialism. The LRA has been accused of widespread human rights violations, including the abduction of civilians, the use of child soldiers and a number of massacres.

It is estimated that around 20,000 children have been kidnapped by the group since 1987 for use as soldiers and sex slaves. The group performs abductions primarily from the Acholi people, who have borne the brunt of the 18-year LRA campaign. The insurgency has been mainly contained to the region known as Acholiland, consisting of the districts of Pader, Gulu and Kitgum, though since 2002 violence has overflowed into other districts. The LRA has also operated across the porous border region with southern Sudan, subjecting Sudanese civilians to its horrific tactics.

Up to 12,000 people have been killed in the violence, with many more dying from disease and malnutrition as a direct result of the conflict. Nearly 2 million civilians have been forced to flee their homes, living in internally displaced peoples (IDP) camps and within the safety of larger settlements, sleeping on street corners and in other public spaces. IDP camps themselves have been attacked and burned down, leaving thousands homeless. Despite these forced migrations, the plight of the Acholi people has received little media coverage in the developed world. Not until April 2004 did the UN Security Council issue a formal condemnation.

From the middle of 2004 rebel activity dropped markedly under intense military pressure. There were reports of significant numbers of LRA rebels taking advantage of the government Amnesty Act. In mid-December 2004 a number of civilians were killed by bands of LRA operating near the Sudanese town of Juba. These rebels had purportedly lost contact with their chain of command under the ongoing government assault. On 31 December 2004, a truce in place since mid-November expired without an agreement.

The signing of a peace deal ending the civl war between the government and the Sudan People's Liberation Army prompted speculation that a more stable Sudan would help end the LRA insurgence. In late January, SPLA leader John Garang pledged that he would not allow the LRA to operate in the south once he gained formal control of the region. On 3 February 2005, President Museveni announced an 18-day cease-fire, backing away from previous commitments to sustain military operations until the LRA committed to withdraw from the bush and admitted for the first time that it was recruiting former abductees and returning them to the battlefield. The army stated that around 800 former abductees had been recruited, hundreds of whom are believed to be below 18 years of age.

During the first half of March 2005, the LRA carried out six reported attacks in which 12 civilians were reported dead and about 50 were abducted, often in response to government proclamations that the rebels were nearly or completely defeated. The government has been the target of increasingly pointed criticism from the international community for its failure to end the conflict. International aid agencies have questioned the Ugandan government's reliance on military force and its commitment to a peaceful resolution. In May 2005, the World Food Programe reported that 1.4 million people displaced by the conflict were facing severe food shortages. The ongoing insecurity prevented the IDPs from tilling and planting farm land, as well as making it difficult for relief organizations to reach persons in need.

International initiatives

International Criminal Court (ICC) Prosecutor Luis Moreno Ocampo formally opened an investigation in January 2004. Some local Ugandan groups have criticized this move, as an ICC prosecution of Joseph Kony and his senior lieutenants is seen to

make a negotiated end to the conflict nearly impossible. In November 2004, President Museveni was reported to be exploring ways to withdraw the referral made to the ICC, which was seen as a complication to what appeared to be a significant movement towards a negotiated peace. In February 2005 the ICC announced that 12 arrest warrants were to be issued for LRA war crimes suspects.

Zimbabwe

Since the defeat of the constitutional referendum in 2000, politics in Zimbabwe have been marked by slow regression away from many of the norms of democratic governance. International pressure on the Zimbabwean president, Robert Mugabe, to change his damaging policies significantly increased in the second half of 2005. The UN, South Africa and other African powers are pressing him to restore democracy and change economic management. Perhaps the greatest pressure has resulted from the collapse of the Zimbabwean economy, which has left millions hungry. In five years, the economy has contracted by 50 per cent, according to Harare economists. Inflation stands at 255 per cent and unemployment at 75 per cent. The seizure of almost all white-owned commercial agricultural land, with the stated aim of benefiting black farmers, has led to sharp falls in production. In late 2003 fewer than 900 commercial farms were still operating and the country has endured critical food shortages. In mid-2004, 5 million Zimbabweans still needed food aid, with almost half the neediest living in urban areas (a traditional locus of opposition support). Food aid was used as an instrument of political strength by the government in the run-up to the 2005 elections.

In July 2005 Operation Murambatsvina (Restore Order) cost some 700,000 Zimbabweans their homes or livelihoods or both, and otherwise affected nearly a fifth of the troubled country's population. The UN Secretary-General's special envoy's report on the military-style campaign shows that the Zimbabwe government collectively mounted a brutal, ill-managed campaign against its own citizens. Whatever its intent – the urban clean-up claimed by authorities, or more sinister efforts to punish and break up the political opposition as city dwellers voted overwhelmingly for the opposition in recent elections – the campaign has exacerbated a desperate situation in the country.

After destroying homes in the cities and moving people into transit camps, the government assigned people to rural areas on the basis of their identity numbers. On the identity cards carried by all Zimbabwean citizens, the first few digits form a code for the bearer's home area. This, however, reflects one's ancestral home rather than one's own birthplace. Zimbabweans of foreign parentage are finding themselves in a particularly difficult situation.

A change in the citizenship law shortly before the 2002 presidential elections meant that being born in Zimbabwe no longer automatically conferred nationality. Zimbabweans who had one or both parents born outside the country were reclassified as aliens unless they formally renounced claims to foreign nationality. Although most observers believe the law was designed to disenfranchise whites, it also affected the status of Zimbabweans who have roots in other African countries. ■


Alaska (US)
CANADA
UNITED STATES
NORTH
PACIFIC
ATLANTIC
OCEAN
Hawaiian Islands (US)
MEXICO
CUBA
HAITI
DOMINICAN REP.
Puerto Rico (US)
BELIZE
JAMAICA
GUATEMALA
HONDURAS
EL SALVADOR
NICARAGUA
COSTA RICA
PANAMA
VENEZUELA
GUYANA
Guyane (Fr.)
SURINAM
COLOMBIA
ECUADOR
PERU
BRAZIL
BOLIVIA
PARAGUAY
SOUTH
PACIFIC
CHILE
URUGUAY
ARGENTINA

Americas

Latin America: Afro-descendants

Darién J. Davis

1 Terminology in English for people who define themselves as Afro-descent in Portuguese and Spanish remains problematic, particularly in areas with large populations of people of mixed heritage. Afro-descendants speak a variety of languages including Spanish, Portuguese, French, English, Garifuna, Kryol and a variety of dialects. In this essay Afro-descendant, Afro-latin American and black are used as synonyms.

The diverse populations of African descent[1] in Latin America, which number approximately 150 million (some estimates range as high as 250 million) continue to face a significant number of challenges, including discrimination in employment and housing, economic exclusion, and under-representation in government, civil society and in the media. One of the major challenges in assessing the status of black populations is the lack of concrete data. The majority of Latin American countries do not collect information on race and ethnicity, nor do they document incidents of racial discrimination. In addition, any attempt to understand the struggles of Latin Americans of African descent must take into account economic and political problems on the global, national and local levels, whether it is in countries like Brazil, Venezuela, Colombia and Cuba where the population of African descent is significant, or in countries such as Argentina and Mexico, where they represent less than 5 per cent of the population. In all Latin American countries, Afro-Latin Americans with darker skin complexions continue to face greater pressures as they confront societies where racist languages and practices continue to be accepted in the mainstream. Socio-economic status can often mitigate these pressures, but Afro-Latin Americans are over-represented among the poor. According to the UN Human Rights Commission, the rights of Afro-Latin Americans in 2005 continue to be routinely violated, particularly in the areas of employment, health and housing.

At the same time, the region as a whole has witnessed a proliferation of NGOs dedicated to aiding Afro-Latin American communities. Since the 2001 World Conference Against Racism, Discrimination, Xenophobia, and Related Intolerance in Durban, South Africa, Afro-Latin Americans have succeeded in securing greater visibility to highlight their social situation. International agencies such as the UN, the Organization of American States, the World Bank and the Inter-American Development Bank, and NGOs such as Minority Rights Group International (MRG) and many others have made commitments to aiding and promoting Afro-Latin American issues on the global front. Within the region, many countries such as Brazil and Colombia have created a number of progressive policy instruments. Others, such as Honduras and Nicaragua, have recognized problems but have publicly bemoaned the lack of resources to address them. Because the vast majority of Afro-Latin Americans constitute part of the working poor with little access to education, health benefits and transportation, many incidents of racial discrimination go unreported. Moreover, black Latin Americans are over-represented in the prison systems of Latin America and are often subjected to random searches and harassment by police. Not surprisingly, Afro-descendant communities often view the policing authorities with suspicion and thus are reluctant to report cases of criminal discrimination.

Rights and concerns

Afro-Latin Americans fare poorly in areas of employment, health and education compared to their white and *mestizo* counterparts. According to the International Development Bank, for example, Afro-Latin Americans have higher infant mortality rates in many areas of South America. Areas with a higher proportion of Afro-descendants, such as Piura, Peru have historically reported higher infant mortality rates (93 per 1,000 live births), compared to the more *mestizo* city of Lima (45 per 1,000 live births) in the 1990s. Similar ratios have been reported among black people in the costal regions of Colombia, compared to other regions and among black Brazilians compared to white Brazilians. Afro-Latin Americans are over-represented among street children, the homeless and among prisoners in Brazil and Venezuela; and they continue to live in humiliating social and cultural environments in countries such as Uruguay and Ecuador. In Mexico and Argentina, their historical contributions and actual presence continues to be ridiculed, downplayed or even ignored. Moreover, Afro-Latin Americans face strong pressures to assimilate even though assimilation itself has not garnered them actual economic, political or social security. Patriotism and nationalism have routinely collaborated to coerce Afro-Latin Americans to ascribe to a sense of unified nationhood and to deny their ethnic traits or to ignore group needs in favour of national interests. Women of African descent face significant challenges of sexual violence, rape and access to jobs and education. National media and tourist industries continue to present limiting and one-dimensional stereotypical and sexualized images of black women in places such as Bahia, Brazil and Havana, Cuba. Meanwhile, many single black mothers face the daunting task of raising

their children alone on menial salaries. Only in the 2000s is there evidence that black consciousness movements are beginning to effect change in Latin American societies, although in many areas individuals still do not identify (politically, socially or culturally) with one another on the basis of racial ancestry. Thus, education and consciousness, both inside and outside the community, remain critical on many levels.

Global trends

Despite the historical invisibility of Afro-Latin Americans on the world stage, the period between 2000 and 2005 witnessed numerous international conferences which brought their plight to the forefront. The 2001 World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban represented a watershed in the rights movement in Latin America, and continues to be an important reference point to this day. Latin Americans of African descent were energized by the historical opportunity to present their views to the international community. Almost all Latin America countries were present and signed up to the conference's resolutions. Representing Brazil, Minister of Justice José Gregori recognized his country's racist past and pledged dialogue with the country's black movement, for example. Although the Argentine Minister of Justice and Human Rights Jorge Enrique de la Rua did not mention Afro-descendants by name, the Argentine presence along with other Latin American nations such as Paraguay, Peru, and Panama, and their signing of the anti-discrimination measures taken up by the conference, marked a new era in international discussions of race in the region. Afro-Latin American NGOs, which had participated in a number of preparatory meetings in dialogue with their governments prior to the Durban congress, were also present in full force in Durban, a week before government officials arrived. This new consciousness resulted in the historic commitment by some 20 Latin American governments to the idea that peoples of African descent: 'should be treated with fairness and respect for their dignity and should not suffer discrimination of any kind based on origin, culture, skin colour or social condition.'

During 2003–5, black Latin Americans and their allies have organized a number of regional conferences, published several policy papers, and created networks to help promote Afro-Latin American issues. Institutions such as the World Bank, the Organization of American States, the Inter-American Development Bank (IDB), and the Inter-American Dialogue have become important allies to Afro-Latin American NGOs throughout the region. Networks in the United States such the Global Afro Latino and Caribbean Initiative (GALCI), and the TransAfrica Forum have also played important roles. Regional networks such as AFROAMERICA XXI comprised of over 60 black NGOs, and Afro-Latin American elected officials in Spanish-speaking countries represent an impressive development, although no regional organization to date has brought together people of African descent from all the Latin American and Caribbean countries.

A number of other regional conferences in Central America, Brazil and the Caribbean have discussed ways to meet local, regional and international goals, while sharing experiences at the same time. In 2003, UNESCO's 32nd General Conference adopted an international convention to safeguard intangible cultural heritage and listed specifically at least two Afro-Latin American population cultural practices: the Garifuna language, dance and music of Belize, and the rites of the Congo Kings in the Dominican Republic. On 5 August 2005, UNESCO supported the city of Esmeraldas, in collaboration with indigenous and black organizations, to create the Esmeraldas International Centre for Afro-Indoamerican Cultural Diversity and Human Development. It is also significant that the Organization of American States' Inter-American Commission on Human Rights (IACHR) now includes the status of Afro-Latin Americans as a policy area and has established the position of rapporteur on the rights of people of African descent. Latin American activists and government signatories to the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance Declaration also agreed, 'to incorporate a gender perspective in all programmes of action against racism, racial discrimination, xenophobia and related intolerance …'

At the regional and national levels

Latin American states have instituted a number of important policy instruments since Durban. Paraguay and Honduras ratified the 1965 UN Convention on the Elimination of Racial

Discrimination, joining 17 other Latin American nations. In one of the most significant regional events since Durban, legislators of African descent from around the region held their first meeting in Brasilia on 21 November 2003. This unprecedented event brought together people from eight Latin American countries (Brazil, Colombia, Costa Rica, Ecuador, Panama, Peru, Venezuela and Uruguay) and from the United States. The first meeting was followed by the Second Meeting of Legislators of African Descent in Santa Fé de Bogota, Colombia on 19–21 May 2004. At the end of the congress, legislators published the Bogota Declaration, in which they highlighted and reaffirmed their identities as Afro-descendants, recognized the paths of their ancestors and reiterated the commitments of national governments to the actions outlined in the declarations and plans of action of Durban. The third meeting of Afro-descendant legislators took place in Costa Rica on 28–31 August 2005; 135 participants from 19 countries discussed ways of fostering democratic participation among Afro-Latin Americans and other collaborative projects.

Activities among Latin American states indicate that some progress is being made, although more work in terms of implementation and monitoring of programmes needs to occur. Discrimination and maltreatment can be especially violent in poorer areas such as the *favelas*, the *pueblos jovenes* and in the shantytowns, where police forces still often act with impunity. In Brazil, Colombia, Peru and Venezuela, poverty, lack of educational opportunities, and the lack of proper sanitation, electricity and running water remain among the greatest challenges to Latin Americans of African descent.

Brazil

Countries such as Brazil and Colombia have made the most dramatic progress nationally. The Palmares Foundation, established in 1988, continues to function as an important state institution for the accreditation and granting of lands to communities of the descendants of enslaved Africans, although for many activists the process is too complex and lengthy. Articles 215 and 216 of the Federal Constitution mandate the protection and preservation of these federally certified lands (or *quilombos*) and the Palmares Foundation assists in the securing of land titles to the Afro-descendant communities. To date, the foundation has identified 743 *quilombo* communities, 42 of which have been officially recognized and 29 of which have received titles. The majority of Afro-descendants in Brazil live in urban areas, the majority in the *favelas*, with no land titles or ownership of property. Monumental strides have taken place under the government of Luiz Inácio 'Lula' da Silva, at least symbolically. For the first time in its history, four of the national ministers are Afro-Brazilians, three of them women (Benedita da Silva, Minister of Social Services; Marina Silva, Minster for the Environment; and Matilde Ribeiro, who heads the Ministry for the Promotion of Racial Equality. The man, Gilberto Gil, is Minister of Culture. Federal universities around the country have continued to implement affirmative action programmes, and the federal government has mandated the teaching of African and Afro-Brazilian history in high schools and universities. Despite these advances under the ruling Workers' Party (Partido dos Trabalhadores, PT) of President 'Lula' da Silva, after two years Afro-Brazilians have not seen any major social or political changes which have benefited their communities. Moreover, the 2005 political crisis, which exposed corruption within the PT, has disappointed Brazilians and has shifted time and resources away from social programmes as the PT defends itself against allegations of corruption.

Brazil has also been in the forefront of affirmative action programmes, although not without controversy. Education Minister Paulo de Renato Souza voiced his concern that unprepared students might enter universities and he has called on the Inter-American Development Bank for US$10 million to help prepare Afro-Brazilian students for entrance exams. President of the High Court of Justice Paulo Costa Leite expressed concern that quotas represented an artificial way to allow black people to ascend in society, and that this may aggravate prejudice, although the federal court has declared the quotas constitutional.

Debates about reparations and affirmative action programmes for Afro-descendants continue to engender fierce debates across the region.

Colombia

Most Afro-Latin American activists and black NGOs support positive discriminatory practices in education and employment that benefit poor black communities but they warn against imitating

Above: Afro-Brazilian woman, Salvador da Bahia, Brazil. Jeremy Horner/Panos Pictures

programmes in the United States, which they see as strengthening the middle class but doing little to ameliorate the problems of the masses of poor blacks. Afro-Columbians gathered over 23–25 September 2005 in the first International Seminar on 'Truth, Justice, and Reparation for Afro-Colombian People for the Crimes of Slavery and Contemporary Violence'.

In Colombia, the 1993 Federal Law 70, which assigns seats in its National House of Representatives to Afro-Colombians, remains fully intact and has empowered Afro-Colombians and their communities, despite the ongoing civil war which has adversely affected them. Colombian law also acknowledges collective land rights for Afro-Colombian communities and mandates that Afro-Colombian history be taught in the secondary school curriculum. Constitutional laws, which have ensured Afro-Colombian political leadership on the national and regional levels, has also led to internationally visible organizations working on behalf of Afro-Colombians such as the Afro-Colombian Mayors' Federation (Mr Oscar Gamboa, International Affairs Director) and the Congressional Black Associates (Yul Edwards, President).

Positive developments

Other positive developments have been reported in countries such as Honduras where authorities are creating a national programme for indigenous peoples and people of African descent. The Peruvian government established the National Commission on Andean Amazonic and Afro-Peruvian Peoples (CONAPA), although the body has few resources and no legal authority. Both Peru and Ecuador have anti-discrimination laws on the books. The 1997 Anti-Discriminatory Law remains important for Peruvians, as does the 2001 Afro-Ecuadorian People Law, although both remain largely symbolic since citizens have not been able to take human rights violators to court. NGOs throughout the region continue to play an important part in highlighting the needs of the Afro-Latin communities and in raising awareness among people of African descent. Through the Internet and cross-national alliances, many have garnered resources and acquired expertise that can be invested in the community.

NGOs such as Geledés in São Paulo Brazil, MundoAfro in Uruguay, the Centre of Afro-Costa Rican Women, and the Ecuadorian NGO Grupo Africa Mía continue to work for the rights of women of African descent who face discrimination in all sectors of Latin American society.

At the Congress of Legislators of African Descent, for example, delegates demanded that Ecuador discuss and approve a statute of racial equality. Throughout 2005, and Afro-Venezuelan NGOs have pressured the Chavez government to collect data on black people in the next census. In 2005, the Network of Afro-Venezuelan organizations, made up of 30 groups from around the country, petitioned for reform of the Constitution so that it recognizes multi-ethnicity and respects Afro-Venezuelan rights.

Human rights violations

Human rights violations among Latin American populations remain alarmingly high, although the situation varies considerably from country to country. In countries such as Brazil, Colombia and Venezuela, with large populations of African descent, abuses range from disappearances, extra-judicial executions, torture and unequal treatment in the economic, social and political spheres. In others, such as Argentina, Mexico, Paraguay and Uruguay, where Afro-descendants constitute small minorities, marginalization, prejudice and invisibility still plague hundreds of law-abiding citizens because of the colour of their skin. Reports of discrimination against Afro-Cubans, particularly in the Cuban tourist industry, continue to mount, although in the absence of a thriving civil society this issue remains unexplored on the island. In Brazil, Cuba, Peru, Venezuela and elsewhere, activists are joined by popular musicians, particularly rappers, who denounce racism in their art.

State-sponsored brutality

Government agencies have proven ineffective in curbing violence and in enforcing national and regional laws, while human rights violators continue to go largely unpunished. In Brazil, for example, in 2004 and 2005 hundreds of civilians were killed by police, the majority of them of African descent, allegedly as a result of gun battles, in the pursuit of criminals, or in the government's war against drug smugglers. In one highly publicized case, police murdered the black dentist Flávio Ferreira Sant'Ana from the poor São Paulo neighbourhood of Santana because he was mistaken for a criminal. Police

reportedly planted a gun on his body and reported that he was killed in a shoot-out. His family was subsequently harassed because they made a formal complaint against the police officers who shot Sant'Ana, and argued that the shooting was racially motivated. Police brutality in the overcrowded prisons of Brazil, where people of African descent are over-represented, continues to be a major problem that has led to protest and riots.

The April 2004 prison riots in the Urso Blanco penitentiary system in the Amazon state of Rondónia, which resulted in inmate-to-inmate violence and 14 deaths, is unfortunately not an anomaly. The prison, which was built for 360 inmates, held 1,000. In addition to the racial violence perpetrated by state authorities, paramilitary death squads also continue to flaunt their power. In August 2004, death squads in the city of São Paulo severely beat 15 homeless people, 12 of whom were of African descent. Six of the wounded died in what officials called the most brutal attack on the homeless in Brazil since the 1992 Candelaria massacre in the city of Rio de Janeiro (reports of the number of victims of African descent vary). A 2003 study by Brazil's Economic Research Institute Foundation found that there are 10,000 homeless who sleep in the São Paulo streets, squares, underpasses, thoroughfares and cemeteries. Afro-Brazilians make up the majority of this figure.

In Venezuela, the popular classes, including many Afro-Venezuelans, have supported the government of Hugo Chavez, although his support among Afro-Venezuelans is hardly unanimous. As in Brazil, Venezuela suffers from violent crime that disproportionately affects people of African descent. Police often take the law into their own hands, abusing their power and authority in poor neighbourhoods where Afro-Venezuelans are in the majority. Black Venezuelans are also over-represented in prisons where deplorable conditions and overcrowding lead to similar problems as in Brazil.

Civil war

The scenario in other Latin American countries is equally bleak. In Colombia, the civil war continues to ravage Afro-Colombian communities. The Colombian United Self-Defence Forces of Colombia (AUC), a paramilitary organization, remains one of the major destabilizing forces together with the leftist Revolutionary Armed Forces (FARC). Cases of disappearances and torture among civilians continue to be high. In 2004, almost 1,500 were kidnapped and over 250,000 were forced to leave their homes. Colombia's government has followed the United States' lead in evoking the War against Terrorism, as a rationale for not pursuing human rights violators, a move that has often left Colombian activists in a precarious situation. Despite the official constitutional protection of Afro-Colombian community land, Afro-Colombians have been forced to leave their homes and flee guerrillas and paramilitary groups. In addition, the land is being taken over by multinationals interested in cultivating the area for palm production. According to Marino Cordoba, founder of AfroDes (Association of Afro-Colombian Displaced Persons), attacks against Colombian communities remain high and have 'resulted in more than three million internal refugees in Colombia, 40 per cent of whom are black'. The military offensive against rebel guerrillas and paramilitaries outlined in 'Plan Colombia', which the US has supported with US$3 billion in five years, increased opportunities for armed battles in black communities.

Discrimination

Jorge Ramírez, a lawyer who heads the Black Association for the Defense and Advancement of Human Rights in Peru, has documented the unfair treatment of Peruvians of African descent in the labour force and the stereotypical and limited portrayal of black people in the Peruvian media. 'Racism in Peru is not in the laws,' according to Ramírez. 'It's in the mentality of the people.' Uruguayan sociologist Susana Rudolf's study in 2003 and 2004, reached similar conclusions in Uruguay. According to Rudolf, racism inhibits the advancement of Uruguayans of African descent in school and in the labour force. In this small country of just over 3 million, the black population is estimated at about 180,000, the majority of whom make up the poorest strata of Uruguayan society.

In Mexico and Central America, the minority rights situation is mixed. In Panama, black people remain conspicuously absent from positions of political and economic power. The city of Colon, with its majority of African descent (many Afro-descendants of English-speaking migrants from the 19th and early 20th century), continues to suffer from the lack of government services. The Garifuna,

a population that lives in 36 northern costal communities along Central America's Atlantic coast, including the municipalities of Limón, Irona, Colón, and Juan Francisco Belnes and Gracias a Dios (Mosquito Coast), continue to struggle to preserve their unique cultural heritage and language. Bilateral agreements such as the Agricultural Education Program for Growth and Sustainability, between Canada and the Garifuna, are indicative of positive bilateral cooperation.

Since the September 2001 National Forum for Diversity and Pluralism in Quito, many in the Andean regions of Bolivia and Peru and in the costal region of Ecuador have called for a number of measures aimed at benefiting indigenous and Afro-descendant communities, including agrarian reform programmes which take into account Afro-Latin American traditional agriculture; credit and technical assistance, which historically have only gone to *mestizo* controlled businesses; and systems which allocate land titles to peoples of African descent.

Poor Afro-Mexicans face similar problems, which undermine their ability to stake out a life of dignity. Moreover, as in Argentina, Afro-Mexicans are not conceived or included as a part of the contemporary body politic. In spring 2005, the population of African descent in Mexico received unexpected attention when Mexican President Vicente Fox remarked that 'Mexican immigrants (to the United States) take jobs that blacks don't even want,' reflecting a deep prejudice about people of African-descent. Tensions heightened during summer 2005 with the release of the commemorative stamps of the central character of the 1940s Mexican comic book *Memim Pinguin*, a stereotypical black image that resembles the racist sambo images of the United States. The Mexican government claimed that although North Americans may be offended (it was denounced by various civil rights groups in the United States), Mexicans were not since the image represented a part of Mexican culture. Fox's comments did not take into account the voices of the small and isolated black communities of Mexico's Pacific coast, who have remained marginalized for centuries.

Indeed, like their Afro-Colombian and Afro-Venezuelan counterparts, Mexicans of African descent have been forced to leave their homes for economic or political reasons and many have made their way to the United States and Europe. Included among the many Latin Americans of African descent who have become forced migrants or refugees in 2005 are Haitian immigrants and their descendants in the Dominican Republic. Haitians in the Dominican Republic continue to face widespread discrimination and are summarily deported. Many others lack any resources and do not understand their legal rights in their new country. In addition, as a new wave of African immigrants begin to move into countries such as Argentina, Chile and other Latin American countries where people of African descent are not necessarily visible, their experiences are beginning to be documented.

Conclusion

The period 2004–5 represented an important watershed in the development of regional cooperations of peoples of African descent in Latin America since Durban. Yet the level of human rights violations against Afro-Latin Americans across the region remains high. In many cases, governments are constrained by small national and local budgets but, in many cases, officials do not even speak out with rage or moral authority, and the media continues to overlook violations that affect poor and marginalized communities. Nonetheless, local activists and NGOs continue to work diligently with young men and women who want to create a just society in which cultural, ethnic and racial differences are accepted if not celebrated.

Some scholars have pointed out the dangers of utilizing strategies of racial and cultural identities to secure group rights while overlooking racial inequalities and endemic practices which result in disenfranchised citizens. In the 2000s, institutions such as the World Bank and the Inter-American development Bank have focused their attention on micro-development and the amelioration of poverty among Afro-descendants. Some Colombians, Ecuadorians, Garifuna in Honduras, and members of *quilombos* in Brazil, see securing regional rights as important. Most NGOs understand that international alliances remain important in their quest for broader inclusion in national societies. Given the diversity within black communities in Latin America it is not surprising that Afro-Latin Americans rely on multiple approaches to the social, economic and cultural obstacles that stand in their way. ■

Latin America: Indigenous Peoples

Theodore Macdonald

Any survey of rights needs and opportunities culled from a map of Latin American indigenous peoples' demographics, political openings, organizations and external pressures appears, at first glance, to be a landscape as heterogeneous as the peoples themselves. However, by focusing on patterns and processes, the apparent patchwork reveals similar norms and actions – some new, some old – that now run down the densely populated Pacific rim and onto the sparsely populated but resource-coveted lowland plains of the Caribbean coast and the Amazon basin. Indigenous peoples throughout the entire region, now marked by hundreds of local, regional, national and international indigenous organizations that have emerged and coalesced over the past 25 years, have become more vocal and visible, whether reacting to violations or demanding a voice in policy development. This brief review focuses on the patterns and processes, drawing from illustrations rather than attempting continental coverage.

Overview

When, in December 2004, the UN's first International Decade of the World's Indigenous People closed, the situation of Latin America's approximately 40 million indigenous peoples was one of contrasts. Cultural Survival's interviews with participants at the UN Permanent Forum on Indigenous Issues indicated that 'the accomplishments were far outweighed by what has been left for the future'. Their marginal and impoverished situation remains little changed. A May 2004 World Bank study on indigenous peoples and poverty emphasized, 'indigenous peoples in Latin America have made little economic and social progress in the last decade, and continue to suffer from higher poverty, lower education, and a greater incidence of disease and discrimination than other groups'.

But in terms of international visibility, national and international organization, strategic mobilization, use of the electronic media, and placement within politics and political life, indigenous people have moved themselves into a new world. They are supported strongly by national and international laws, and have received unprecedented attention from international and national courts, legislators, lending agencies and NGOs. Perhaps more than in any other part of the world, Latin American indigenous peoples can now benefit from international conventions, agreements and policies that provide avenues for realizing their individual human rights as well as the group-differentiated rights accorded to national minorities living in states created and dominated by other groups.

Foremost among the supportive international conventions is the International Labor Organization's Convention concerning Indigenous and Tribal Peoples in Independent Countries (ILO Convention No. 169). Of the 17 states that have ratified ILO Convention No. 169, 13 are in Latin America – Argentina, Bolivia, Brazil, Colombia, Costa Rica, Dominica, Ecuador, Guatemala, Honduras, Mexico, Paraguay, Peru and Venezuela. (The others are Denmark, Fiji Islands, the Netherlands and Norway.) No non-Latin American country, other than Fiji Islands, in the developing world has ratified the Convention.

Equally if not more important, indigenous peoples directly participated in the drafting of ILO Convention No. 169. Participation – voice and presence – now permeates key articles in the Convention as well as the new Constitutions of Brazil, Colombia, Ecuador and Peru. Similar participatory roles and rights appear throughout the ongoing formulations of the Organization of American States (OAS) Draft Declaration on Indigenous Rights and the Inter-American Development Banks' 'Operational Policies Regarding Indigenous Populations' in several joint sessions (May 2004 and April, June and October 2005). Though rewriting of the UN Draft Declaration on the Rights of Indigenous Peoples is stalemated and the new World Bank guidelines for development work with indigenous peoples have been critically debated and challenged, the idea that protection can be created for, without the direct participation of, indigenous peoples is now unacceptable.

Several recent decisions of the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights, most noticeably the Awas Tingni case reviewed below, have significantly advanced indigenous rights claims. Likewise, the newly established (2001) UN special rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, Rodolfo Stavenhagen, has already been invited to and reported on Chile, Colombia and Guatemala.

One of the special rapporteur's main observations has been that there is an 'implementation gap' between public practice and national/international law. In October 2005, he convened an 'Expert Seminar on Implementation of National Legislation and Jurisprudence Concerning Indigenous Peoples' Rights: Experiences from the Americas' to review cases and seek remedial procedures. The observations were confirmed, and there is now an ongoing search for remedial approaches.

Meanwhile Latin American indigenous organizations in nearly every country have worked to meld facts on the ground to norms on the books by convening regular national and international forums that range from meetings of indigenous leaders and legislators (October 2005) to an Indigenous Global Forum that will parallel the heads of states meeting in Argentina in November 2005. As such, indigenous peoples of the Americas are placing themselves and their agendas into debates and discourse on national and international rights, particularly as they relate to land and resources. They have also undertaken self-determination projects – illustrated here from Colombia, Ecuador and Nicaragua – to demonstrate how rights should be practised. Rather then simply responding to persistent violations – loss of land, unauthorized development of natural resources, or inadequate health care and education – indigenous peoples are positioning themselves for greater participation, consultation, informed consent and, through them, greater self-determination. Latin America's indigenous peoples are thus creating opportunities to advance their own capabilities while also locating themselves as bellwethers on a Latin American political landscape frustrated by corruption and the lack of participation, as detailed in the striking 2004 United Nations Development Programme (UNDP) report *Democracy in Latin America*. The boundaries between universal human/civil rights and 'special' group-differentiated rights thus become quite porous. Many indigenous communities and organizations now serve as beacons, refracting and multiplying previously unique indigenous political, social, economic and governance concerns onto receptive national populations, thus projecting images for a more discursive multicultural world.

Rights issues

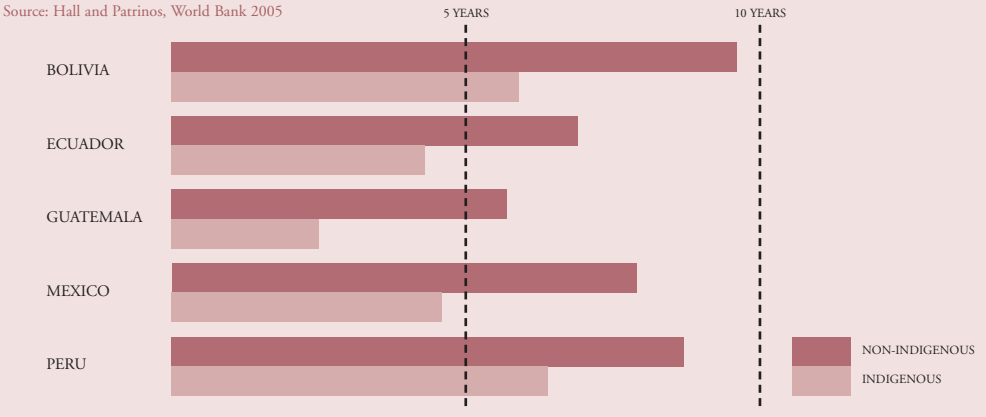
Current rights issues fall into two categories, the persistent and the new. While some might suggest a third category for war-torn Colombia, where indigenous communities have been disproportionately affected, that country's indigenous peoples share many of the region's problems and their organizations' actions illustrate many of the indigenous experiments in self-determination, albeit in noticeably higher relief.

Persistent issues: new terms

Beginning in the mid-1980s, as electoral democracies replaced military dictatorships in the region, a 'rights cascade', unique to Latin America, occurred. Particularly in those countries with the worst human rights records – Argentina, Chile,

Schooling gap between indigenous and non-indigenous population
Average years of schooling, population 15 and older, latest available year

Source: Hall and Patrinos, World Bank 2005



Guatemala and Mexico – outrage and shame led to rapid ratification of international conventions and national legislation to meet international standards. Systematic violations of political and civil rights, rationalized by state actors as a means to stop the advance of communism, are no longer acceptable.

Violations against indigenous leaders, and thus the need to secure protective rights to the groups they represent, nonetheless persist. Also, as will be discussed later, there are now demands for mechanisms that respond to prescriptive needs – expanded citizenship rights emphasized by many indigenous organizations and educational and health deficiencies emphasized by the 2004 Word Bank study. While there are few accusations of systematic state-supported violations of indigenous peoples' basic civil and political rights, some states have failed to provide adequate protection and, on occasion, state actors still participate in rights violations, particularly in Brazil, Chile and Colombia. While specific contexts vary, persistent claims surround access and rights to land and natural resources, and the national and local development of each.

Land and natural resources

Brazil

Brazil's populist president Luiz Inácio 'Lula' da Silva has alienated indigenous peoples in two ways. His embrace of neoliberal economics and agri-business has stalled many of the land titling actions, leaving his government with, arguably, Brazil's worst indigenous rights record since the military regimes left power in 1985. The April 2005 'Indigenous April', inspired by the 2004 Landless Workers Movement (MST), drew attention to land needs and put pressure the government to demarcate and title new reservations, as it is now obliged to do by the Constitution.

In July 2005, after much delay, Brazil awarded land title to the Macuzi in a violently disputed case in Roraima State. However, violence and killings continue to mark relations between indigenous peoples and landowners. In addition, and clearly linked to the demands for land and resources, indigenous leaders and other land rights protesters have been killed by suspected agents of large landowners and agri-business (largely soy bean) seeking access to indigenous lands. Amnesty International argued that the government has 'laid the foundation for the current violence' and cited 'the continuous failure of the Brazilian governments to act effectively to protect indigenous communities'. Violence against Brazil's 700,000 indigenous peoples, most of whom live in the resource-coveted Amazon region, is a clear mark against a government that started out promising democracy and an end to corruption.

Bolivia

In Bolivia, most of the country and the world's press have focused on the riots and indigenous-led Andean movements and subsequent presidential changes, which cannot be adequately detailed in this brief review. Meanwhile, other actions have gone largely unnoticed. Among these are killings and other violence against indigenous leaders in the lowland region around Santa Cruz. Thugs and others said to be in the employ of large landowners have begun systematic attacks on local indigenous groups, principally the Guarani peoples of the region, whose land rights will become even more precarious as the separatist movement led by landowners and industrialists seeks greater regional autonomy.

'Terrorism'

The term 'terrorist' has, in many places, replaced 'communist' as means to justify suspension of basic rights to freedom from persecution, assembly and participation, as well as to avoid dialogue and deliberation over issues such as land and resources. Challenges to the state have been met with responses that adopt a lexicon that links political opposition to international terrorism. Invoking such terms, as in many others parts of the world, takes advantage of the US government's 'War on Terrorism'. In Latin America, international terrorism links are occasionally suggested for indigenous organizations in Bolivia, Ecuador and Guatemala, but the most open charges have appeared in Chile and Colombia.

Chile

Land and resource disputes have long pitted indigenous Mapuche communities against private landowners and, more recently, lumber companies in southern Chile, one of the few Latin American countries that has not provided constitutional recognition of indigenous people or ratified ILO Convention No. 169.

Government efforts to break up indigenous community lands have been under way since the

early 1980s military dictatorship, but over the past two years indigenous efforts to secure communal land titles have produced startling government responses. A 2004 joint report by Human Rights Watch and the Chile's Indigenous Peoples' Rights Watch noted that some indigenous protest had shifted to the 'use of force, such as the blocking of roads, occupation of disputed land, felling of trees, setting fire to manor homes, woods and crops, and sabotage of machinery and equipment'. The Chilean government consequently charged over 200 members of the one group that advocated violence, the Coordinadora de Comunidades en Conflicto Arauco Malleco (the Arauco Malleco Coordinating Group of Communities in Conflict, CAM), with crimes of illicit terrorism ('conspiracy to commit acts of terrorism'). In November 2004 six of those charged were tried and acquitted. In April 2005 the Chilean Supreme Court annulled that decision. A retrial for the six accused was held in July 2005 and the court once again rejected charges of 'illicit terrorist association' for activities that threatened property not human life. Rising tensions and violent responses prompoted a 2003 visit by the UN special rapporteur. Mr Stavenhagen defended the Mapuche's right to protest and added that charges of terrorism and criminal association were unacceptable in such circumstances and should be dropped.

Colombia

Colombia, one of two Latin American countries to support actively the US war in Iraq, was rewarded with 'terrorist' status for its armed insurgents – the left-wing Colombian Revolutionary Armed Forces (FARC) and the National Liberation Army (ELN) guerrillas as well the right-wing Colombian United Self-Defense Association (AUC) – and received US economic support. Subsequently, President Alvaro Uribe drew national and international criticism and condemnation when he stated publicly that international human rights groups were either sympathetic to the guerrillas or naïve with regard to their interests. Similar suspicions were raised about indigenous organizations, highly visible and active in a country where indigenous peoples make up less than 3 per cent of the population.

Perhaps the most notable example took place in September 2004 when Colombia's most numerous indigenous group, the Nasa, organized a large march – 'Minga [communal action] for life, justice, happiness, freedom, and autonomy' – from the Andean city of Popayan to Cali on Colombia's Pacific coast. President Uribe initially sought to discredit this highly publicized 50,000-strong non-violent protest march by arguing that it was an opportunity for terrorist infiltration and attacks, but later shifted his argument and stated that the event was 'politically motivated' by opposition politics. The national and international press sharply critiqued the unsubstantiated claims. Nevertheless, the events illustrate the president's exclusive focus on ending, militarily, the armed conflicts without contemplating input from or discourse with civil society. Meanwhile, as described below, the Nasa have established independent 'civic guards' in response to armed violence and demonstration of self-determination.

Right: Elderly Mayan Indian woman, Guatemala. Jeremy Horner/Panos Pictures

Free trade

The violence in Brazil and challenges in Chile illustrate what many fear from the impact of neoliberal free trade on indigenous peoples, who are seen as bearing the brunt of reduced public services and minimally controlled economic competition. Free trade has been the subject of much critique by indigenous organizations, with occasional public demonstrations but largely regular anti-free trade statements in the Andean countries. Over the past two years negotiations have shifted from hemispheric Free Trade in the Americas Accords (FTAA), to sub-regional and bilateral negotiations. While the Central America Free Trade Agreement (CAFTA) has been approved, the parallel Andean Free Trade Agreement has been modified, perhaps scrapped, and replaced by bilateral negotiations between the US and Colombia, Ecuador and Peru (Venezuela dropped out in protest and in Bolivia violent indigenous-led protests have halted talks).

While the expressed concerns lie in the inability of indigenous smallholders and subsistence farmers to compete economically, the debates are not limited to comparisons with Chile and Mexico under NAFTA. They also illustrate new and widely held concerns about indigenous self-determination and participation in negotiations. Indigenous organizations seek – thus far with little success – an informed and active voice as negotiations progress in Colombia, Ecuador and Peru.

Oil and natural gas

Oil and gas exploration and development – largely in the Amazon Basin of Colombia, Ecuador and Peru, as well as the Bolivian Chaco and Argentina's lakes region – is the arena in which land and resource rights are most publicly and frequently contested. Natural resource development – mining in Peru and water rights in Peru and Bolivia – has sparked similar local protest and international alliances.

The disputes are, on the one hand, part of the long-term debate concerning the trade-offs between national development and indigenous land rights. However, what has changed recently is the nature of the indigenous defence. While the always-questionable national development argument persists for some, indigenous protests now emphasize rights to information and consent regarding the use of resources in indigenous lands, property rights and contamination of lands and rivers.

Some proponents of national development suggest that indigenous organizations will simply hope to invoke a 'veto' and thus threaten essential foreign investment. However, international treaties such as ILO Convention No. 169 more precisely frame the debate. The Convention obligates states to provide information, undertake consultation and, wherever possible, obtain consensus before undertaking development projects. In addition, extractors must do no harm – economically or culturally – to indigenous communities and must provide direct economic benefits from any subsoil development project.

Oil development is no longer a simple pro/con development debate. It has now become a participatory and rights-based argument as to whether or not large-scale development programmes can take place on indigenous lands and, if so, the obligations on the state and other actors to obtain agreement regarding the manner in which development is undertaken.

Oil and natural gas debates, following the highly contested cases of Texaco in Ecuador and Occidental in Colombia, have been the source of recent and highly publicized protests including those over gas extraction in the Bolivian Chaco and on Machiguenga lands of Camisea, Peru (by Repsol-YPF); and oil extraction in Achuar lands of Ecuador's Pastaza River (by Burlington) and Loreto Province of Peru (by Occidental) and Kichwa lands on Ecuador's Bobonaza River in Ecuador (by CGC of Argentina). Each of these cases is made more complex by the absence of clear or widely accepted rights-based rules and regulations – particularly with regard to informed prior consent – which are the obligation of the state.

New rights recourses and concerns

The cases cited above illustrate that many of the current rights violations and debates are 'classic' cases of land and natural resource disputes. What is new is the rights-based approach to these and other issues. The obligations articulated in the landmark ILO Convention No.169 have been incorporated in the subsequent national constitutionalizations and the aggressive support of the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

International regimes

Among the many claims received and acted upon by Organization of American States human rights

bodies, perhaps the most significant opinion was that handed down in September 2001 by the Inter-American Court of Human Rights in its historic decision in favour of the Nicaraguan Indian community of Awas Tingni ('The Case of the Mayagna (Sumo) Indigenous Community of Awas Tingni against the Republic of Nicaragua'). Presented with evidence of state permission to undertake logging on indigenous land without informing or seeking consent of the communities, the courts, drawing on the American Convention on Human Rights (Nicaragua has not yet ratified ILO Convention No. 169), recognized as indigenous community 'property' Awas Tingni's lands of traditional use and occupancy.

The precedent-setting capacity of the Awas Tingni case is currently illustrated by the highly publicized charges brought by the Ecuadorian Lowland Kichwa community of Sarayacu against oil development on community land. Their complaint was accepted by the Inter-American Court of Human Rights in 2004 and, following months of intransigence by the regime of recently ousted President Lucio Gutierrez, his successor, President Alfredo Palacio, initially agreed (mid-2005) to accept the recommendations and seek a friendly settlement with the community. However, violent August 2005 protests in Ecuador's oil-rich northern jungle region (Oriente) have disrupted the initially cordial relations of the new government with indigenous peoples, and challenged its will regarding good faith agreements.

Such legal decisions and political responses, even though the cases of both Awas Tingni and Sarayacu are far from final resolution, are impressive advances. Each, as with the local resistance efforts in Colombia and local discursive democracy in Ecuador reviewed below, illustrate new means to define and exercise concerns in terms of rights.

Colombia's Civil Guards

Indigenous organizations, most noticeably in Bolivia and Ecuador during the past decade, have led to movements and protests that have toppled and replaced presidents and governments, though with little resulting political change. However, in other areas indigenous efforts have focused on local self-determination. This has been most noticeable in Colombia and Ecuador.

In southern Colombia, the Nasa's 'civil guards' illustrate an impressive and daring response to armed violence. Colombia, alongside Guatemala and Peru in the late 1980s, stands out as the Latin American country where indigenous communities are caught in the crossfire between armed actors. Now their lands serve as the setting for much of the country's illicit drug traffic. But unlike Guatemala and Peru, the indigenous peoples of Cauca have said 'no' to violence and have created an independent mechanism to meet demands for peace in their communities. The Nasa, whose indigenous civil guards patrolled the Minga mentioned earlier, do the same for daily life in communities throughout Cauca. Armed only with wooden staffs of authority – *baras* – the guards protect the villages and have successfully confronted guerrilla groups who have recruited or kidnapped indigenous youth and leadership.

For their work the guards have won the National Peace Prize, the UNDP's Equator Prize for outstanding community leadership' and the UN Educational, Scientific and Cultural Organization (UNESCO) recognized two Nasa leaders as 'Masters of Wisdom'. The multiple award-winning response to violence by the country's largest indigenous group has also drawn needed attention to the disproportionate impact of Colombia's violence on indigenous peoples, in which populations are displaced and indigenous leaders are murdered at a rate far higher than in any other sector of society.

Participatory governance in Ecuador

As with Bolivia, national and international attention on Ecuador has focused on indigenous-led efforts to topple unpopular governments and place indigenous peoples in high government offices. Though dramatic, little substantive change has occurred as a result. By contrast in Cotacachi, a small Ecuadorian city north of Quito, the indigenous mayor, Auki Tituaña, has initiated 'participatory budgeting' by shifting budget priorities and public discourse away from of the main non-indigenous city and spreading funds across the predominantly Indian rural areas. He combined this shift with a crackdown on corruption and government mis-spending. A 2004 article in *The Economist* notes:

'Each year, he reports back to a three-day communal assembly. It all seems to work: Mr. Tituaña was re-elected in 2000 with 80 per cent of the vote (including

that of many mestizos). Such experiences show that the Indian movements can bring about a welcome deepening of democracy.'

This grassroots effort at governance suggests that, if and when ideas and practices of participatory governance move up the political ladder, this ladder will be reinforced by experienced and well-informed citizens.

Citizenship and self-determination

Ecuador's Sarayacu case and Colombia's civil guards have moved rights issues toward larger issues of citizenship, self-determination and dignity. Proactive stances are linked to wide demands for inclusion as equals, realized through consultation, dialogue and other face-to-face acts that provide an equitable mode of interaction in governance for indigenous organizations. These now-widespread actions began in the 1980s for Sarayacu's parent organization – the Organization of Indigenous Peoples of Pastaza (OPIP) – and with the 1991 Colombian Constitution for the Nasa's parent organizations – the Regional Indigenous Caucus of Cauca (CRIC) and the Colombian National Indian Organization (ONIC).

These indigenous organizations, like hundreds of others throughout Latin America, now demand increased participation in and consultation on policy development in economic planning and other aspects of governance that affect indigenous peoples. These prescriptive rights permeate the overall tone and specific language of international treaties, particularly ILO Convention No. 169 and the national constitutions that have incorporated the concepts.

Participation and consultation are considered to be the main policy thrust of the Convention. The concepts are included, explicitly or implicitly, in many articles. Indigenous people now have the right to speak for themselves in all matters that affect them. They must be consulted and must be allowed the right to participate actively in the consultations, not simply be informed after the fact.

The Convention specifies that the 'consultations shall be carried out in good faith and in a manner appropriate to the circumstances, with a view to reaching an agreement or achieving consensus on the proposed measures'. It further states that 'interested peoples shall determine their own development priorities and shall participate in the formulation, implementation and assessment of national and regional development plans and programs which may affect them directly'. Governments are now required to consult with indigenous peoples from the start over decisions that may affect them directly. Furthermore, the consultation process must be one in which the indigenous people can participate in an informed manner and have a say in all decisions on projects involving their lands, including the early stages when the project is being drafted.

Though most widely ratified in Latin America, these rights have been particularly difficult to implement where the state retains rights to all sub-surface resources. Attempts to establish rules, regulations and procedures for consultation – particularly prior consultation and participation – now required by national and international law have been unsuccessful in Colombia and Ecuador, have advanced somewhat in Bolivia and Peru, but remain un-institutionalized in every Latin American country. The dilemma explains, in part, the new emphasis on citizenship rights that seek to define indigenous peoples as equals, as well as those who deserve group differentiated rights.

Indigenous organizations' new 'citizenship' thrust is not simply an adoption or example of the new 'identity-based social movements' that have appeared throughout the world. Indigenous organizations continue to link their politics clearly to economic justice and equity. Consequently, they now occupy much of the political space previously claimed by exclusively class-oriented social movements. By adding ethnicity and cultural expression they move themselves beyond any ascribed 'working-class/peasant' status. This status has been clearly and successfully used in recent protests in Bolivia, Colombia and Ecuador, where specific claims are always associated with general demands for increased dialogue and thus political space. These concerns links indigenous peoples to many others in Latin America and lead many to accept indigenous rights as legitimate means to enhances broadly recognized rights.

Citizenship rights also parallel many of the 'classic' land and natural resource disputes and thus provide opportunities to understand and respond properly to indigenous interests in and approaches to a particular development project or government

policy. Inclusion in decision-making, for many indigenous organizations, has now become as important as responses to specific cases of rights violations. Many indigenous leaders suggest that persistent rights violations can best be treated, or prevented, though active participation in policy making and subsequent implementation within the national political arena.

These new indigenous roles fall, by and large, onto indigenous organizations. However, there are risks that the progressive 'professionalization' of leaders – the main actors in a complex, often international, and highly symbolic debate – is producing a gap between their goals and those of the local communities that they represent. The organizations, like any other legitimate representative group, will continue to have their legitimacy monitored by their indigenous constituency as well as their non-indigenous opponents or detractors. Political leaders must therefore accept a double burden. They must listen to and respond to local, often parochial, community needs, while also seeking to elevate citizenship issues in national and international arenas and institutions.

Horizontal dialogues with local communities will become as essential as vertical argumentation with state agents if the organizations are to realize the genuine discursive communities they aspire to. This double tension – the need to be heard and the obligation to listen – will, as much as any specific local rights violation, test the ability of Latin America's indigenous peoples to respond to the new rights opportunities, and political opportunities and openings that characterize the present Latin American political horizon. ■

Caribbean

James Ferguson

The main issue involving minority rights in the Caribbean is that of the migrant Haitian diaspora. Haitians fleeing both political violence and economic hardship are present in many territories across the region, and are often subject to persecution and discrimination. The Haitian diaspora in some cases dates back to the 1920s but in other instances is of more recent origin. In the neighbouring Dominican Republic, for instance, there have been substantial and settled Haitian communities since the beginning of the 20th century when large-scale sugar cultivation necessitated cheap imported labour. In other Caribbean territories, especially where tourism and construction provide informal-sector job opportunities, Haitian migration has expanded significantly in the last decade. Haitian minorities in the Caribbean therefore present a mix of settled and transitory communities. While many Haitians aspire to escape Haiti and reach the United States or Canada, significant numbers also aim to work and live in the Caribbean region itself.

Since the infamous massacre of Haitian migrants by Dominican forces in 1937, relations between Haiti and the Dominican Republic have been problematic. While relatively poor, with an estimated per capita GDP of US$6,300 in 2004, the Dominican Republic is nonetheless wealthier than Haiti (US$1,500 per capita). The shift in the economy of the Dominican Republic away from agriculture and towards tourism and export-oriented manufacturing has created strong growth since the 1980s. Haitian migrants, facing unemployment and hardship in their own country, are attracted across the border to work for lower wages than their Dominican equivalents. While some Haitian communities are based around the remnants of the traditional sugar industry, housed in the squalid settlements known as *bateyes*, increasing numbers of individuals and families are dispersed throughout the country, working in other forms of agriculture, construction, domestic work and informal trading.

It is not known how many Haitians or Dominicans of Haitian origin currently live in the Dominican Republic, but estimates range from 400,000 to 2 million. They face the contradiction of being needed as a source of low-cost and undocumented labour yet being widely discriminated against. Anti-Haitian feeling in the Dominican Republic is complex, but normally revolves around the perceived superiority of Dominicans' alleged Hispanic culture over the African traditions ascribed to Haitians. Race, colour, language, poverty and religion all play a part in anti-Haitian sentiment. The Haitian presence in the Dominican Republic is often described as an 'invasion', while Dominican politicians and media frequently point out that the country can ill afford to provide educational and medical services to Haitian migrants.

Recent events in the Dominican Republic follow a familiar pattern of arbitrary deportation and abuse long monitored by NGOs and human rights organizations, which estimate that some 45,000 Haitians are expelled annually. In May 2005, Haitian nationals were allegedly involved in the murder of a Dominican woman in the north-western town of Hatillo Palma, near the border with Haiti. After Dominican residents threatened violent reprisals against the Haitian community, Dominican military and police forces began the deportation of over 3,500 men, women and children, forcibly removing them to the border town of Dajabón. According to the Jesuit Refugee Service (JRS) and the UN High Commissioner for Refugees, the deportations targeted all Haitians, irrespective of whether they possessed appropriate documentation. Some Haitians were reportedly injured, their property stolen or destroyed and families separated in what the JRS called 'an indiscriminate, inhumane and illegal mass expulsion'. The Dominican authorities, according to the JRS, were in violation of international law, national migration law and an understanding of 1999 between the two states regarding expulsions.

Incidents such as this have occurred regularly from the 1980s onwards, but another legal obstacle confronts Haitians and Dominicans of Haitian descent in the form of nationality status. According to the Dominican Constitution, anyone born in the country is automatically considered a Dominican citizen, but a sub-clause dealing with persons 'in transit' is often applied to those of Haitian origin, even if their parents are long established and permanent residents. As a result, many thousands of people born in the Dominican Republic have no official documentation in the form of birth certificate or passport, and thus face severe difficulties in accessing education, health and other services. While the Dominican government has

granted some concessions, such as lifting the requirement for birth certificates for secondary school students in 2000, the problem remains. Neither the Dominican nor Haitian government has any interest in resolving it, as undocumented workers enjoy no legal protection or rights.

The Haitian diaspora spreads beyond the Dominican Republic, with many thousands of refugees arriving by boat each year in the Bahamas, Cuba, Jamaica and other Caribbean countries. In June 2005, the Jamaican authorities repatriated 309 Haitians whose requests for political asylum were rejected. Over 2,000 had been repatriated in 2004. Also in June 2005, Antigua and Barbuda repatriated 37 Haitian migrants. In the Bahamas, where many Haitians land en route to the US, some 2,000 migrants were deported in 2004, many within days of arriving. According to Amnesty International, abuses took place in the Carmichael Detention Centre in 2004, while many repatriations were conducted in violation of international law.

While many Haitians are repatriated annually, there is also a fixed minority population in the Bahamas. The number of Haitians living there is unknown, but estimates suggest that as many as 25 per cent of the population comprises 'illegal' migrants, many of whom bypass border controls. According to the conservative Freedom House, 'between 30,000 and 40,000 Haitians reside illegally in the Bahamas', while the Nassau Institute put the figure at 78,000 in 2005. With its relatively high standard of living, the Bahamas attracts migrant workers to menial and informal-sector employment, especially domestic work and undocumented manual labour. It is extremely difficult for the Haitian minority to regularize its status regarding residency and work permits, and this reinforces not only the undocumented nature of employment but also anti-Haitian feeling among Bahamians, as expressed in the media and by politicians as the 'Haitian problem'. ■

North America

Julia Seifer-Smith

United States president George W. Bush declared during his 2003 State of the Union Address that: 'Americans are a free people, who know that freedom is the right of every person and the future of every nation.' However, many civil, political, economic and cultural freedoms are distinctly absent for many people; from convicted-felon African-Americans in Georgia denied voting rights, to indigenous women and girls suffering disproportionately high incidences of violence in Canada.

The wide range of minority and indigenous groups making up the peoples inhabiting North America, and the number of legal jurisdictions existent in the United States (US) alone, does not permit a comprehensive account or analysis in the space allowed. This contribution is therefore limited to the more salient developments in the period under review.

Anti-terrorism measures

Following the events of 11 September 2001, both the US and Canada introduced domestic legislation to address homeland security in the face of a perceived terrorist threat; in both countries, such legislative acts have impacted negatively upon minority people, specifically Muslims and/or people of Middle Eastern or South Asian heritage. The political and social culture in North America has likewise had a chilling effect upon these communities' normal activities: men and women have attended mosque less frequently or stopped completely, whole families have left North America for their home countries, sometimes under unsafe conditions.

In the US, among other recent legislation like the Patriot Act I and II, the current material witness law has had an adverse effect upon the civil rights of members of minority communities. The Material Witness Act, dating from 1984, was enacted as a means of allowing the government to get witness testimony from persons who might otherwise flee to avoid testifying. The law is predicated upon the theory that if a court believes a witness's information to be 'material' to a criminal case, the witness can be locked up, but theoretically only for the time necessary for the deposition. Since 11 September 2001, the US Department of Justice has manipulated use of this Act for a different purpose: securing the indefinite detention of people whom the government has wanted to investigate as possible terrorist suspects. A Human Rights Watch report of June 2005, *Witness to Abuse*, found that detainees were denied basic access to justice, including a right to a public trial without delay, access to an attorney and being informed of their Miranda rights (the right to remain silent, right to an attorney, etc.). By using the law in this way, the government has imprisoned at least 70 men to date – all but one Muslim, at least three-quarters of whom are US citizens and 64 of whom are of Middle Eastern or South Asian descent. Since May 2005, the US Department of Justice's role in these men's futures has been determined: 42 were released, with 13 of them receiving a formal apology from the US government for wrongful imprisonment. On 9 September 2005, a federal appeals court determined that Jose Padilla, a Chicago-born Latino Islam convert, could be held indefinitely as an 'enemy combatant', overturning a South Carolina ruling that such detention violated Padilla's *habeas corpus* rights.

Canadian anti-terrorism acts (Bills C-36 and C-42) evoked similar concerns from minority communities. In November 2004, the Department of Justice asked community-based organizations about the impact that the Anti-Terrorism Act (ATA) was having upon their ethnic and religious community members. Representatives from various Arab and Muslim community groups stated that many in their communities felt 'singled out and humiliated by their government', fearful of wiring money to their families abroad, ill-informed of the ATA provisions and their rights; harassment of Muslim students by police, and surveillance of people and charities were also mentioned. Other minority groups, including African-Canadians, believed that the Act promotes racial profiling, in particular of young non-white males, and fuels racism of black- and brown-skinned communities. In their June 2005 report, the Canadian Arab Federation asserted that the ATA has had a chilling effect on individual participation in religious or cultural community events out of fear of attracting government attention or a perceived affiliation with criminal activity.

United States

Ongoing concerns are the incarceration rates and sentence periods for minorities, particularly African-Americans and Latinos, which are far higher and longer than those for white Americans, owing in large part to state and federal mandatory sentencing laws for drug-related offences. These, like New York

States' 'Rockefeller' drug laws, invariably hurt people of lower economic status more than others. The enactment of such judicial protocol affects an even higher percentage of women of colour than men of the same racial and ethnic groups. In its March 2005 report, *Caught in the Net: The Impact of Drug Policies on Women and Children*, Fair Laws for Families revealed extraordinarily high rates of incarceration of women – since 1986 there has been an 800 per cent increase in the number of African-American women behind bars in state and federal prisons – damaging the lives of these women, their families and the communities from which they come. The Supreme Court judgment in *Blakely v. Washington* of 24 June 2004, followed by the *US v. Booker and Fanfan* judgment delivered 12 January 2005, questioned the constitutionality of federal mandatory sentencing laws, ultimately finding that such laws abridge sixth amendment rights (specifically trial by jury) insofar as they require judges to apply them. Immediately, thousands of defendants awaiting sentences previously governed wholly by mandatory sentencing laws benefited from the decision; although there is a caveat: sentencing within the post-*Booker* guidelines is often applied arbitrarily.

Disenfranchisement of minority voters continues to be a national concern. However, on 29 June 2005, Rhode Island made inroads in addressing this disparity by approving legislation that would amend the state Constitution to reinstate voting rights for parolees and probationers. On 17 June 2005, Iowa's governor issued an executive order to restore voting rights to these groups. There are now 39 states legislatively supporting the voting rights of ex-offenders. Denial of voting rights has an extremely burdensome impact on minority communities, who are represented in disproportionate numbers within the prison system in the US. The racially discriminatory effect that state disenfranchisement of ex-felons has will be challenged in March 2006, when the Eastern District Court in Washington State will hear the case of *Farrakhan v. Washington*. The plaintiffs argue that Washington's felony disenfranchisement statute operates with racial bias in the criminal justice system, causing 'a denial or abridgment of the right … to vote on account of race or color'.

The Mexican American Legal Defense and Education Fund (MALDEF) has published surveys indicating that educational and employment opportunities for Latinos continue to be subject to discriminatory practices. Levels of educational segregation affecting Latino children are today in some districts on a par with segregation levels of African-Americans pre-*Brown v. Board of Education*, the landmark 1954 Supreme Court ruling that declared unconstitutional the segregation of white and African-American children in public school. Several states have higher education admissions policies that place students of colour at a distinct disadvantage. Among challenges to these policies is a suit filed alleging that California State Polytechnic University at San Luis Obispo gives undue weight to standardized test scores and geographical location. Recent suits challenging discriminatory hiring/firing practices targeting Latinos include: *Gonzalez v. A.F.* filed in the US District Court in San Francisco (settled 14 November 2004 for US$40 million), which alleged that, 'the "A&F Look" is designed to exclude employees of color'; and 'English Only' rules may only be enforced for non-discriminatory reasons – two US District Court suits filed by the Equal Employment and Opportunity Commission concluded in 2004 that Latino workers forced to speak only in English had been discriminated against based upon their national origin.

With regard to economic, social and political gender equity, according to 2000 US Census Bureau and other data, a full-time working white American woman currently receives only 73 cents to every dollar received by a man. African-American women are paid only 65 cents for every dollar received by white men, while Hispanic women are paid only 53 cents to the dollar. Women do more than 80 per cent of unpaid family work, even though two-thirds work outside the home. Women make up less than 15 per cent of Congress and law-firm partners, 12 per cent of big-city mayors, 9 per cent of state judges and 1 per cent of Fortune 500 CEOs.

On 29 August 2005, Hurricane Katrina made landfall in New Orleans, Louisiana. The devastating effects of this storm have made headline news across the world as poorer residents, overwhelmingly minority, became trapped in the rising floodwaters owing to neglectful decisions made by local, regional and national officials. Emergency plans for the below-sea-level city neglected to account for tens of thousands of people without private transportation, grossly affecting people of colour: over two-thirds of

the city's residents are African-American, and one in four citizens lives in poverty. This single event has caused the greatest domestic migration crisis in America since the Civil War. It has weighed disproportionately on minorities.

Indigenous peoples

Several recent legislative and judicial developments throughout the US have touched upon issues affecting Native Americans. The Senate and House, on 15 June 2004, passed a Joint Resolution to send to the Senate Committee on Indian Affairs to formally apologize to the Native Americans for years of depredations. US District Judge Royce C. Lambeth, in his ruling on 12 July 2005 in *Corbell v. Norton*, criticized the government for failing to adequately inform Native Americans of their rights; Attorneys for the Native Americans accused the government of purposely misleading and deceiving their clients about the purpose and content of the ten-year lawsuit and failing to provide basic information about their property rights. On 9 August 2005, the 9th District Circuit Court ruled 2:1 in the *Kamehameha Schools* case to overturn the 117 year old precedent allowing the school to give admissions preference to Native Hawaiians. The Senate is scheduled to hear debate on the Native Hawaiian Reorganization Act of 2005, which seeks to extend the federal policy of self-governance and self-determination to Native Hawaiians. Also currently under consideration is the Proposed Indian Health Care Improvement Act put forward by Senator John McCain on 18 May 2005, which seeks to extend the existing Indian Health Care Act in order to improve the provision of community and home health care, long-term care and enhancing children's health programs.

Canada

The targeting of African-Canadians and members of Canada's Somali and Rastafarian communities, particularly young men, for stops and searches, surveillance, questioning and harassment, continues to be a concern of the community. The African Canadian Legal Clinic has stated that this perceived racial profiling is directly related to the enactment of the Canadian Anti-Terrorism Act (ATA). In a 2003 focus group concerning their own department, black officers in Toronto stated that racial profiling was an existing policy and, further, that they experienced racism on the job, all of which the police department pledged to address internally. On 20 February 2005, there was a racial incident at a Scarborough police station in which Inspector David McLeod, a member of the 2003 focus group, felt that he was discriminated against according to his race. In follow-up meetings related to this incident, the police department heard testimony from black officers of 'differential enforcement activities' with regard to people of colour, the perpetuation of the stereotype of extra attention paid to black motorists in expensive cars and neighbourhoods, and racist attitudes and behaviour within the department going unexplored and unpunished. The Toronto police department has taken administrative and training steps to address the problem of racial profiling and internal discrimination against people of colour.

Indigenous peoples

Amnesty International, in its 4 October 2004 report, has found that indigenous women and girls experience a disproportionate risk of violence that Canadian officials are doing little to address. Specifically, the report asserts that the police have failed to provide indigenous women with adequate protections; this is coupled with the impact that government policies have had on the economic and social marginalization of indigenous women, thrusting them into 'poverty, homelessness and prostitution'. It is held that the danger for these women from discriminatory violence lies in their identity as both female and indigenous people.

In the past 10 years, the population growth of First Nation peoples has outstripped that of white Canadians. However, the purchasing power of indigenous people has actually fallen by 14 per cent, and the government has only increased health and social service spending for the communities on par with inflation, not with the actual increase of people requiring services. In 2004, a Community Well-Being Index developed by the Department of Indian Affairs and Northern Development found that in the top 100 Canadian communities, there was one First Nation community. In the bottom 100, there were 92 First Nation communities.

Conclusion

The double burden of discrimination that gender creates for minority women is a world-wide phenomenon and is therefore evident in such

countries as the US and Canada, as well as in developing countries. It is just as insidious for the women themselves, their families and their communities in the US and Canada as elsewhere. It is promising to see that, although these governments have instigated rollbacks of fundamental freedoms in the course of terrorism investigations, they are also dismantling discriminatory policies in employment and education, as well as submitting to public pressure to reinstate voting rights for ex-offenders, and considering the extension of self-determination rights to more indigenous peoples. ■


RUSSIA
KAZAKHSTAN
MONGOLIA
UZBEKISTAN
TURKMENISTAN
KYRGYZSTAN
TAJIKISTAN
AFGHANIS TAN
Jammu and Kashmir
CHINA
PAKISTAN
TIBET
NEPAL
BHUTAN
BANGLADESH
INDIA
BURMA
LAOS
THAILAND
VIETNAM
CAMBODIA
JAPAN
NORTH KOREA
SOUTH KOREA
Taiwan
Hong Kong
PHILIPPINES
Andaman and Nicobar Islands
SRI LANKA
MALDIVES
BRUNEI
MALAYSIA
SINGAPORE
Borneo
Sumatra
Sulawesi
INDONESIA
TIMOR-LESTE
Java
PACIFIC OCEAN
INDIAN OCEAN
PAPUA NEW GUINEA
Bougainville
SOLOMON ISLANDS
Wallis and Futuna (FR.)
FIJI ISLANDS
French Polynesia (FR.)
New Caledonia (FR.)
AUSTRALIA
NEW ZEALAND

Asia and Oceania

Central Asia

Fernand de Varennes

The situation for most minorities in the former Soviet states of Central Asia (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan) has worsened markedly since independence in 1991. Their lot in much of the region has been especially affected in 2004–5 by two main phenomena: the fight against terrorism and fundamentalism, and the drive to increase the status of each state's 'titular' people and their language (the language of the majority ethnic group in each country, i.e. Kazak in Kazakhstan, Uzbek in Uzbekistan). The former has had the effect of adversely affecting some religious minorities and occasionally impacted more on specific minorities seen as sympathetic to Islamic fundamentalists or linked to ethnic insurgency movements in neighbouring countries, while the latter has resulted in language and other policies that discriminate against many minorities, and has resulted in their exclusion from a number of areas of economic, employment and political opportunities. Overall, except for the more consistent responses from international human rights organizations such as the UN, which have continued to decry breaches of international standards, the reactions from Western countries, including Russia and the United States (US), have tended in 2004–5 to be more 'forgiving' in the context of the 'War on Terrorism'. The one notable exception has been the more robust response of the international community to the 2005 Andijan massacre in Uzbekistan.

Kazakhstan

In Kazakhstan, the last decade has seen a dramatic emigration: nearly 2 million people, mainly Russian (approximately 28 per cent of the population) and other non-Kazak minorities, are believed to have left the country. Language legislation that privileges the Kazak language is increasingly perceived by non-Kazak minorities, especially those who are Russian-speaking, as discriminatory and exclusionary, and is often cited as one of the factors for this large-scale flow out of the country, in addition to better economic opportunities elsewhere. Though the Russian language is deemed 'equal' to Kazak under the Constitution, a programme of 'Kazakhization' initiated in 2001 is increasing the use of the Kazak language as the main language of government. Despite the Kazakhs only representing about 53 per cent of the population, territorial gerrymandering has assured Kazakh majorities in the country's political divisions. Minorities have in recent years claimed to experience difficulty in establishing organizations at the political level. In practice, the 1997 Law on Languages and subsequent regulations and legislation have set into motion policies which not only favour the Kazakh language, but also effectively discriminate against and exclude members of the Russian, Uighur and other minorities from various economic, political and employment opportunities, as well as breaching their rights as minorities in areas of language use. Reactions from countries with an interest in the region's minorities, and especially Russia, have been largely muted in 2004–5, because of strategic and economic interests (linked to its significant oil and gas resources, a large part of which transits via Russia).

The current Constitution prohibits the formation of associations or political parties that have ethnic, religious or nationalist identities. Some minorities are also specifically targeted in the fight against 'terrorism' and 'separatism'. A 1995 cooperation agreement with China included a clause about fighting separatism. Since then, some Uighur activists have been extradited to China and executed there. Some Uighur minority groups have claimed they face bureaucratic obstacles in their dealings with state authorities because of the stereotyping of Uighur activists as 'separatists'.

Religious minorities in 2004–5 have been generally free to operate, and are not subject to any state-sanctioned harassment, though there are occasional problems reported with some local authorities (US State Department, *Country Report on Human Rights Practices 2004: Kazakhstan*). However, in July 2005, President Nursultan Nazarbaev signed amendments entitled 'On additions and amendments to laws of the Republic of Kazakhstan relating to national security' which may substantially restrict freedom of religion in the country, especially for non-traditional religious minorities, making it compulsory to register all religious communities and banning the activities of all religious organizations that have not been registered. Some reports suggest that the new legislation could be used to ban all unregistered religious activity, affecting particular religious minorities such as Baptists, other Protestants, Ahmadiya Muslims, non-state-controlled Muslims and Hare Krishna devotees.

Kyrgyzstan

The situation for minorities in Kyrgyzstan has not improved significantly in the last five years. The country has experienced the departure of large numbers from minority groups, though perhaps to a lesser extent than many of its neighbours. Despite this, it can be described as the most tolerant and receptive towards minorities of the Central Asian states. It was the only country in the region to have retained Russian as an 'official' language (i.e. 'language of inter-ethnic communication'). Kyrgyz, until 2004, was the 'state language'.

The trend towards a 'Kyrgyzstan for the Kyrgyz' has picked up steam in 2004, however, through language legislation passed by the lower house of parliament on 12 February. This legislation seems to pave the way to further disadvantaging minorities such as the Uzbek-speaking minority (about 16 per cent of the population) and Russian-speaking minority (perhaps 11 per cent), especially since the new language provisions require that candidates for elected office need to demonstrate proficiency in Kyrgyz, as do students wishing to enter or graduate from university. State officials are to use primarily Kyrgyz, though Russian remains as a 'language of inter-ethnic communication'. The Uzbek minority, based in the restive southern parts of the country, in particular may experience this as a way of assuring the dominance of the Kyrgyz majority. The former's almost complete exclusion from administrative and political positions, despite their now constituting the largest minority in the country, has probably contributed to the strength of fundamentalist beliefs (often officially described as Wahhabist interpretations) among some Uzbeks, and to government crackdowns and suspicion against members of this minority. It is still unclear what the effects of the revolution in June 2005, which saw then President Askar Akayev deposed, will mean in terms of the treatment of minorities in Kyrgyzstan. Prior to his being deposed in 2005, many international organizations such as the Organization for Security and Cooperation in Europe (OSCE) had tended to view Akayev in quite positive terms, though concerns had been expressed as he seemed to be moving towards a more authoritarian regime in 2004–5.

Tajikistan

The situation in Tajikistan is similar in many respects to that of its neighbours. The titular ethnic group, while a majority, faces the legacy of the dominance of the Russian language in many aspects of political and economic life. Since independence, Tajiks have attempted to assert their dominance by linguistic and other preferences that tend to discriminate against and exclude minorities, often leading to resentment or even an exodus. Uzbeks, the largest minority at around 21 per cent of the population, are concentrated in areas usually associated with opposition to the government. This has led to a general distrust of Uzbeks, and in turn discriminatory treatment towards them in many institutions of the state. Once again, oppressive measures have been presented as necessary in the name of the fight against 'terror' and 'separatism'. The civil war that broke out in the country after 1992 has meant a massive departure of some 400,000 Russians – and Uzbeks – so that today the former constitute less than 3 per cent of the population. Russian is not an official language, but a language of 'inter-ethnic communication' under the Constitution. Despite constitutional provisions that initially appear to guarantee the use of minority languages, and despite the large percentage of minorities in the country, in particular Uzbeks, minorities are largely excluded from employment in public service. The limited use of the Uzbek language by state authorities in particular is probably discriminatory, although in the field of education the use of the Uzbek language is more prevalent.

The situation of religious minorities in 2004–5 is relatively better in Tajikistan than in some of its neighbours. While religious groups must register, there are no reports of denial of registration of religious minorities, and Tajikistan permits the formation of political parties of a religious character, something no other country in the region permits. The fight against Islamic fundamentalism has led the government to ban one group, Hizb ut-Tahrir, though most outside observers describe it as a non-violent organization. Most of its activists who have been imprisoned since 2000 are members of the Uzbek minority.

While on the surface there are a number of rights guaranteed to minorities under the country's Constitution and legislative provisions, implementation remains unclear and uncertain for minorities, leading the UN Committee on the Elimination of Racial Discrimination to request additional information from Tajik authorities,

especially as to the actual use of minority languages in education, the media and other areas.

Turkmenistan

Turkmenistan's minorities are, proportionally speaking, less numerous in this often forgotten part of Central Asia, with Turkmens representing more than three-quarters of the entire population of the country. The Russian language still has a prominent position in political and elite circles, but it is increasingly supplanted by the Turkmen language. Religious minorities, however, are severely hampered through a series of legal restrictions to freedom of religion. A 1997 law on religious organizations not only requires registration of all religious communities, it also requires proof that there are more than 500 adherents in the same district. Until 2003, only the Russian Orthodox Church and Sunni Muslims satisfied this requirement and were officially registered, with the effect that individuals belonging to religious minorities such as Bahá'ís, Buddhists, Jews, Jehovah's Witnesses and many others were denied permission to conduct public religious activities. Amnesty International has reported that religious minorities are often harassed and even tortured by the police. State authorities justify the need for this legislation on the basis of the fight against terrorism and for reasons of security. The real motive has more to do with realpolitik: it is one of the tools used by President Saparmurad Niyazov – also known as the 'Father of Turkmens' – to maintain an iron grip on Turkmenistan's population and suppress dissent. This all changed dramatically for the better from March 2003 however, with amendments to the law requiring only five members of a religious community in the same district in order to be registered and statements indicating that the authorities would comply with international standards protecting religious minorities. In May 2003, this was followed up by President Niyazov signing two decrees which lifted various requirements burdening religious organizations. Since 2003, four more religious minorities (Seventh Day Adventists, Bahá'ís, Baptists and Hare Krishnas) have been registered. Despite these positive steps, the activities of non-registered religious minority groups are often restricted, with many still unable to establish places of worship. It is also reported that ethnic Turkmen members of unregistered religious groups accused of disseminating religious material received harsher treatment than members of other ethnic groups (US State Department, *Country Report on Human Rights Practices 2004: Turkmenistan*).

Legislation adopted after 2000 defines high treason, casting doubts on the internal or external policies of President Niyazov. Members of the Russian minority have increasingly spoken with their feet, with more than 200,000 leaving the country since 1995, and especially after 2003 when a new law forced them to renounce Russian citizenship or lose the right to own property in Turkmenistan. This country is seen as one of the most despotic of the region, with the authoritarian regime tolerating no opposition or freedom of the media. For example, the president ordered the renaming of calendar months in 2002 in order to honour some of the country's 'national personalities', including his mother, whose name is now officially the name for the month of April.

While legislation would appear to grant minorities the right to education and access to public services in their own language, in practice this is not true except for the Russian language. Certain minorities are, in addition, specifically targeted by the government in such a way as to prevent them from claiming linguistic rights. Uzbeks, who were fairly numerous and concentrated in the north of the country, were forcibly transferred to desert areas of the country, 'diluting' their numbers to a level where authorities need not respond to their language preferences. A presidential decree of November 2002 initiated the forcible resettlement of the populations of three largely Uzbek regions (Dashowuz, Lebap and Ahal) to a largely uninhabited and uninhabitable desert in north-western areas of the country and was partially implemented in 2005. Reports in 2005 refer to continuing and active state attempts to assimilate them, including prohibitions on 'wearing native Uzbek dress to school, and an accompanying requirement that all Uzbeks wear Turkmen dress. Finally, like the Russian minority, Uzbeks are denied access to higher education; to career and employment opportunities; and to heritage-language education.'

Despite the relatively prestigious position of the Russian language, authorities have also moved to close down a number of Russian-language schools since October 2002, and in practice all non-Turkmen teaching has been severely restricted if not

yet extinguished. In July 2004, Radio Mayak, the only Russian-language news and radio service available, was shut down by the government because of 'technical difficulties' and replaced by a Turkmen language station. These and other measures increasingly adopted since 2001 are all part of a movement by state authorities to impose the 'Turkmenization' of most areas of public life in the country.

Reports in 2004 indicate a gathering move by the government to close minority ethnic and cultural centres. It is reported that no teaching will be permitted in minority languages from 2005; education is to be conducted in Turkmen only, with the exception of one official Russian-language school in Ashgabat (Human Rights Watch, *Turkmenistan: Human Rights Update*, May 2004). There is also still a flow of ethnic minorities leaving Turkmenistan in 2004–5 as a result of what is seen as systematic discrimination against non-Turkmen ethnic minorities, such as ethnic Azeris reportedly compelled to leave the country in substantial numbers after purges which saw the replacement of minorities in state institutions with ethnic Turkmen employees.

Countries such as the US have not been overly critical of such extreme restrictions on minorities, perhaps due to an unwillingness to jeopardize their own interests – such as the currently useful corridor to Afghanistan, and flyover rights which Turkmenistan granted to the US in 2001. Reactions from international organizations have been sharper, with the UN General Assembly adopting a resolution on human rights in Turkmenistan in December 2003, and the UN Commission on Human Rights also adopting a resolution on the situation of human rights in Turkmenistan in April 2004. The Committee on Elimination of Racial Discrimination has also specifically criticized Turkmenistan over its treatment of minorities, especially in the fields of education and employment (CERD/C/60/C0/15).

Uzbekistan

Minorities have left Uzbekistan in very large numbers, partly as a consequence of the repressive regime of President Islam Karimov, but also because of the limited opportunities for minorities that are linked to discriminatory practices by authorities in favour of the Uzbek majority (US State Department, *Country Report on Human Rights Practices 2004: Uzbekistan*). The Russian-speaking minority has seen an exodus of almost a third of its numbers since independence in 1991, and in 2004 constituted only about 5 per cent of the population. The largest single minority, the Tajiks, probably comprise close to 8 per cent of the population, but they remain largely excluded in many areas of public life. The regime of President Karimov has often been seen to target Tajiks. Thousands of individuals are detained for political or religious reasons, including human rights activists. The position of minorities in the country is thus similar to that of others who experience the difficulties of living in a repressive regime. The Russian language is still widely used by state authorities in daily activities, however, despite the Uzbek language being the only official language. The fight against terror and fundamentalism has in Uzbekistan an ethnic dimension which has severely impacted on the Tajik minority, with the forcible resettlement in 2000 of thousands of mostly ethnic Tajik families from southern mountain villages, burning and bombing of mainly Tajik villages, and the destruction of their homes and fields because of allegations that Islamic militants had infiltrated these villages.

Because of a special autonomy arrangement granted to the Republic of Karakalpakstan, the Turkic-speaking Karakalpaks have in legal and practical terms much greater protection of their rights and in the use of their language, though they comprise less than 2 per cent of the population. The status of other minorities, and the use of their languages, are significantly less, and in the case of Tajik almost non-existent outside of some localities despite their being present in greater numbers than Russians.

The repressive regime took a particularly bloody turn in 2005 following the Andijan massacre. Hundreds of unarmed people protesting in the eastern city of Andijan, perhaps as many as 750, were killed on 13 May 2005 by Uzbek government forces. The protest started when a group of armed people freed a group of 23 local businessmen accused of Islamic extremism and took officials hostage in the local government building. The protest then grew into a rally of thousands of mostly unarmed people who voiced their anger against government corruption, repression and growing poverty in the region.

The massacre led to widespread condemnations – including European Union sanctions in 2005 – though these still seem surprisingly muted given the massive numbers of unarmed civilians, including women and children, who were killed by security forces. The US was 'ejected' from Uzbekistan for its criticisms when the Uzbek government requested it leave its military base in southern Uzbekistan. Russia has been supportive of President Karimov's actions and indeed increased its presence and conducted joint military exercises with the Uzbek military in September 2005.

Overall, the situation of minorities has seen no improvement in 2004–5. For religious minorities, reports following the Andijan massacre suggest there is in fact a tightening of that country's repressive religion policy. In addition to members of the Tajik minority who may be tagged as 'fundamentalists', religious minorities such as Hare Krishna, Jehovah's Witnesses and Protestants in Karakalpakstan (where all activities of this minority have been banned) show an increase in 2005 in restrictions and prohibitions. Indeed, the repressive nature of the government restrictions on religious activities, including from non-government-sanctioned Islamic groupings, may breed further resistance in the next few years. ■

North-East Asia

Fernand de Varennes

During 2004–5, the situation has worsened in China for some groups such as the Tibetans and Uighurs, sometimes under the guise of the fight against terrorism and extremism, while in most other countries of the region it has largely remained stagnant or improved slightly. The treatment of migrants and 'new' minorities is also beginning to emerge as an area of concern and effort in the region, particularly in Japan and South Korea and to perhaps a lesser extent Taiwan.

China

Minorities in China, including the territories of Hong Kong, Macau and Tibet, constitute an extremely diverse and substantial grouping in what is still the world's most populous state. Ethnic minorities, known as 'nationalities', are officially 55 in number (not including the majority Han Chinese). In addition to this, more than 120 nationalities are said to exist, and even this number does not necessarily include all religious minorities such as the Falun Gong, or 'newer' minorities. The human rights record of China is often criticized as being very poor, both by some Western governments and in various international reports, but the particular plight of most minorities in the 'Middle Kingdom' remain largely overlooked in the flood of attention to this record.

Overall, their lot during 2004–5 has not improved significantly: on the contrary, the international 'War on Terrorism' and slogan of 'national security' have been a godsend for Chinese authorities intent on crushing separatist and autonomist movements in restive parts of the country, particularly in the north-western province of Xinjiang (Xinjiang Uighur Autonomous Region) where the Muslim, Turkic-speaking Uighur minority are concentrated (according to the official 2000 census, approximately 45 per cent of the 19 million people in Xinjiang are Uighurs), and to a lesser extent, Tibet. As reported by Amnesty International, the view that human rights could be curtailed under the 'War on Terrorism' umbrella was particularly apparent in China in the last few years (Amnesty International, *Regional Overview 2004: Asia and the Pacific*). Under the guise of cracking down on terrorists and other extremists, arrests, detentions and even torture and other violations of the rights of minorities have been conducted without evoking a huge amount of criticism from the outside world. Another general noteworthy and worrying trend in China is the growing identification of the country with an increasingly blatant Han Chinese form of nationalism as the country appears to move away from the traditional doctrines of communism. Officially, and in conformity with what could be described as Marxist doctrine, the Chinese Communist Party still opposes forced assimilation and allows autonomy to the minority nationalities, so that they can retain their own characteristics. It is under this policy that the government has set up numerous autonomous areas throughout China, many of which are identified with specific nationalities, as did the former Soviet Union in the past.

The practice and reality in 2004–5 is not so benevolent for most minorities, especially those in Tibet and Xinjiang, but also in most parts of the country. Huge infrastructure developments continued in 2004–5, and their disastrous effects on minorities are now beginning to appear, though with hardly any reaction from the international community. Two new major rail-lines, one to Lhasa, the capital of Tibet, and the other to the Xinjiang city of Kashgar, are being finished, and billions of dollars more are being invested to build highways, some with the financial backing of international agencies such as the World Bank. Ostensibly to assist in the economic development of these regions and to improve their transportation infrastructure, these projects however are connected to government policies that are clearly discriminatory and favour almost exclusively individuals of Han Chinese background.

The World Bank and much of the international community have remained largely silent and even complicit in what is in effect a surreptitious ethnic 'transmigration programme': recruitment for the thousands upon thousands of road- and rail-building jobs are mainly targeting Han Chinese in other parts of the country, and some estimates admit that, for Tibet alone, the new rail-line will open the door for some 900,000 Han Chinese annually to move into the ancient 'Land of the Snow', attracted by various employment opportunities and even financial incentives from the Chinese central authorities. In other words, government policies are clearly discriminatory as they favour and support overwhelmingly the Han Chinese, and are leading to the Uighurs, Tibetans and other minorities being swamped and rendered

increasingly powerless in the face of a mammoth influx and settlement of people of Han Chinese background.

Employment practices by public authorities in Tibet, Xinjiang and other parts of China have seemed to be increasingly discriminatory, partially fuelled by the growing numbers of Han Chinese settling in these provinces, and often resulting in the effective exclusion of minorities from various jobs because of language requirements. Though officially supportive of minority languages, reports continue to indicate that even where minorities represent a very high percentage or even a majority in a region, civil service offices refuse or are unwilling to use local languages in their activities (Article 121 of the Constitution of the People's Republic of China states that: 'In performing their functions, the organs of self-government of the national autonomous areas employ the spoken and written language or languages in common use in the locality'). Recruitment of civil servants is often based on fluency in Chinese, with no consideration of knowledge of local languages, with the result that minorities are clearly and unreasonably disadvantaged by this Chinese-language bias and find that they will be passed over for employment opportunities in favour of ethnic Hans.

The discriminatory position attributed to the Chinese language as the almost exclusive language of employment opportunities for government and government-supported initiatives in regions where there are substantial minorities thus has augmented the complete dominance of Han Chinese in almost all areas of political and economic significance. While minorities generally do have access to school instruction in their own language, they are still relegated in practice to the lower echelons of society with few job opportunities unless their language is also used as a language of work, particularly in those regions such as Tibet, Xinjiang and others with very large and territorially concentrated populations:

'In many areas with a significant population of minorities, there were two-track school systems which used either standard Chinese or the local minority language. Students could choose to attend schools in either system. However, graduates of minority language schools typically needed one year or more of intensive Chinese before they could handle course work at a Chinese-language university. Despite the government's efforts to provide schooling in minority languages, the dominant position of standard Chinese in government, commerce, and academia put graduates of minority schools who lacked standard Chinese proficiency at a disadvantage. The vast majority of Uighur children in Xinjiang attended Uighur-language schools and generally received an hour's Chinese language instruction per day. Tuition at Chinese-language schools in Xinjiang was generally more costly, and thus, most Uighur children living in rural areas were unable to afford them.' (US State Department, Country Reports on Human Rights Practices 2004: China)

Chinese authorities tend, however, to emphasize that nationalities enjoy equality through the system for regional autonomy for ethnic minorities, and that they have the right to receive instruction in their own language, and that this is in fact more respectful of the identity of minorities than what is in place in many Western states. (This autonomy is unfortunately in most cases more illusory than real, with real positions of power usually kept in the hands of Han Communist Party cadres, and Han Chinese generally being employed in most senior positions. For example, out of 25 new appointees to various parts of the judiciary at local and Tibetan Autonomous Region levels, only four were Tibetan, according to the Free Tibet Campaign, August 2005.) Additionally, Chinese authorities will refer to new measures such as increasing investment and improving education and the legal system, and poverty alleviation for (only) 22 ethnic minorities in the government's 10th Five-Year Plan (2001–5).

The government published in February 2005 a White Paper on 'Regional Autonomy for Ethnic Minorities in China' which emphasizes that China's policy of Regional National Autonomy is 'critical to enhancing the relationship of equality, unity, mutual assistance among different ethnic groups, to uphold national unification, and to accelerate the development of places where regional autonomy is practiced and promoting their progress'.

While this White Paper and other developments show that authorities are discussing the situation of minorities, international outside reports have continued to be more critical of the reality in the field of respecting the rights of minorities. The UN Special Rapporteur on the Right to Education concluded that in effect there was discrimination in the implementation of the country's minority

education policy in relation to minorities, and especially in relation to the imposition of the Chinese language in detrimental ways:

*'Education imposed upon minorities, enforcing their children's obligation to receive compulsory education, violates human rights when it denies their religious or linguistic identity.' (*Special Rappoteur Katarina Tomaševski*, The Right to Education Report, Addendum, Mission to China,* November 2003*)*

Indeed, even relatively recent regulations hailed as emphasizing the equality of minorities are in fact double-edged. Regulations approved on 22 May 2002 by the 15th session of the 7th Tibetan Autonomous Region People's Congress were described by the *China Daily* as 'the first government regulation[s] ever passed in China on preserving an ethnic language'. They permit the use of either Tibetan or Chinese in the region, but since authorities are not obliged to use Tibetan with the local population, but can use Chinese, this will increasingly lead to the marginalizing of the Tibetan language with the increased influx of Han Chinese, and the de facto bias and discriminatory disadvantaging of the Tibetan-speaking population.

The overall evolution in the treatment of religious minorities is also one of mixed messages. Officially, as the Chinese authorities often indicate, there is no restriction on the religious beliefs of individuals in private. Authorities however have often cracked down, often brutally, against unsanctioned religious activities, especially those of groups that are deemed a threat to the authority of the Communist Party or to be linked with 'separatist' or 'terrorist' threats. There are also new regulations adopted in 2004 and in force since 1 March 2005 which are likely to increase the state's overview and control over all religious activities, as well as to ban those of unrecognized religious groups. (On the potential significance of these regulations see HRIC Special Report, *Devastating Blows: Religious Repression of Uighurs in Xinjiang*, Human Rights Watch, April 2005.)

The US State Department reports that the 'freedom to participate in officially sanctioned religious activity increased in many areas of the country, but crackdowns against unregistered groups, including underground Protestant and Catholic groups, Muslim Uighurs, and Tibetan Buddhists continued and worsened in some locations' in 2004 (US State Department, *Country Reports on Human Rights Practices 2004: China*).

There does not seem to have been let-up in the targeting and harsh treatment of practitioners of the Falun Gong spiritual movement, with Amnesty International reporting that more than 1,000 are alleged to have died during or soon after their detention and ill-treatment, even torture (Amnesty International *Report 2005: China*). During 2004, it seems that the same criminal laws that had been used to incarcerate and suppress the activities of the Falun Gong were being used against newer religious minorities, especially evangelical Protestant groups that refuse to refuse to register officially (Human Rights Watch, *World Report 2005*).

It has perhaps even become worse for the Muslim Uighurs (see in particular HRIC Special Report, *Devastating Blows: Religious Repression of Uighurs in Xinjiang*, Human Rights Watch, April 2005). Armed with the 26 August 2002 support of the US that the East Turkestan Islamic Movement (ETIM) should be recognized as an international terrorist organization, Chinese authorities have cracked down heavily and unrelentingly on some Islamic religious practices, and even on use of the Uighur language in 2004 and 2005, whether these are connected to ETIM or not. This includes a prohibition against those under 18 receiving Quran instruction at home and a prohibition of private madrasas and mosques. The government published in December 2003 a 'terrorist list' of organizations, such as the World Uighur Youth Congress, that it viewed as terrorist entities. However, there is no clear evidence that most of these advocate violence. Many Uighurs continued to receive long prison terms and to be executed for separatist or terrorist activities.

Even cultural or religious popular events may fall foul of the 'War on Terrorism' in Xinjiang. The Xinjiang Party Secretary issued instructions to all local authorities from February 2002 to crack down on 'separatist techniques', one of which was 'using popular cultural activities to make the masses receptive to reactionary propaganda encouraging opposition', permitting the intimidation, arrest and detention of Uighur cultural and human rights activists, and even poets writing about a blue pigeon, as occurred in 2005.

On a more positive side, it must be emphasized that the Chinese government does recognize that

minorities have rights, and seems to make efforts to demonstrate that their rights in relation to language, religion and culture are respected. The practice, however, seems to be still quite removed from the rhetoric.

Taiwan

The situation of the indigenous peoples of Taiwan, who linguistically belong to the Austronesian (Malayo-Polynesian) group, has been improving slightly in the last few years. Although about 98 per cent of the population is of Han ancestry, a dozen officially recognized indigenous peoples number almost half a million (in 2004), or close to 2 per cent of the country's population. Most of these are also Christians, whereas most Han are members of the Buddhist majority.

One of the main legal-political developments for the indigenous peoples of Taiwan in 2004–5 has been the drafting of a new constitution that includes an explicit recognition of the rights of indigenous peoples, including a right of autonomy presented as self-determination. This autonomy would potentially extend to the use of traditional lands, language, customary law and other rights. These reforms are part of a long-term process which is expected to be completed by 2008. Indigenous languages have additionally started to be supported by authorities, after decades of active government suppression, with a number of initiatives for total language immersion education being set up after 2001 in some districts. A special affirmative action programme also started in 2005 covering the admission of indigenous students to university, and 2004 legislation requires that, for a firm with 100 employees or more wishing to compete for government contracts, at least 1 per cent of its employees must be Aborigines. (This is a quota required under the 2001 Indigenous Peoples Employment Rights Protection Act.) On the negative side, a 5 per cent hiring quota for Aborigines in firms established in free-trade zones under the 2003 Statute Governing the Establishment and Management of Free Trade Ports was heavily criticized in 2005 and may be reduced.

Despite Mandarin being the first language (mother tongue) of slightly more than 20 per cent, and therefore a 'minority language', it is the main and almost exclusive language used by public authorities. (The language of about 67 per cent of the country's population is actually Southern Fujianese, also called Minnanese.) The Hakka-speaking minority (about 11 per cent of the population) has only recently started to see its language being taught in primary schools – in the years just prior to 2004–5 – though this seems to be limited to a few hours a week. Overall, it seems that in this period the government has continued to follow a more inclusive and tolerant approach towards its minorities, although its language policies could still be seen as discriminatory in some respects.

Amnesty International still reports rampant social discrimination in 2004, with indigenous people subjected to discrimination in employment in the cities. The unemployment rate among indigenous people was 15 per cent – compared to an average of 4 per cent for the population as a whole – and 48 per cent received less than a third of the average wage (*Amnesty International Report 2005: The State of the World's Human Rights*).

Freedom of religion is widely respected, and religious minorities are not subjected to any form of visible discrimination. However, in 2004–5 they are still not permitted to have religious instruction in their own private schools accredited by the Ministry of Education, although if a minority school is not accredited by the Ministry of Education it can provide religious instruction.

One area that has been of increasing concern is the treatment of 'new' minorities in Taiwan. Minorities who have arrived since the 1990s in Taiwan as migrant workers, especially Filipinos, Indonesians and Thais, have become in 2004–5 more vocal, even violent, over their limited legal protections. A violent riot by more than 1,500 mainly Thai migrant workers erupted in August 2005 over poor working conditions and alleged abuses of workers building a mass transit railway project in Kaohsiung Taiwan, leading to the resignation of Council of Labour Affairs Chairwoman Chen Chu.

Japan

Usually viewed as a fairly homogeneous state, Japan has nevertheless non-negligible numbers of religious, linguistic and ethnic minorities. In addition to those that could be described as traditional or national minorities such as the Buraku people (Burakumin), the Ainu people (widely recognized as indigenous) and Okinawans, there are two other broad

categories: those originally from neighbouring countries such as Korea and China who have a fairly long-standing presence in the country, and newer minorities of migrants from Asia, the Middle East, Africa and Latin America.

Few positive developments have occurred for the Ainu during 2004–5, despite high hopes following a 1997 court ruling and subsequent legislation passed by the Diet to develop programmes for the promotion of Ainu culture and traditions. There have been calls from international organizations for Japan to ratify the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries in order to provide greater recognition for the rights of the Ainu as an indigenous people (Concluding Observations of the Committee on the Elimination of Racial Discrimination: Japan, March 2001). Members of the UN Committee on the Elimination of All Forms of Racial Discrimination also noted that the Okinawans could be considered a minority, and that information on their situation should be submitted by the Japanese government in the future.

There is in Japan a large number of religious minorities, with no reports of repression or oppressive measures against them. The only issues that have remained involving religious minorities during this period is the allegation from members of the Unification Church and Jehovah's Witnesses that police do not always intervene when church members are kidnapped by family members in order to force their deprogramming.

One minority group, whose situation in 2004–5 could be said to have become worse from a legal and political point of view, is Japan's estimated 3 million Buraku people, a social caste who have tended to live in isolated neighbourhoods (Dowa), and tend to be victims of long-ingrained social discrimination with regard to job opportunities and other areas where they may interact with other members of society.

There were intense efforts by the Burakumin to have new laws adopted to replace legislation which expired in March 2002 (the Law Concerning Special Government Measures for Regional Improvement Special Projects), under which various special measures to assist and develop Dowa districts had been in place for a number of decades; a special scholarship programme was also discontinued. They have not succeeded in having the government of Japan adopt a national law against discrimination that would protect the Burakumin and other minorities, despite some discussion of a new law against discrimination in the Japanese Diet in 2004–5. This has led to criticisms from international bodies, including from the UN Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance during a recent visit to Japan. A bill discussed in 2004 in the Japanese Diet for a new human rights commission also was of concern to the UN Committee on the Rights of the Child, regarding the degree of independence proposed for such a body. A new bill in 2005 does not seem to address these concerns.

A slight, mainly symbolic, improvement has however occurred in 2004–5 for minorities who are long-term residents of Japan, with a local court for the first time ruling in April 2005 that a provision dealing with acquisition of citizenship to be unconstitutional. (There are 2 million 'foreigners' residing in Japan, a large number of whom are long-term residents or even individuals born in the country.) Citizenship still remains difficult to obtain for 'new' minorities from non-Japanese ethnic background.

While many, though far from all, Koreans living in the country hold Japanese citizenship and are long established in Japan, there are persistent complaints of social discrimination and other obstacles, including in education where students graduating from private Korean-language schools would not have their studies recognized in some cases for admission to university. (There were thought to be over 600,000 individuals of Korean descent living in Japan at the end of 2004.) This changed in September 2003 with changes to the School Education Act, now permitting graduates of a number of non-Japanese-language schools – mainly Korean – to become eligible to take university entrance examinations. In 2004–5, many universities admitted graduates from Korean and non-Japanese-language schools other than those listed in the national legislation. There was still no official financial support for private minority schools during this period, however, a situation considered as discriminatory by some of these minorities, especially the Koreans.

Newer minorities, including mainly Brazilian, Chinese, Filipino, Peruvian and Thai workers, continued to appear vulnerable to exploitation, prejudice and discrimination. While there is

legislation against racial discrimination and international treaties that may be used under Japanese law to protect them, courts in Japan have tended in 2004–5 to interpret these obligations restrictively, either for example in terms of access to employment opportunities and employment, or access to private facilities that bar foreigners with their 'Japanese Only' policies.

As for the rights of foreign workers, legislation such as the Labour Standards Law and the Employment Security Law in theory apply to all workers in the country, but in practice they remain largely at the whim of their employers, especially in the case of workers in irregular situations. There are continuing reports of safety standards being ignored for illegal workers and of below-minimum-wage salaries being paid. There has been pressure exerted on Japan, mainly from NGOs (for example by the International Steering Committee for the Campaign for Ratification of the Migrants Rights Convention), during 2004–5 to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

North Korea

The Democratic People's Republic of Korea (DPRK or North Korea) is one of the world's most homogeneous countries in linguistic and ethnic terms, and its government one of the most repressive. There is only a Chinese minority (of perhaps around 50,000). There has in 2004–5 been no change in the language policies of the regime of Kim Jong Il, General Secretary of the Korean Workers' Party (KWP). The Korean language is the exclusive language of state authorities at every level.

Religious minorities do exist and are more significant in demographic terms, and their treatment at the hands of authorities has been one of unabated persecution and repression in 2004–5. There is no majority religion in the country since the total of all religious practitioners is apparently less than 50 per cent, with even traditional religions such as Buddhism now thought to have relatively few active adherents (US State Department, *International Religious Freedom Report 2004: Democratic People's Republic of Korea*).

While the Constitution in theory provides protection for freedom of religious belief, in practice this is severely restricted by the authorities unless it is under the auspices of officially recognized groups linked to the government. A Russian Orthodox church was, however, being built in 2004 in Pyongyang. Reports in 2004–5 continue to appear from religious and human rights groups of harsh treatment, and even of torture, of members of religious minorities involved in non-sanctioned religious practices.

Widespread condemnation of North Korea's human rights record, and its treatment of its religious minorities in particular, from numerous international organizations and the international community has continued. There was a third resolution at the 2005 session of the UN Commission on Human Rights condemning its human rights record, as well as the appointment in 2004 of a UN Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea. The US also adopted a 'North Korean Human Rights Act of 2004' to 'promote human rights and freedom' in that country.

South Korea

The Republic of Korea (South Korea) is less homogeneous than its northern neighbour. It has seen an influx of 'new' minorities attracted by the country's strong economic output, much as in Japan and Taiwan, and also has significant religious minorities. The Chinese, at between perhaps 1 to 3 per cent of the population of the country constitute the largest ethnic minority in South Korea, and many of them are relatively recent arrivals. There is no clear majority religion in the country, though close to half may be Christians.

It is however in the numerical strength of religious minorities and their treatment that the south distinguishes itself markedly from North Korea. These minorities, and all religious practices in general, continue to be treated benignly in 2004–5. One notable problem for one minority involves the issue of military service and Jehovah's Witnesses in South Korea. Since legislation does not permit any exemption or alternative service for those who have a religious objection to serving in the country's armed forces, members of this minority were still being imprisoned for their refusal in 2004–5. A number of district courts, prior to and during 2004, had acquitted conscientious objectors who were Jehovah's Witnesses of criminal charges over their refusal to serve in the military. In August 2004 however, the Constitutional Court handed

down a judgment confirming the constitutionality of legislation mandating the imprisonment of conscientious objectors who are members of a religious minority. It was reported in 2005 that a member of the National Assembly has proposed new legislation that would permit alternative service to qualified candidates, including members of minorities who would object for religious reasons. Amnesty International reported that in June 2004, 'at least 758 conscientious objectors, mostly Jehovah's Witnesses, were detained for refusing to perform compulsory military service' (*Amnesty International Annual Report 2005*).

Some progress occurred for migrant workers in August 2004 with the entry into effect of the Employment Permit System Act. On the face of it, the legislation provides a first legal framework to control and monitor migrant workers, and some protection of basic rights. The legislation also would permit the immediate detention and deportation of undocumented workers who have stayed in South Korea for more than four years (migrant workers are only permitted to work in South Korea for a maximum of three years, and only for one employer). Reports mention the deportation of some 3,000 migrant workers, and the voluntary departure of perhaps 10,000 more, between November 2003 and January 2004. There were some estimates of 180,000 undocumented migrant workers not registered with the authorities at the end of 2004.

When a Migrant Workers Trade Union was formed on 24 April 2005, the response of the authorities was to crack down on the leaders of this and other migrant workers' rights organizations, with the president of the Migrant Workers Trade Union being arrested in May 2005 and detained by immigration authorities. Such crackdowns on the leadership of migrant workers groups have occurred repeatedly in 2004 and 2005. This has been followed by new legislation adopted by the National Assembly in March 2005 imposing harsher punishments on local businesses hiring illegal migrant workers.

Mongolia

Minorities in Mongolia have not seen any major developments in 2004–5. Overall, they continue to be treated in a rather benign way. Kazakhs, most of whom are Muslim and speak their own language, are the largest minority at about 4 per cent of the population and represent about 85 per cent of the population of the western province of Bayan-Olgiy. Their status in 2004–5 in Bayan-Olgiy, a province established during the former Socialist period, has continued, with the result that Kazakhs are not visibly subjected to discriminatory practices by authorities, are prominent in the administration of the province, and operate Islamic schools for their children. Religious minorities appear to be protected by the Constitution, which enshrines the freedom of religion. The government generally respects this in practice, although there were reports in 2004 of some bureaucratic delays and harassment in registration of certain groups.

There have been no legislative changes in 2004–5 on the use of minority languages. Though Article 8 of the Constitution in theory guarantees to 'national minorities' the right to primary education in their own language, the continued absence of specific legislation to apply this constitutional provision means that, in reality, minorities – with the exception of the Kazakhs – still cannot enjoy this right. This could be deemed to be discriminatory in relation to the treatment of some of the largest minorities in the country, such as the Chinese, who account for 2 per cent of the population, and Russians who also account for 2 per cent.

The United Nations Development Programme (UNDP) and government of Mongolia have collaborated on a number of initiatives that have reformed the administration of the country in the 1990s, the Programme for Governance and Economic Transition and the Management Development Programme, which appear to have had a beneficial impact for minorities in 2004–5. Though not sanctioned in legislation, the decentralization of public administration under these programmes has apparently led to a greater use of minority languages by local authorities, who now have more autonomy and responsibilities. Previously, the highly centralized Mongolian administration meant an almost exclusive use of the Mongolian (Khalka) language, to the exclusion of minority languages.

The issue of minorities in 2004–5 does not figure prominently in the work or activities of international organizations involved in Mongolia, such as the UNDP, with various official reports remaining largely silent on even the existence of these in the country. This may however be due to the overall relatively benign treatment of minorities in Mongolia. ■

South Asia

Javaid Rehman

South Asia remained besieged by religious, ethnic and political conflicts, which also entailed substantial threats to international and regional security. The economic, political and social imbalance amongst the communities within South Asia was a factor contributing to the abuse of human rights, with particularly significant implications for the ethnic, religious and racial groups of the region. Aspirations for peace, security and respect for human rights within South Asia remained confounded by the enormity of the regions' political and constitutional problems. The shortfall in democracy and political accountability, coupled with the continuation of draconian measures – ostensibly to deal with terrorism – were features consistently impinging on the rights of minorities and indigenous peoples of the region.

Bangladesh

The persecution of religious minorities featured prominently within the political development of Bangladesh. In January 2004, the Bangladesh government imposed a ban on Ahmaddiya publications as a response to growing demands from mainstream Sunni Imams for Ahmaddiyas to be declared non-Muslims. On an application by the Ahmaddiya community, the High Court intervened to grant a stay of the governmental executive order in December 2004. Police and governmental authorities nevertheless continued to seize books and documents relating to Ahmaddiya faith, and colluded with Muslim extremists to remove signs referring to Ahmaddiya places of worship as 'mosques'. There was also a sustained campaign of harassment, violence and physical abuse against the Ahmaddiya minority. On 29 October 2004, a mob of around 300 men belonging to Khateme-Nabuwat party attacked a mosque in Brahmanbaria, seriously injuring 11 Ahmaddiyas. On 17 April, a crowd of religious extremists attacked another Ahmaddiya mosque in Jotidriangar injuring 25 people. There was also harassment, abuse and physical destruction of properties belonging to religious minorities during the period 2004–5. On 1 January 2004, local Bangladesh National Party officials set 20 houses belonging to the Hindu community on fire. This action was repeated in Sarkerpur village in Rangpur district in September 2004. During April 2004, 12 Ahmaddiya houses were destroyed and, on 18 September 2004, Christian convert Dr Joseph Gomes was killed by unidentified assailants. Religious minorities also continued to suffer from discrimination in key areas of the public sector: jobs, higher education and access to justice. The Hindu minorities and the indigenous peoples (particularly those from the Chittagong Hill Tracts) have blamed the government for being complicit in continued seizure of their lands by the so-called Muslim vigilantes and those belonging to extremist religious parties.

Bhutan

In the absence of a written constitution providing for fundamental human rights, the overall position of minorities within Bhutan remains precarious. King Jigme Singye Wangchuck of Bhutan maintains a despotic autocracy; those campaigning for democratic reforms and the repatriation of refugees (from Nepal) are condemned as 'terrorist and anti-national' elements. The primary minority, ethnic Nepalese, continued to claim that they have suffered from forced expulsions and non-rehabilitation in their native lands, and discrimination in civil service and public-sector employment – claims rejected by the government. There are currently over 100,000 Bhutanese who have been forced to become refugees in the bordering Nepal. Almost all of these are ethnic Nepalese, who were stripped off their nationality by the new Bhutanese Citizenship Law. These refugees, while desperate to return to their homes, have put forward substantial claims of mass torture, persecution and repression by Bhutan's security forces. In what it perceives as efforts to maintain a Buddhist national identity, the government of Bhutan also carried on with a policy of compulsory wearing of traditional Buddhist dress for both men and women of Bhutanese nationality (including minorities) while in public places. This law was rigorously applied, in particular for those visiting Buddhist religious buildings, schools and monasteries, and those participating in official functions and public ceremonies.

India

A change in the political climate had an impact on the religious minorities of India. The coalition led by the Hindu Nationalist Party (Bharatiya Janata Party) lost the general parliamentary elections held in April–May 2004 and was succeeded by the Indian National Congress. Notwithstanding a

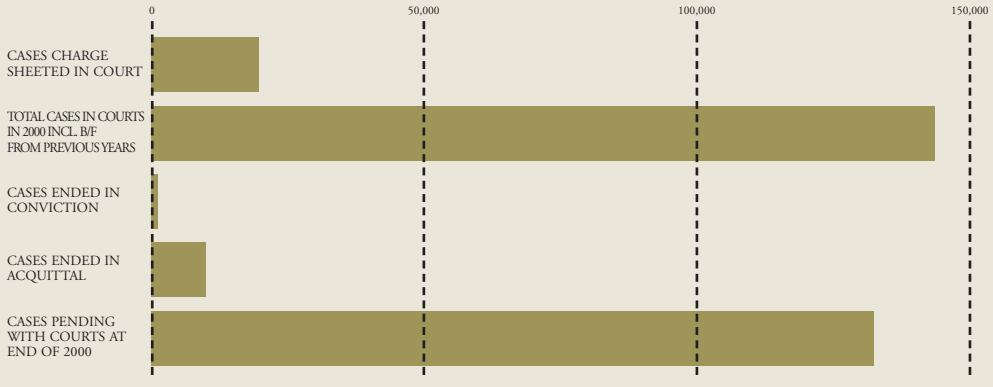
change in the federal government, security forces continued to pursue policies, *inter alia*, of extra-judicial killings, detentions and torture. The implication of such policies was particularly tragic for India's religious, ethnic and linguistic minority groups. Arbitrary practices of arrests, detentions and torture were deployed against the Muslims in Jammu and Kashmir; courts in Jammu and Kashmir were reluctant to hear cases involving militants and failed to act expeditiously on *habeas corpus* cases. Jammu and Kashmir has a bitter and painful political history, the roots of the conflict going back to the partition of India in 1947 and leading to three wars between India and Pakistan. The conflict between the Kashmiris and the Indian armed forces has been brutal, resulting in more than 40,000 deaths within the past 15 years. Since April 2005 (with the visit of Pakistan's Military leader Pervez Musharraf to India) some, albeit slow, progress has been made in developing a peace dialogue. In April 2005 a bus service opened between the two parts of the divided Kashmir. In June 2005, a number of Kashmiri leaders held talks with the Pakistani leader, with a view to advancing the peace initiative. This was followed by the decision at the end of August by the Indian Prime Minister Manmohan Singh to hold talks with the Kashmiri separatists. The talks, which were conducted with the moderate wing of the All Parties Hurriyat Conference in Dehli on 5 September 2005, provide cause for optimism: the leader of the Hurriyat – an umbrella group of parties opposed to Indian rule in Kashmir – agreed in principle to denounce all forms of violence within Kashmir. However, in the light of the intransigent stance of all the parties involved in the conflict and the continuing violations of Indian security forces, a resolution to the dispute appears distant.

In addition to the grievances emerging from Kashmir, Muslims of India claim to have suffered persecution and genocide in the state of Gujarat. Muslim leaders condemn the failure of the Gujarat government and the Indian courts to prosecute those involved in the killing of over 2,000 Muslims at the hands of Hindu extremists. In many cases, attempts to hold perpetrators of Gujarat riots accountable were hampered by the allegedly defective manner in which police recorded complaints. There were allegations made by the victims that the police failed to register their complaints or recorded the details in such a way as to lead to lesser charges. Victims complained that the police and governmental authorities deliberately failed to bring charges against prominent people involved in attacks. No appropriate action has been undertaken against those involved in the Gujarat riots. A retrial was ordered in relation to the most serious instance of rioting in Gadhra, and arrest warrants were issued for 10 of the 21 accused. However, in November 2004, the key prosecution witness refused to testify in the Mumbai court in one of a series of recantations.

There was also the continuation of another related sectarian Hindu–Muslim dispute over the sacred site of Ayodha. On 5 July 2005, six men pretending to be tourists used explosives to blast

India: Disposal of cases during 2000 under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989

Source: Ministry of Social Justice and Empowerment, 7th report; national Human Rights Commission, Report on Prevention of Atrocities against Scheduled Castes, 2004.



through the wall of the Ayodha site. Although all the assailants were killed, Hindu nationalist parties such as the Vishwa Hindu Parishad (VHP) called for retaliatory action to be taken against Muslim organizations and blamed Pakistan for orchestrating the attack. The 166.6 million Scheduled Castes (including the Dalits) and the 84.3 million Scheduled Tribes (Adivasis) continued to face discrimination and social segregation in many aspects of public and private life. Dalits were victims of social ostracism, having inadequate access to health care and poor working conditions. Dalit women continued to face 'double discrimination' on the basis of their caste as well as gender – deprived of education and basic health care they were frequently forced into slave-like work and menial labour. In the light of the egregious and systematic denial of the fundamental rights of the Dalits, the UN, on 19 April 2005 (in an unprecedented move) decided to appoint two special rapporteurs to examine the substantial and deep-rooted problem of caste-based discrimination. The special rapporteurs are mandated to study all issues surrounding the discrimination against Dalits and report to the UN Sub-Commission on the Promotion and Protection of Human Rights. The three-year process will lead to the drafting of a set of *Principles and Guidelines* aimed at eliminating caste-based discrimination.

Maldives

An unfortunate pattern of discrimination and persecution of religious minorities persisted in Maldives, which does not provide constitutional guarantees of freedom of religion. According to the legislative provisions, the president and members of parliament must be Muslims. There is a continuing failure in providing places of worship to non-Muslims, with the government also prohibiting the import of religious statues and icons.

Nepal

In Nepal since the dismissal of the elected government in 2002, the king has appointed three interim governments. Sher Bahadur Deuba, a former prime minister, was reinstated on 2 June 2004. However due to the ongoing insurgency led by the Moaists, and the inability to form a political consensus, it has become impossible to establish a parliament. Prime Minister Deuba was forced to resign in February 2005 with the King Gyanendra seizing absolute control of the government, ostensibly to combat the Maoist rebellion. Sher Bahadur Deube was convicted over charges of corruption by a Royal Commission and has been imprisoned for two years. The charges brought against the former prime minister and his conviction at the hands of a Commission appointed by the king has been heavily criticized as a major setback to democracy and rule of law.

The continuing Maoist insurgency has led to an increase in the number of political disappearances in Nepal. According to the UN High Commissioner for Human Rights, at present Nepal has the highest number of disappearances anywhere in the world. The Maoist insurgency has a hugely negative impact at all levels, including schooling and higher education. Amidst the civil and political unrest, women (from all communities) have suffered from discrimination, victimization and degradation. In addition, and as discussed below, Nepal continues to suffer from long-standing refugee problems. There has been no durable solution to, or improvement in the plight of, over 100,000 Bhutanese refugees in Nepal. During 2005, the UN High Commissioner for Refugees intends to withdraw support for the refugees – this would leave these refugees vulnerable to further abuse and continuing statelessness.

Pakistan

Whilst almost all of the regions' minorities suffered from a 'democratic-deficit' and undermining of rule of law and human rights principles, the situation of religious minorities within Pakistan was particularly unfortunate. The year 2004–5 witnessed the strengthening of military rule, and, although some progress was made by the military ruler General Pervez Musharraf to inject a sense of moderation and pluralism in the societal fabric, marginalized communities (particularly the religious minorities and women) were targeted and victimized. Madrasas (Islamic religious schools) continued to flourish, and as the tragic events of London on 7 July 2005 have confirmed, several of these madrasas persist in disseminating fanatical and intolerant ideologies; it is now confirmed through media reports that three of the four men involved in the London bombings had visited madrasas in Pakistan. Notwithstanding the political rhetoric on the part of the government, discriminatory laws such as the Blasphemy Laws and the Hudood Ordinances continue to be deployed

against religious minorities and women. Women in Pakistan suffer huge discrimination as a consequence of the arbitrary application of the Hudood laws. President Musharraf's efforts to introduce a minor amendment in the procedural application of the Blasphemy Laws – a measure approved by the national parliament in October 2004 – failed to reduce the number of arrests and detentions on blasphemy charges. According to the statistics provided by the Human Rights Commission of Pakistan, during the period January 2004–August 2005 more than 150 persons were detained for offences under the Blasphemy Laws. The abuse of blasphemy legislation was exemplified through the cases of Javed Anjum and Samuel Massih. Both were accused of blaspheming under s.295(c) of the Pakistan Penal Code 1860 (as amended). Samuel Massih was bludgeoned to death by his police guard while receiving treatment for tuberculosis in a Lahore Hospital, while the 19 year old Javed Anjum was tortured to death by students from a local madrasa. No action has been taken by the police or security forces against those involved in these murders. Furthermore, there was a substantial increase in sectarian violence across the country, with the Shia minority community being the principal target of victimization and killings.

Religious minorities also claim to have been excluded from the limited avenues of Pakistan's fragile democracy. The present military government had in 2002 agreed to abandon the much-despised separate electorate system – a system whereby separate electoral colleges were established for Muslims and Non-Muslims. Despite the promise of abolition, the system was deployed in the local elections held in August and September 2005. These local elections, seen as the precursor to the national parliamentary elections due for 2007, were marred by considerable bloodshed. There were also substantial accusations of widespread fraud and vote rigging and intimidation of minorities (particularly Christians) at the behest of the government. Minority groups have criticized the Pakistan Election Commission for retaining separate lists for such communities as the Ahmadiyas, and for reserving four seats for male Muslims and two for female Muslims in each of the 13-member local councils.

Sri Lanka

Within Sri Lanka during 2004, the peace negotiations (which had been stalled in the previous year) remained suspended. During the period January 2004–August 2005, both the government and Liberation Tigers of Tamil Eelam (LTTE) violated the provisions of the 2002 accord on numerous occasions. The situation was further exacerbated by the split within LTTE itself. Vinayagamoorthy Muralitharan, the eastern commander, broke ranks with the main party on 3 March 2004, claiming neglect and poor treatment of eastern Tamils. Fighting between the two LTTE groups erupted in early April and continued intermittently for several months. The Tamils, as a minority, complained of continuing systematic discrimination in areas such as employment, higher

Right: Farmer outside her home in Chittagong Province, Bangladesh. Karen Robinson/ Panos Pictures

education and housing. However, an ongoing and unfortunate feature of the conflict has not only been the torture and brutalization perpetuated by the governmental security forces, but also the political killings by LTTE, targeting of Tamil splinter groups and the enforced recruitment of children as soldiers. The recruitment of children is particularly tragic; it extends to both young boys and girls and is in violation of all norms and values of international law. The fragile peace between the government and the Tamil Tigers was further strained after the assassination of the Sri Lankan foreign minister, Lakshman Kadirgamar on 12 August 2005. Mr Kadirgamar, although a Tamil himself, had been highly critical of the terms of the peace agreement, which he perceived as unfairly favourable towards the Tamils. During the period January 2004–August 2005, the indigenous peoples of Sri Lanka, the Veddas made claims of 'land-grabbing' and abuse.

'War on Terrorism'

As a key ally of the Western governments in the global 'War on Terrorism' Pakistan played a prominent role both in Afghanistan and within Pakistan itself. While the Pakistan government was supported financially and militarily by the US and was granted re-entry to the Commonwealth in September 2004, the 'War on Terrorism' resulted in a number of negative consequences for ethnic, religious and racial minorities of the region. There have also been substantial difficulties for the indigenous peoples of the tribal belts of Pakistan. Amendments were made to the Anti-Terrorism Act 1997 in October 2004, whereby those convicted of 'supporting' acts of 'terrorism' were to be sentenced to life imprisonment. The police and security services were given the power to seize the passports of 'terrorists'. Earlier, in April 2004, the Supreme Court of Pakistan ruled that individuals convicted of terrorist offences could not be pardoned at the behest of victims' families – a practice that is allowed in other serious criminal offences such as murder. The 'War on Terrorism' was pursued with ruthless intensity against nationals of some countries – there were numerous instances of disappearances, arbitrary detentions and torture of foreigners. In July 2004, a Tanzanian national Ahmed Khalfan Ghailamin 'disappeared' after having been arrested by the Punjab police. His whereabouts are not known since his arrest, nor is there any confirmation as to whether he is still alive. Since March 2004, the Pakistan government has also undertaken significant military operations in the autonomous Federally Administered Areas of Pakistan (FATA). While the military activities are conducted ostensibly to hunt for Osama bin Laden and to flush out foreign supporters of Al-Qaeda, the indigenous tribal peoples of FATA have complained of torture, killings and arbitrary detentions of their peoples. There have been reports of extra-judicial killings, mass arrests and house-demolitions of the indigenous peoples of Waziristan. After the bombings in London on 7 July 2005, Pakistan's military government rounded up and detained dozens of people, including Islamic religious leaders. While this move is seen as a response on the part of the President Musharaff to placate the West, in particular the US and the United Kingdom, there is a substantial risk of generating a backlash. Furthermore on 1 September 2005, the foreign ministers of Pakistan and Israel also held talks in Istanbul, Turkey – thereby allowing the possibility of establishing formal diplomatic relations between the two countries. Given the religious sensitivities evoked by the Israeli–Palestinian conflict, and the fact that much of the Islamic world does not recognize the state of Israel, critics of General Mushraff perceive this initiative as yet another ill-conceived step towards appeasing the West.

A further negative impact of the 'War on Terrorism' – widely considered as a US-driven operation – is to increasingly radicalize the society of Pakistan. In the North West Frontier Province of Pakistan (NWFP), which borders Afghanistan, a Taliban-friendly government came into power after the 2002 elections. In July 2004 the elected provincial government of NWFP launched the 'Hisbah Bill', and has during 2005 campaigned for its adoption and implementation. This proposed legislation calls for the setting up of 'Muhtasib Offices' at provincial and district levels with the objective of ensuring 'adherence to Islamic values at public places, and during weekly Friday prayers'. The adoption of 'Hisbah Bill' has become a serious matter of contention between the radical Islamic parties of NWFP and the federal government. On 4 August 2005, the nine members Supreme Court Bench declared several provisions – relating to the role of Muhtasib – as unconstitutional. The Court advised the governor of NWFP not to give his

assent to the bill. The issue, however, is likely to remain a serious source of controversy and aggravation. Critics of the proposed legislation are concerned that, once in force, this law could be deployed to ensure adherence to prayers and timings of the call to prayer. The scope of 'Islamic values' is vague and liable to abuse; this ideology is already being used to curb freedom of expression and freedom of religion. Religious minorities fear persecution and further intimidation at the hands of Islamic extremists.

The 'War on Terrorism' had implications on other minorities of the region. In India on 21 September, 2004 the newly elected Congress government repealed the anti-terrorism legislation (Prevention of Terrorism Act – POTA) which had been enacted in the aftermath of 11 September 2001 and the attacks on Indian parliament in December 2001. However, as Human Rights Watch has noted, the legislation was draconian in nature and '[i]n practice, the law was often used against marginalized communities such as Dalits (so-called 'untouchables'), indigenous groups, Muslims and the political opposition'. While the repeal of the legislation was a positive step, POTA in effect continued, courtesy of a sunset feature authorizing the Central POTA Review Committee to using existing powers of arrest, detention and interrogation, and to review all the pending cases under the law. Further, the government combined the repeal of POTA with amendments to the Unlawful Activities of Prevention Act (UAPA) 1967. The impact of the revised anti-terrorism legislation and the application of other laws such as the National Security Act, the Disturbed Areas Act and the Armed Forces (Jammu and Kashmir) Special Powers Acts continue to allow the security forces to abuse the rights of minority communities especially Muslims in Jammu and Kashmir.

Impact of the tsunami

On 26 December 2004 a powerful tsunami, measuring 9 on the Richter scale, hit the coastal areas of South-East Asia. The tsunami brought disaster and devastation not only to the Far East, but also to a number of South Asian countries, most notably Sri Lanka, southern India and Maldives. It is estimated that over 300,000 people were killed and at least a million people were rendered homeless in this tragedy. Women and girls were worst affected by this disaster; fatalities among them were much higher than among men. The tsunami had a devastating impact on the northern and eastern coastlines of Sri Lanka, regions which are controlled partly by the government and partly by the LTTE. The destruction accounted for over 11,000 deaths in Sri Lanka and displaced thousands of people. A huge international effort was launched to support the victims of the tsunami, and a package of US$3 billion was promised by the international community for the reconstruction of Sri Lanka. However, the process of aid distribution has been hampered by internal conflict – there are divisions within the governing coalition, and between the government and the LTTE. Eight months after the disaster, the Tamil and Muslim minorities affected by the disaster claim a failure of support from the Sinhalese-dominated majority government. There are claims of discrimination, diversion of aid and deliberate withholding of funds for reconstruction of Tamil areas. On 14 July 2005, the Supreme Court of Sri Lanka suspended the implementation of an agreement signed earlier between the LTTE and the government for post-tsunami aid-sharing. In its ruling, the Court took the view that the Tamil Tigers were failing to ensure that their offices were accessible to individuals affected by the disaster. The Court also expressed serious misgivings about the management and distribution of aid. The Court's ruling is likely to have a significant negative impact on the already strained cease-fire between the LTTE and the government forces.

In India, the Dalits faced serious losses as a consequence of the tsunami. The most heavily affected areas – with heavy concentrations of Adivasis and Dalits – were the remote islands of Andaman and Nicobar, and the Chennai and Cuddalore, Kanyakumari and Nagapattinam districts of Tamil Nadu. The Andaman and Nicobar Islands are home to six indigenous tribes, including the Onge, the Jarawa, the Sentinelese and the Andamanese. Indigenous peoples faced considerable loss of life and a huge disruption to their lifestyles. The Indian government remains reluctant to admit the level of damage, or to allow international access to the islands because of strategic military bases in the Nicobar Islands. The tsunami brought a substantial amount of devastation for the Dalits of the southern Indian state of Tamil Nadu – it is estimated that 10,000 died while 650,000 were

displaced. More tragic and shameful was the fact that in the aftermath of the tsunami, the Dalits of Tamil Nadu were made to suffer from worst forms of discrimination and humiliation. Notwithstanding substantial losses, many Dalit victims have not been paid compensation – a consequence of their exclusion from the initial lists drawn up on 27–28 December 2005. Dalits also complain of exclusion from making use of (and in some cases even entering into) makeshift relief camps; the untouchablity syndrome continues to dominate the upper Hindu caste mentality. The limited shelter that has been provided to Dalits is close to what are regarded as less desirable areas, for example near graveyards or garbage dumps, and are lacking in proper sanitation or other facilities. In these shelters there is no regular supply of water. After the tsunami, several international agencies donated large portable water-tanks for the general consumption of all those affected by the tsunami. In several instances, the Dalits have been prevented from drawing water from these taps because of the fears of the upper-caste Hindus of the 'pollution' of water at the hands of 'untouchables'.

The tsunami also brought devastation and destruction to the islands of Maldives. Over 50 of the 198 Islands were severely affected by the huge waves; the contamination and destruction of clean water sources is among the most serious problems. There has been considerable disquiet at the way the Maldives government has handled the crises. However, since Maldives continues to have an autocratic regime, any opposition to the governmental policies is likely to be stifled. ■

South-East Asia

James Chin

In much of South-East Asia, the global 'War on Terrorism' has led to a degradation of minority rights. Many governments with poor human and minority rights records have cited this as an excuse to crack down on activists, with many minority rights activists deemed 'terrorists' simply because they challenge the state on minority rights issues.

Other states used the 11 September 2001 attack on New York as an excuse to detain political opponents, citing the need to pre-empt 'terror' actions, especially against Islamic fundamentalist groups. The US silence on these abuses merely encouraged these governments.

Most overt cases of minority discrimination in the region relate to the minority groups' struggle for either autonomy or independence from the state. Thus the discrimination suffered is largely due to a political problem and will be ongoing for some years to come.

Many countries in the region refuse to recognize minority rights, fearing that it will lead to 'separatism' or separatist tendencies. Many countries also see minority rights as a problem associated with the nation-building process, arguing that a single national identity is more important than a parochial minority identity. For countries such as Indonesia, spread across thousands of islands and three time zones, and with hundreds of ethnic groups in its midst, the fear of separatism linked to a particular ethnic group is real. This was reinforced when East Timor successfully broke away from Indonesia in 2002. There are at least two groups, Acehnese and Papuans, who have a history of seeking to separate from Indonesia. A peace deal just concluded in August 2005 between Indonesia and Aceh rebels may forestall moves for independence. Further to the north, there are two big groups in Burma – Shan and Karen – who are also seeking independence, while a section of the Moro people in the southern Philippines is also fighting for an independent state.

Burma

Since 1988, a junta composed of senior military officers has ruled by decree, without a constitution or legislature. These decrees and administrative practices result in what can only be described as one of the world's worst records of discrimination against minorities in the period of 2004–5. The prominent and almost exclusive use of the Burmese language in primary schools and by state authorities, even in areas with very large concentrations of linguistic minorities such as the Shan and Arakan, is a discriminatory practice that continues to disadvantage these minorities in educational, economic and social terms. Religious minorities, including Muslims (Rohingya) mainly concentrated in Arakan State, have in 2004–5 continued to be subjected to discriminatory treatment. Authorization to construct new Christian churches, and especially new mosques, has continued to be denied. Non-Buddhist minorities in 2004–5 continued to experience employment discrimination at upper levels of the public sector: 'the most senior non-Buddhist serving in the government was the deputy attorney general (a Baptist). There were no non-Buddhists who held flag rank in the armed forces. The government discouraged Muslims from entering military service, and Christian or Muslim military officers who aspired to promotion beyond middle ranks were encouraged by their superiors to convert to Buddhism.'

Some of the worst discriminatory practices appear to affect the Muslim Rohingya minority. Because their ancestors are not considered by the government to have been in Burma at the time of British colonial rule, most members of this minority are not deemed to be citizens under the 1982 Citizenship Law. As a result, the Rohingyans cannot be admitted to state-run secondary schools, are excluded from employment in most civil service positions and also have severe restrictions imposed on them in relation to leaving their villages, which inhibits their ability to trade and seek employment.

Reports from Amnesty International and the Fédération internationale des droits de l'homme in 2004 confirm the continued discriminatory confiscation of land belonging to minorities in border areas and the western part of the country, and the displacement of these minorities and handing over of their land to ethnic Burmans in 'model villages', or for development projects mainly controlled or for the benefit of members of the country's ethnic majority.

The Burmese state has repressed many of the minorities and indigenous peoples in the north of the country and there is a long history of minorities and indigenous peoples fighting against the government in Rangoon/Yangon. However, in the past decade, the military junta has managed to

Above: A scene of destruction in Aceh following the tsunami which struck South Asia on 26 December 2004. Tim A. Hetherington/ Panos Pictures

convince many of these minorities and indigenous peoples to stop fighting the central government in return for some autonomy and the cessation of military operations against them. The government is actively repressing, usually by military force, those few minorities and indigenous peoples – including the Shan and Karen – who have managed to build up militia groups and who refuse to come to some sort of a deal with Rangoon.

The Shan are the largest of Burma's eight main minorities, which together make up a third of the country's 43 million population. Like other groups, they are fighting for independence from the rule of the military junta. In the past year, the Burmese military has stepped up operations against the Shan and Karen, forcing many to flee across the border to Thailand. The Thai authorities do not want them and have pushed them back across the border. A few thousand have died already in the fighting. There are also consistent reports that the army is forcing girls and boys from minorities and indigenous peoples to become soldiers or work as forced labour.

The military junta has supported the United Wa State Army (UWSA) against the pro-independence Shan State Army (SSA) causing more civilian casualties. The war against the minorities and indigenous peoples is largely due to the fact that they have refused to accept Rangoon's political authority. The Burmese army is also targeting civilians by burning down entire Shan villages and forcibly relocating whole villages. There are reports that Shan women were raped. During the period March–May 2005, there were reports that 200–500 Shan villagers were fleeing to Thailand on a daily basis to escape the fighting.

Cambodia

In Cambodia, there remain strong undercurrents against the small Vietnamese minority, who still face petty harassment from officials. While there were no organized moves to oust them, the Cambodian community would prefer them to be repatriated to Vietnam. Indigenous peoples face loss of their traditional lands through the granting of land concessions to private companies. Drafting of a sub-decree of the Land Law to allow for collective titling of indigenous land is underway. However, the process is very slow and there is mounting concern that there will be little indigenous land left to title by the time the decree has been drafted and the titling process begins. The Special Representative of the UN Secretary-General for Human Rights in Cambodia has requested that the government stop granting land concessions until the regulations on collective titling are established. Cambodia continued to fail to provide effective protection to Montagnard asylum seekers and some were reportedly returned to Vietnam where they faced ill-treatment.

Indonesia

In Indonesia, the minorities and indigenous peoples of the provinces of Aceh and Papua faced significant discrimination. The Acehnese are fighting the Indonesian state for an independent Islamic homeland. The Indonesian government has responded with military force, which has turned the entire region into a civil war zone for the past decade.

Aceh was the hardest-hit region in Indonesia during the tsunami disaster (see the previous section for more information on the impact of the tsunami). The scale of the disaster was such that it gave the Indonesian state and the rebel movement, GAM (Gerakin Aceh Merdeka – Free Aceh Movement), the impetus to look for peace. After several rounds of negotiations in Norway, the Indonesian state offered the Acehnese autonomy and, on 15 August 2005, GAM and the Indonesian government signed a peace deal in Helsinki, Finland. The Indonesian parliament will have to ratify the autonomy deal but the Indonesian President Susilo Bambang Yudhoyono has already promised to honour it. The deal will give the Achenese autonomy in almost all areas apart from foreign policy and defence, and Aceh will be allowed to keep 70 per cent of its oil and gas wealth. Local elections will be held in April 2006 and around 300 monitors from the European Union and South-East Asia will observe the implementation of the deal. The deal also calls for an amnesty for GAM members and a gradual withdrawal of Indonesian troops. Most observers are of the opinion that this peace deal is the most promising to emerge for the past decade.

Like the Acehnese, the Papuans on Indonesia's eastern front, are also fighting for an independent homeland. The Indonesia army has responded with force, and is widely believed to have murdered Theys Eluay, the leader of the Papua independence movement, a loosely knit movement called the Free

Papua Movement (OPM). Although the Indonesian government has declared Papua an autonomous province (including changing its name from Irian Jaya to Papua), Papuans have complained that this is a ploy to divide the independence movement. They have also complained that they are still being actively discriminated against by the state. There is long-standing animosity between local Papuans and migrants from other islands, who were encouraged to settle in Papua by the Indonesian government, under its *transmigrasi* programme. In the provincial capital Jayapura, the migrant population, consisting mainly of Javanese and Maldurese, easily outnumbers the local population. The migrants also control the local economy. The autonomy given to the Papuans is not as extensive as that given to the Acehnese. In the past year, there are credible reports of clashes between the Indonesian army and Papuan rebels, including clashes in major Papuan towns such as Wamena, Wasior and Timika. Reports suggest that more than 100 people were killed in clashes with the military.

The Papuans are also unhappy with US mining giant Freeport-McMoRan. Its concessions in Papua amount to 3.6 million hectares, and it owns easily the largest gold mine in the region. Human rights activists accuse the company of paying protection money to the Indonesian military, who in turn use military force to stop Papuans from protesting against the operations of the mine. The company denies involvement in human rights abuses. Several OPM attacks on the operations of the mine have led to Indonesian army retaliation against local residents, including a controversial shooting of three American teachers travelling near the mine in 2002. Many Papuans complain that they do not benefit from the mine.

There was some positive news, however. Several laws that discriminated against the ethnic Indonesian Chinese have been scrapped, including the infamous Indonesian Citizenship Certificate (SBKRI) decree. Under this decree, ethnic Chinese Indonesians were given a special code in their ID which identified them as Chinese and gave the bureaucracy the opportunity to discriminate against them. Former President Megawati cancelled the decree in April 2005.

In the 2004 elections, there were several parties that openly claimed to be representing ethnic Chinese, something that was unheard of during the rule of former president Suharto. Although none of these parties made any headway, they did raise the profile of the Chinese community. Many senior Indonesian officials openly proclaimed their Chinese ancestry.

Laos

The Hmong face ongoing severe discrimination in Laos. Like the Hmong in Vietnam, they are a target because they supported the US during the Vietnam War and because some are Christians. Hmong continued crossing into Thailand through 2004 and early 2005, joining thousands already there hoping for resettlement in the US. UNHCR facilitated the resettlement of 14,000 Hmong to the US during 2005. Those not accepted for resettlement face an uncertain future; camps have closed, families have been evicted from villages and left destitute, facing possible deportation back to Laos. The government's anti-drug campaign implemented with support from the UN Office for Drugs and Crime (UNODC), the US and European Union resulted in a large reduction in cultivation of the opium poppy; however, this has been at the expense of those hill tribes who relied on its cultivation. Opium eradication has been used to justify resettlement of indigenous peoples from the remote highlands to lowlands areas. Poppy cultivation has been eliminated before alternative economic activities were established, resulting in worsening economic and social conditions. Relocation has disrupted the indigenous hill tribes' way of life and has left them with insufficient land to earn a living and few of the promised health and education services.

Malaysia

In Malaysia, the state-sanctioned affirmative *bumiputera* (indigenous) policy, which is often seen as discriminatory towards the minority Chinese and Indian population, was being debated openly more and more by the mainstream media. Previously such issues were considered 'sensitive'. Although the debates are often ethnically charged, the very fact that such issues are allowed to be debated is a positive step. The debates brought into question the whole affirmative policy, with even the government admitting that one of the main goals of the affirmative policy – giving the *bumiputera* ownership of at least 30 per cent of the country's corporate wealth – was not achieved. Many

bumiputera businessmen who were given exclusive contracts and licences by the government simply sold them to the Chinese or, in many cases, subcontract the work to Chinese contractors.

The new leadership in Malaysia, under Prime Minister Abdullah Badawi, who took over from Mahathir Mohammad in November 2003, has shown itself to be more transparent.

There are, however, problems relating to minority non-Islamic faiths. Non-Muslims make up about 40 per cent of Malaysia's population. Islam is the official state religion and, while freedom of religion is respected by the state, some restrictions are placed on non-Islamic faiths, mostly in the area of proselytizing. Muslims come under the purview of Syariah courts while non-Muslims come under civil law. Problems arise when there are mixed marriages. In 2004, Shamala Sathiyaseelan, a Hindu woman, went to the civil courts to challenge the conversion to Islam of her two young children (both aged under 5). Without her knowledge, her estranged husband, an ethnic Indian, converted to Islam together with the children. Under civil law, children under the age of 18 cannot change their religion without the parents' consent. Despite this, the Syariah court had awarded the custody of the children to her husband because he was a Muslim looking after Muslim children. As a non-Muslim, Shamala cannot appear before the Syariah court. When she went to the civil court, it refused to intervene, arguing that it does not have jurisdiction. It ruled, however, that the children should stay temporarily with her, but she cannot expose them to any non-Islamic religion or practice. Because there is no legal remedy to the issue, as the civil and Syariah courts are equal, Shamala fled Malaysia with the children. Unless the state clearly draws the line separating Muslims and non-Muslims in legal matters, cases like this will become more frequent.

Philippines

In the Philippines, progress was made on the Moro minority. Under a peace deal signed in 1996, the central government in Manila has given them autonomy in the south, where the majority of them live. Local elections in August 2005 were uncharacteristically peaceful, and a new Muslim governor was elected, suggesting that prospects for peace are good in the short term.

However, sections of the Moro community have refused to go along with the peace plan, preferring to fight for an independent Islamic Moro state. The largest group that has rejected the peace plan is the Moro Islamic Liberation Front (MILF). Nevertheless, the MILF is holding talks with Manila hosted by the Malaysian government. The truce between the MILF and Manila appears to be holding, with Malaysian officials acting as cease-fire monitors.

There are ongoing military operations against Muslim groups in the south, and some of these encounters have caused civilian casualties. In February 2005, more than 50 civilians were killed on the island of Jolo, when the army clashed with a faction of the Moro National Liberation Front (MNLF). More than 12,000 people were displaced.

The Moro problem is a long-term one which requires a long-term solution to grievances that have accumulated over generations. The Moros are Muslims in Catholic-majority Philippines, making this problem hard to resolve. Manila has granted autonomy and will not go further, fearing that this may lead to a breakaway state. Manila must address the economic disadvantage of the region if it wants to strengthen the peace process.

Recent years have also seen advances with regard to the land rights of indigenous peoples in the Philippines. The Indigenous Peoples Rights Act 1997 recognised indigenous peoples' native title to land, and rights of self-determination and free exercise of culture. It offered an option of applying for a Certificate of Ancestral Domain Title. The National Commission on Indigenous People announced that, as of July 2003, 11 such certificates had been awarded covering 367,000 hectares. About 76,000 people are direct beneficiaries of the certificates, constituting less than one per cent of the indigenous population of the Philippines. The implementation of the Act has been slow and difficult, partly on account of persistent discrimination on the part of the authorities.

Thailand

Lack of citizenship is a particular problem for many ethnic minorities in the north. The government has undertaken registration schemes but statelessness continues to restrict access for a significant number to education, employment and health care and renders them vulnerable to exploitation. Women and girls from minorities are especially vulnerable

to trafficking. More than 2 million Burmese have crossed the border into Thailand where they seek a living as undocumented migrants. They are vulnerable to exploitation by employers and deportation to Burma by the authorities. Many migrant workers, particularly from Burma, were not provided with humanitarian assistance following the tsunami of 2004 because of their lack of legal status in Thailand.

The majority of people living in the south are Muslims who want to break away from the Buddhist-majority Thai state and create an Islamic state. This has been the case for more than 50 years, but in 2004 separatists started a bombing campaign and this, in turn, has led to a state of emergency being declared. Troops have poured into the region and the government has vowed to crush the separatists by military means if necessary. In the period April–August 2005, there were almost daily reports of killings of Buddhists and government officials. The Thaksin government does not appear to be willing to negotiate with the rebels and the military has repeatedly said that a military solution is possible.

The use of strong-arm tactics by the Thai state has reinforced the separatists' claim that the entire Muslim community is being repressed, and has helped them recruit more militants. The government blames Islamic schools for teaching radical Islam, and also blames Islamic radicals in Malaysia for helping the separatists. Unless Bangkok addresses the political grievances of the Muslims in the south, the problem will persist. A military solution is not possible.

Vietnam

Religion is regulated in Vietnam. Unauthorised religions (including unauthorised Buddhist churches) face repression by the state. Christians in Vietnam make up no more than 10 per cent of the population. Unauthorised Christian churches have faced strong persecution by the Vietnamese state for the past several years. The state sees the church, especially evangelical Protestant churches as influenced by the US and undermining the authority of the Communist Party. Clergy are often harassed and beaten, and churches placed under police surveillance. Key worshippers are often taken to police stations for interrogation. Discrimination is especially acute among minorities and indigenous peoples who are Christians.

The Hmong people, who constitute less than 1 per cent of the population, are singled out for persecution because, in addition to being Christians, they fought against the Communists during the Vietnam War. In 2002 and 2003 two Hmong Christians were beaten to death by the authorities, who were pressuring them to renounce their faith.

Two senior members of the Vietnamese Mennonite Church are currently in jail and other members were subject to torture while under detention. There are reports of members being sent to mental hospitals. One Mennonite church was burned down in Ho Chi Minh City by officials.

The Montagnards (a collective term for a variety of ethnic groups living in the central highlands) also face severe state sanctions. They face persecution both as ethnic minorities and also as Christian Protestants. At Easter 2004, Montagnards held peaceful demonstrations over long-standing land rights and freedom of religion issues. They also called for an end to the migration of large numbers of majority Kinh people to the central highlands, migration that has dramatically changed the demographic composition of the region. There followed a severe crackdown by the authorities resulting in at least 8 deaths and hundreds of injuries. The central highlands have been effectively closed to the outside world since. Diplomats and journalists have been allowed to visit only under strict supervision. Hundreds have fled to seek refuge in neighbouring Cambodia. Those that are caught leaving or are returned to Vietnam from Cambodia face ill-treatment. Since 2001, more than 180 Montagnard Christians have been arrested and sentenced to long prison terms on charges that they are violent separatists using their religion to 'sow divisions among the people' and 'undermine state and party unity'. ■

Oceania

Nic Maclellan

A major feature of 2004–5 is an assault on indigenous rights in Pacific Rim countries (highlighted by the Akaka Bill in Hawai'i, the abolition of the Aboriginal and Torres Strait Islander Commission in Australia and foreshore legislation in Aotearoa/New Zealand). There have also been significant changes in the non-self-governing territories of the Pacific, with new attempts to devolve powers to autonomous governments after conflicts in the 1980s and 1990s.

Hawai'i

For five years, Hawai'i's Senator Daniel Akaka has been shepherding the Akaka Bill through the US Congress – legislation that will formally recognize Hawaiians as an indigenous people. In August 2005, the bill was put before the full US Senate for debate, even though many Kanaka Maoli (native Hawaiians) remain firmly opposed to the legislation.

Critics of the Akaka Bill say the legislation will make the US Department of the Interior the lead agency responsible for Hawaiian rights, that it enshrines a racial definition of indigenous Hawaiians based on blood, and that it ignores questions of international law about the overthrow of the Kingdom of Hawai'i in 1893. Hawaiian sovereignty groups like Ka Pakaukau see the Akaka Bill as a way to foreclose their right to self-determination under international law. There is also concern that the bill will open the way for a Land Claims Settlement Act to access the Hawaiian homelands, which are currently protected from foreign ownership.

The legislation was developed after the 2000 court case *Rice v. Cayetano*, when the US Supreme Court decided that voting for the Office of Hawaiian Affairs (OHA) by Kanaka Maoli alone – rather than all residents of the state – breached the US Constitution. This court ruling opened the way for other cases challenging affirmative action programmes for Kanaka Maoli, including the existence of the OHA and the Department of Hawaiian Homelands.

In July 2005, a US federal appeals court struck down the Kamehameha schools' policy of prioritizing education for Kanaka Maoli, saying it amounts to unlawful racial discrimination. Overturning a lower court, the 9th Circuit Federal Court ruled that the policy of allowing only Hawaiians to attend Kamehameha schools violates the 14th amendment to the US Constitution, which outlaws discrimination on the basis of race.

Australia

In Australia, Aboriginal and Torres Strait Islander (ATSI) people are under similar challenge from the conservative government led by Prime Minister John Howard. The Australian government has rejected measures it dubs 'symbolic reconciliation' – negotiations on a treaty with Aboriginal Australia, further action on the recommendations of the Royal Commission into deaths in custody, and an apology for the Stolen Generations (indigenous children separated from their families by welfare workers, missionaries and government officials).

Instead, it is moving on 'practical reconciliation', by dismantling Aboriginal-run institutions and 'mainstreaming' specialist services (previously run by and for indigenous Australians) into government departments. A 2005 Senate Committee on the Administration of Indigenous Affairs expressed concern that specialist organizational and cultural knowledge developed by self-managed organizations will be lost if funding for indigenous programmes is folded into Australian government agencies.

In a crucial decision, the government-created Aboriginal and Torres Strait Islander Commission (ATSIC) was abolished in March 2005.

Prime Minister Howard had already split the Commission into an elected arm and a funding arm in 2003, leaving ATSIC with no decision-making responsibility for the provision of services. The government then introduced the Aboriginal and Torres Strait Islander Amendment Bill 2004 to legislate for the complete abolition of ATSIC, which was passed by the federal parliament on 16 March 2005. These decisions were made with limited consultation and after the government had crippled ATSIC's ability to participate in the Senate Select Inquiry into Indigenous Affairs. Since then, the government has failed to propose an alternative model for an elected representative body for indigenous peoples and instead formed a government-appointed advisory board, called the National Indigenous Council.

The government's abolition of its own elected indigenous body reflects not simply a belief that its model was a failure, but also that indigenous self-determination should be off the agenda. The government policy comes at a time when Aboriginal

communities have rioted over police brutality following the death of a young boy in Redfern in February 2004, and the police killing of a man on Palm Island in November 2004.

Indigenous community leaders are also lobbying for government action on the ongoing social and health crisis, including an epidemic of petrol sniffing in rural communities and significant violence against indigenous women and children. A 2001 study on violence in Aboriginal communities by the National Crime Prevention Program estimated that the rate of deaths from family violence in indigenous communities is 10.8 times higher than for the non-indigenous population. Faced with significant failures in the criminal justice system, there is increased emphasis on restorative justice mechanisms for addressing criminal behaviour in indigenous communities, and women are heading key community initiatives for youth employment and community reconciliation. (Responses to family violence in indigenous communities are detailed in an important report by the Human Rights and Equal Opportunities Commission: *Social Justice Report 2003*.)

New Zealand

The New Zealand Parliament passed the Foreshore and Seabed Act in November 2004. The bill overruled a June 2003 court ruling that found Maori may have customary interests in the foreshore, which could allow granting of title by the Maori Land Court. The new legislation effectively extinguishes this native title, and opened the way for extensive public protest. In May 2004, a *hikoi* (protest march) of 20,000 people marched from the north of New Zealand's North Island to the capital Wellington. Associate Maori Affairs Minister Tariana Turia resigned from the government and has formed a new Maori Party, receiving a significant upsurge of indigenous support in the lead-up to national elections in late 2005.

French dependencies

Major changes are under way in the three French dependencies in the Pacific: New Caledonia, French Polynesia, and Wallis and Futuna. Key politicians aligned with French President Jacques Chirac's Union pour un Mouvement Populaire (UMP), have been defeated in elections over the last year. In French Polynesia, the Tahoeraa party of Chirac's close ally Gaston Flosse has twice been defeated in elections for Tahiti's local assembly in May 2004 and by-elections in February 2005. Flosse lost power to a coalition led by independence leader Oscar Temaru.

In New Caledonia, the anti-independence strongman Jacques Lafleur has resigned from Congress and lost the presidency of his party Rassemblement UMP, after the party lost power in May 2004 elections. Leaders of the Kanak independence movement Front de Libération Nationale Kanak et Socialiste – which has the support of the minority indigenous population – were elected to a multi-party government alongside their former opponents. For the first time in the Oceania region, two women are heading a government: President Marie-Noelle Themereau of the anti-independence party Avenir Ensemble and Vice-President Dewe Gorode, an Kanak independence activist, writer and poet from the Party of Kanak Liberation. French authorities in Wallis and Futuna are also in dispute with the Lavelua (King) of Wallis, 86-year-old Tomasi Kulimoetoke, who came to power in 1959 (two years before Wallis and Futuna adopted its statute as an overseas territory of France).

Lafleur and Flosse were two key pillars of French policy in the region – both had been in power for over two decades. Their defeat was a setback to the programme outlined by President Chirac when he toured New Caledonia and French Polynesia in July 2003. At the 2004 Pacific Islands Forum, French Polynesia was given observer status, but it was President Temaru and not French ally Gaston Flosse who addressed the assembled leaders of the independent nations of the Pacific. Temaru lobbied for French Polynesia to be re-listed with the UN Special Committee on Decolonization.

In June 2004, France's Overseas Minister Brigitte Girardin stated: 'Thanks to its territories, France is a Pacific nation. Thanks to France, Europe is present here too.' As French citizens, Kanaks, Tahitians and Wallisians all carry an European Union passport and can vote in elections for the European Parliament, even though they're 20,000 miles away. However, voter turn-out for European Parliamentary elections is often very low in the Pacific – in June 2004, voter turn-out was only 25.4 per cent of voters in New Caledonia, 43.07 per cent in Wallis and Futuna, and 39.85 per cent in French Polynesia. Increasingly, most New Caledonians and French

Polynesians see their future as part of the Pacific region, with increasing ties to the trade, cultural and social life of the great ocean. In September 2004, thousands of Kanaks gathered in New Caledonia's capital to erect the *Mwâ Kâ*, a 12-metre high, 3-tonne carved wooden totem to symbolize unity of the Kanak nation and a common destiny for all inhabitants of the French territory.

But independence will not come tomorrow. Under the 1998 Noumea Accord, New Caledonia will only vote on independence after 2014. In Tahiti, President Temaru has stressed that his victory was a vote to change the government – not a referendum on independence. With a narrow majority in parliament, a public service filled with Flosse appointees and a coalition government, Temaru says it will be at least a decade before independence comes.

Bougainville

A further decade-long transition to a vote on self-determination is occurring after the May 2005 election of an autonomous government on the island of Bougainville – formerly the North Solomons Province of Papua New Guinea. Between 1989 and 1998, more than 12,000 people died during a blockade of rebel areas and armed clashes between the Bougainville Revolutionary Army (BRA), the Papua New Guinea Defence Force (PNGDF), and pro-PNG Resistance militias. The 1998 peace settlement opened the way for amendments to the PNG Constitution and the adoption in December 2004 of a new Constitution for an autonomous Bougainville.

In May 2005, voters on Bougainville elected an autonomous government led by President Joseph Kabui, a former BRA leader who later engaged in peace negotiations with Papua New Guinea. The death of BRA founder Francis Ona in July 2005, apparently from malaria, will hamper the project of the Republic of Mekamui, the self-proclaimed government in central Bougainville, which refused to join the peace process in the late 1990s. Bougainville will vote on its final political status after 2014.

There are also debates over rights for indigenous peoples and minority communities in independent nations around the region, especially as there is increasing regional integration and new immigration and investment from China, Taiwan and other Asian nations.

Fiji Islands

There is ongoing tension in Fiji Islands in the aftermath of the May 2000 takeover of parliament by Fijian nationalist George Speight and the subsequent abrogation of the Constitution by the Fiji Military Forces. Although 2001 elections returned the country to parliamentary rule, there are unresolved tensions over the slow pace of prosecutions and reduced penalties for coup supporters (Fiji Islands' former Vice-President Ratu Jope Seniloli was released from prison in November 2004 after only four months of a four-year jail term for coup-related offences). In 2005, relations between the Fijian and Indo-Fijian community have been stressed by debate over the Reconciliation, Unity and Tolerance Bill introduced by the government of Prime Minister Laisenia Qarase – in spite of the name, key provisions of the bill provide amnesty for 'political' crimes and government critics see this as a way of appealing to Fijian nationalist sentiment in the lead-up to national elections in 2006.

Solomon Islands

After the July 2003 intervention by Australian and islander police and military forces under the Regional Assistance Mission to Solomon Islands (RAMSI), the military component of the force has been reduced in 2004–5. While Solomon Islanders largely welcomed RAMSI's work to end criminal activity by former militia members after 1998–2002 clashes between the Isatabu Freedom Movement (IFM) of Guadalcanal and the Malaita Eagle Force (MEF), the Solomon Islands is moving to the difficult stage of economic reform. Over the last year, indigenous landowners and church leaders have challenged proposals for privatization of public utilities and for land registration. NGOs like the Solomon Islands Development Trust (SIDT) have surveyed popular anxiety about the lack of basic services, especially in rural areas, while a November 2004 report by Amnesty International has documented ongoing violence against women, even though armed conflict has largely ended.

Pacific indigenous communities

Faced with all these challenges, indigenous communities in the Pacific islands are organizing to reassert minority rights. A March 2004 regional consultation on the UN Permanent Forum for

Indigenous Issues, held in Nadave, Fiji Islands, brought together indigenous peoples from 15 Pacific nations. The consultation developed proposals for the Permanent Forum's Pacific representative, Mililani Trask of Hawai'i, to take to the UN forum in May 2004. Delegates also gathered at the University of the South Pacific in Fiji Islands in June 2005 for an important regional consultation on intellectual property rights, studying biopiracy and the use and ownership of human and biological genetic material.

Pacific governments are also considering legislation to increase the use of vernacular languages in education: Fiji Islands' government is moving to introduce Fijian and Hindi across the curriculum; Kanak Customary Senator Paul Jewine in the French territory of New Caledonia has proposed creation of a Kanak Language Academy; while the governments of the US territory of Guam and the Commonwealth of the Northern Marianas Islands (CNMI) are discussing a joint commission to preserve the minority Chamorro language. ■


ATLANTIC
OCEAN
FINLAND
NORWAY
SWEDEN
RUSSIA
ESTONIA
LATVIA
IRELAND
UNITED
KINGDOM
DENMARK
LITHUANIA
Kaliningrad
(Rus.)
BELARUS
NETHERLANDS
GERMANY
POLAND
BELGIUM
LUXEMBOURG
CZECH REP.
UKRAINE
SLOVAKIA
FRANCE
SWITZERLAND
LIECH.
AUSTRIA
MOLDOVA
HUNGARY
SLOVENIA
ROMANIA
CROATIA
GEORGIA
PORTUGAL
ANDORRA
SAN MARINO
BOSNIA
AND HERZE.
SERBIA AND
MONTENEGRO
BLACK SEA
MONACO
AZERBAIJAN
SPAIN
Kosovo
ARMENIA
BULGARIA
MACEDONIA
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GREECE
CYPRUS
MEDITERRANEAN SEA

Europe

Europe

Tove H. Malloy

Threats and risks

Other than the direct threat to the life of ethnic and national minorities in armed conflicts, arguably the most worrying threats to ethnic and national minorities today are socio-economic exclusion and assimilation. Roma and Sinti minorities remain the most excluded and vulnerable groups in Europe, closely followed by immigrants and some refugee groups. The UN Millennium Development Goals adopted in 2000 hold that men and women have the right to live their lives and raise their children in dignity, free from hunger and from the fear of violence, oppression or injustice. Moreover, they claim that no individual and no nation must be denied the opportunity to benefit from development, and that equal rights and opportunities of women and men must be assured.

The socio-economic disadvantage of members of ethnic and national minorities concerns their access to housing and services, health care, education and training, as well as employment. The socio-economic disadvantage of minorities results from direct and indirect discrimination, language barriers, lack of citizenship or status, and lack of recognition. In the employment sector, minorities are often excluded from public administration positions and relegated to the lowest-level jobs in the private sector. Self-employment and self-starters of small and medium-size enterprises (SMEs) are often lower than the average, except in certain parts of Europe where self-employment is basically the only way to survive and procure a small but inadequate income.

The level of education among certain minority groups is generally low. Ethnic and national minorities experience language difficulties in state school systems resulting in high drop-out rates and even non-attendance. Moreover, the number of ethnic and national minority teachers appears low, and segregation and special schooling have increasingly become the norm. Discrimination in the housing sector is especially troubling, with issues ranging from non-access in the private housing market, laws requiring residence permits to obtain public housing and health benefits, to issues of property restitution in post-conflict areas and poor municipal housing resembling ethnic ghettos in other areas. In many states, access to the public health sector not only requires prior registration but also insurance guarantees. Disadvantaged minorities usually do not have the means to buy insurance. Across the board, female members of minorities often suffer double or triple discrimination: first as women, next as members of minorities and third as members of the poorest part of the population.

In spite of the lofty ideals set out in the UN Millennium Goals, governments are redirecting funds from economic development to fighting terrorism and in some cases to the war in Iraq. The reduction of funds not only puts minorities at risk but also the overall security of the European region. Certainly, the increased attention to international terrorism has also proven a threat to the rights and freedoms of Muslim minorities and immigrant communities living in Europe. Following the 11 September 2001 attacks and the Madrid and London bombings, European governments have adopted legislation curbing the rights of all citizens but mostly exercised in relation to Muslim communities. While there is a legitimate fear among Europeans that terrorism is threatening the security of a greater number of urban societies, the at times unwarranted use of force and police profiling against members of Muslim communities constitutes racial discrimination. Moreover, the mistreatment and singling out of Muslim individuals as alleged terrorists contribute to the rise in xenophobia among majority populations. Islamophobia is on the rise in most European societies and Muslims increasingly live in fear: fear of hostility, intimidation, discrimination and persecution.

The rise in racial discrimination and Islamophobia has been particularly acute for minorities in Western Europe. It took extreme forms in the Netherlands following the assassination of filmmaker Theo Van Gogh in November 2004, which came after that of Pim Fortyun, an anti-immigration politician in 2003. After Van Gogh's death, a wave of arson attacks targeted mosques and Muslim schools. This came as a surprise to many who believed that there was a Dutch tradition of tolerance and respect for different cultures rather than a reality of avoidance and disregard. Racist and xenophobic attitudes have also been on the rise in France where the entry into force in 2004 of the law forbidding Muslim girls to wear headscarves while receiving instruction in class has exacerbated the situation of Muslim minorities considerably.

International initiatives

Although the initiatives of the international community in Europe have been manifold, the concerted effort is difficult to evaluate. The division

Above: Auschwitz survivor at ceremony marking the 60th anniversery of the concentration camp liberation. Bjoern Steinz/Panos Pictures

of labour of the European governance regime initiated in the early 1990s after the 'soft' revolutions in Eastern Europe and the collapse of the USSR has continued much in the same vein. The Council of Europe has championed the normative approach and made a considerable impact with monitoring cycles under the 1995 Framework Convention for the Protection of National Minorities (FCNM). While governments are now forced to deal with the issue of minority rights directly, the value of the instrument and its monitoring is not yet fully embraced by all sectors of the public administrations of state parties, and the general awareness of it is inadequate. The Organization for Security and Cooperation in Europe (OSCE) has, on the other hand, continued the security approach and has been especially successful in contributing to stability in South-East Europe, but is also making good progress with the governments in the former Soviet Union (FSU) and Eastern Europe, especially through the good work of its field offices and the efforts of the High Commissioner on National Minorities (HCNM). Especially pro-active was the OSCE Economic Forum in May 2005, by putting the socio-economic integration of persons belonging to national minorities on the agenda. Although the willingness to address integration is strong in OSCE member states, the actual ability to transform this into action proved rather more difficult. While the European Union (EU) has encouraged compliance with international law through its conditionality policy, it is questionable how successful the post-2004 enlargement will be in terms of influencing the internal normative barometer in the 25 EU members. This may also founder on the stalled ratification process of the EU Constitution. The conditionality policy, coupled with the requirement for regional reconciliation, is not achieving such good results in the Western Balkans, however, where reforms are slow.

The EU's soft governance impact on the economic prosperity of new member states, and thus the prospect of greater socio-economic inclusion of minorities, is rather more positive. This is in part due to the adoption in 2000 of the Lisbon Strategy to improve the human and social capital of Europe and the subsequent initiation of the informal approach in the Open Method of Cooperation (OMC) to improve member states' social inclusion programmes, both of which have begun to address the socio-economic exclusion of minorities.

Of course, the World Bank's embracing of a Decade of Roma Inclusion in February 2005 stands out as a particularly strong initiative. Set to run from 2005 to 2015, the Decade of Roma Inclusion was initiated by the World Bank, the Open Society Institute and the Hungarian government in summer 2003. The Decade has four priority areas: education, employment, health and housing, and two cross-cutting areas, gender and non-discrimination. Under the Roma Education Fund, special attention is given to the role of education in combating the complex marginalization of Roma.

The governments of Bulgaria, Croatia, the Czech Republic, Hungary, Macedonia, Romania, Serbia and Montenegro, and Slovakia have signed up to the Decade's action plan. To date, however, the record of the participating countries and of the sponsoring organizations in moving toward the stated goals has been mixed. One of the most positive aspects of the Decade has been the collection of relatively high-quality data in the participating countries, as well as further afield, through a survey coordinated by the United Nations Development Programme (UNDP). Unfortunately, the participation of Roma in the designing, drafting and implementation of plans under the Decade also remains unsatisfactory, and little funding is in fact allocated to this.

Constituting a significant improvement not only over the official statistics available from the countries covered but also over the World Bank's own previous studies on Roma minorities, the UNDP survey has already generated a considerable body of new data useful both for documenting the current marginalization of Roma and for monitoring progress in the implementation of the national action plans of the countries participating in the Decade. This, on the other hand, could have the adverse effect of taking the participating countries 'off the hook' over systematic collection of disaggregated data.

The funding of the Roma Decade as a whole remains of concern. Funding for Decade initiatives is expected to come primarily from the signatory governments. It is assumed that participating countries will reallocate resources in their national budgets to finance implementation of their action plans, and both the World Bank and the Open Society Institute have made it clear that the Decade

is not a new funding source. The Open Society Institute has pledged $30 million to the Roma Education Fund (as well as supporting other Decade activities), but the sum total of pledges to the Education Fund remains below US$50 million, and it must be kept in mind that these funds are to be spread over eight countries over a 10-year period. The overall level of funding to address the problems faced by Roma in Eastern Europe and the former Soviet Union remains inadequate, in part because national governments have not allocated sufficient resources, as well as intergovernmental donors. Finally, the change of the presidency at the World Bank has been cited as a new concern for the success of the Decade.

Minority rights developments

At the international level, the beginning of the 21st century was characterized by the putting into practice of the minority rights standards reached in Europe in the 1990s. The greatest activities have been on the monitoring side, with reporting systems coming into full swing. Moreover, both the Council of Europe and the EU have convened new expert groups, and the Council of Europe has established a Roma/Sinti and Travellers Forum. At the political level, ratifications have been achieved, and the impact of the Copenhagen Criteria has begun to extend into the Balkans. In the FSU, the European minority regime is gaining influence, and the 2005 Economic Forum of the OSCE was successful in putting improved implementation of the socio-economic rights of national minorities on the agenda. Standard-setting remains the exclusive prerogative of the Council of Europe with Protocol 12 to the European Convention on Human Rights (ECHR) coming into force in April 2005.

European Union

Although the EU has followed a minimalist approach to minority rights in terms of focusing on combating discrimination, and given the fact that its Charter of Fundamental Rights, adopted in 2000, is not legally binding, there have nevertheless been positive developments in the area of minority protection in EU governance. The EU's Racial Equality Directive, adopted in 2000, and legally based on Article 13 of the Amsterdam Treaty, prohibits direct and indirect discrimination on the basis of racial or ethnic origin, and includes employment, training, education, social security, health care, housing and access to goods and services. The Employment Equality Directive of the same year addresses the issue of discrimination in employment, occupation and training.

The deadline for the transposition of these Directives was 2003 for the then 15 EU members, and 2004 for the new member states, as part of the Community legislative *acquis*. However, in July and December 2004, the Commission referred five member states (Austria, Finland, Germany, Greece and Luxembourg) to the European Court of Justice for not communicating transposition of the Racial and Employment Equality Directives. Eventually, on 24 February 2005, Finland and Luxembourg were condemned by the European Court of Justice for failing to adopt legislation to transpose the Race Equality Directive. Among the compliance states, Slovakia adopted the Anti-Discrimination Act in May 2004, while Ireland approved the legislative status of the Equality Act in July 2004. France created a High Authority against Discrimination and for Equality in December 2004, and the Belgian Walloon-, French- and German-speaking regions adopted new legislation in May 2004, while Poland approved a Law on National and Ethnic Minorities and Regional Languages in May 2005. Legislation has also been adopted in non-member states, such as the Protection against Discrimination Act 2003 (in force in 2004) in Bulgaria, and the entry into force of legislation implementing the rules of the Employment Directive in Norway (May 2004). The fact that the EU gives a high priority to the issue of discrimination is illustrated with the establishment of a new Group of Commissioners for Fundamental Rights, Anti-Discrimination and Equal Opportunities in 2004. This group will ensure that every legislative proposal is screened for compatibility with the European Charter of Fundamental Rights and Freedoms.

Charter of Fundamental Rights

During the European Council in June 2003 it was decided to elevate the European Monitoring Centre on Racism and Xenophobia (EUMC) established in 1997 to a fundamental rights agency. The EU is currently in the process of deciding on the structure of the reformed agency. The decision taken by the Council requires the agency to monitor the Charter

of Fundamental Rights adopted in 2000. The agency is expected to be functional in 2007.

In the meantime, the Charter of Fundamental Rights has been monitored upon the request of the European Parliament by a group of experts. In 2002, the European Commission convened the EU Network of Independent Experts on Fundamental Rights whose mandate is to monitor the situation of fundamental rights in the member states and in the EU on the basis of the Charter of Fundamental Rights. The Network prepares reports on each member state, and on the basis of these prepares a Synthesis Report, which identifies the main areas of concern and makes recommendations. As early as its first working report for 2003, the Network had taken the opportunity to suggest a broader interpretation of Article 21 on non-discrimination and specifically indicated that the implementation of equal treatment in favour of persons belonging to national minorities may impose certain positive obligations on member states in order to promote full and effective equality in all areas of economic, social, political and cultural life.

The Network also prepares Thematic Comments and Opinions. Thematic Comment No. 3, issued in April 2005, addresses the protection of minorities in the EU. In this report the Network takes a holistic view of minority rights and argues for the EU institutions to interpret the rights of minorities not as rights of minorities per se, requiring a prior recognition of the minority, but rather as a list of guarantees given to individuals as members of certain groups, or to the groups themselves. Among the eligible rights of the Charter cited by the Network are, in addition to Articles 21 and 22, the right to respect for private life (Article 7), freedom of religion (Article 10), freedom of expression (Article 11) and freedom of association (Article 12). Thus, on this notion the Network suggests that while most rights pertain to all people in the EU, the right to participation in public life may pertain only to individuals who have strong connections to the state or who hold citizenship.

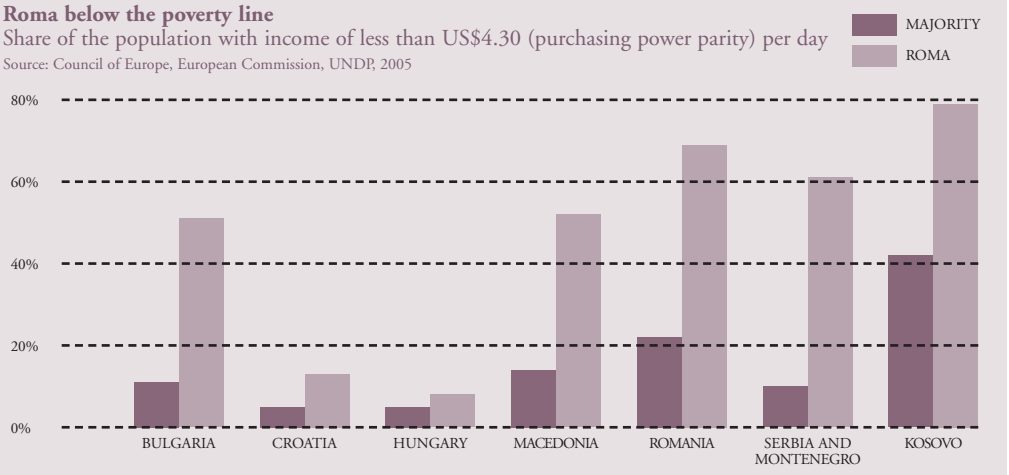
The Council of Europe's Framework Convention for the Protection of National Minorities (FCNM) was adopted in 1995, but the instrument has not yet been ratified by a number of the Council of Europe's members. In 2005 it was ratified by Latvia and the Netherlands. The FCNM is enforced through its monitoring mechanism under which states parties are required to submit a report with information on the status of their minorities and legislation in force. After these reports are made public they are examined by an Advisory Committee (AC), which by now as a matter of rule requires the input of NGOs. The AC's opinions on measures taken by the states serves as a basis for the Council of Europe's Committee of Ministers' recommendations.

During the first monitoring cycle, the AC received 36 state reports and adopted 34 opinions. Many deficiencies and limits were noted, such as the late reception of state reports, their lack of compliance with the guidelines (article-by-article report following the structure of the FCNM), the lack of NGO shadow/parallel reports, and the delay

Roma below the poverty line

Share of the population with income of less than US$4.30 (purchasing power parity) per day

Source: Council of Europe, European Commission, UNDP, 2005



in making reports and opinions public. The second monitoring cycle has seen the submission of 17 state reports to date, and the AC has adopted 10 opinions of which four have been made public so far. According to the outline for state reports, the second reports are to be closely linked to the first results of the monitoring. This means that more attention will be given to the manner in which the states have followed and implemented the recommendations of the Council of Ministers during the first monitoring cycle.

The Committee of Experts for the Protection of National Minorities (DH-MIN), established in 1992 and suspended in 1999, was reconvened in November 2004 with new terms of reference issued during the 902nd meeting of the Committee of Ministers. The DH-MIN is a working group of the Council of Europe's Steering Committee for Human Rights (CCDH), with the task of proposing specific legal standards relating to the protection of national minorities. The DH-MIN identifies and evaluates the ways and means protection might be strengthened. The DH-MIN held its first meeting as a re-established committee in May 2005 and decided to begin its work by examining the issue of advisory and consultative bodies on national minorities. A questionnaire sent to DH-MIN members will be discussed at the next meeting in October 2005.

Roma and Travellers

On the Roma and Travellers issue, the Council of Europe took a major step in 2004 when, after four years of consultations and negotiations, the European Roma and Travellers Forum (ERTF) was registered in September as an NGO. The ERTF is part of a Partnership Agreement with the Council of Europe, enabling close and privileged relations between the ERTF and Council of Europe institutions. The Forum's overall goal is to give the Roma and Travellers the possibility to participate in and influence decision-making processes in issues concerning them. The aim of the Forum is to oversee the effective exercise by Roma and Travellers of all human rights and fundamental freedoms as protected by the legal instruments of the Council of Europe as well as by other relevant international legal instruments. It will promote the fight against racism and discrimination, and facilitate the integration of these population groups into European societies and their participation in public life. The Forum may propose implementation of initiatives primarily with regard to housing, health, education and employment as well as measures to combat any discrimination that Roma and Travellers may meet in relation to the freedom of movement. It must encourage dialogue between the Roma and Traveller communities and governments and exchange of good practices. The Council of Europe's Committee of Ministers kept up the momentum on Roma and Travellers by adopting Recommendation (2004)14 on the Movement and Encampment of Travellers in Europe in December 2004, and Recommendation (2005)4 on Improving Housing Conditions for Roma and Travellers in Europe in 2005.

Two Roma women from Hungary were elected to the European Parliament in June 2004.

Ombudspersons

Only a few European states have established specialized Ombudspersons for the protection of minorities, such as Finland and Hungary. Other European countries have some form of protection for minorities, such as Sweden with the Ombudsperson against Ethnic Discrimination, Germany's Commissioner for Matters Related to Repatriates and National Minorities at the federal level and, in the state of Schleswig-Holstein, a Commissioner of the Minister President for Minority Affairs. In April 2005, the Bulgarian Parliament elected Mr Ginyo Ganev as its first national ombudsperson for a five-year term. The law on a Bulgarian Ombudsperson entered into force in January 2004.

Legal developments

At the international level, arguably the most important development has been the entering into force of Protocol 12 to the ECHR on 1 April 2005. The Protocol provides for a general prohibition of discrimination. The current non-discrimination provision of the ECHR (Article 14) is limited to the application of the provision only in conjunction with one or more rights guaranteed by the ECHR. Protocol 12 removes this limitation and guarantees that no one shall be discriminated against on any ground by any public authority. The list of non-discrimination grounds of Article 14 is reproduced in Protocol 12, extending the prohibition to cover

discrimination in any legal right in national law, even when that legal right is not protected under the ECHR. Protocol 12 is thus a free-standing provision to protect individuals from discrimination. However, there are some regrettable omissions in Protocol 12. First, the absence of a general equality provision is curious, as is the absence of sexual orientation as a forbidden ground for difference of treatment. Moreover, a direct reference to the principle of equality between the sexes is missing in the Protocol. In comparison with the extensive non-discrimination measures now enforced by the EU, the wording of Protocol 12 therefore appears outdated because of the lack of reference to equal treatment or the respect for diversity. The application of Protocol 12 is of course in its early days. Only 11 of 46 European states signatories to the ECHR ratified the Protocol, and only three EU member states have ratified the Protocol.

The conditionality politics of the EU has mixed effects on the countries currently in accession to the EU. While the Race Equality Directive is a required conditionality, other options to seek compliance with the Copenhagen Criteria and the overall international minority rights scheme may vary, depending on the domestic situation. In Romania, the Constitution adopted in 1991 after the fall of communism included a provision demanding the adoption of a law on national minorities. During the 1990s, various groups and governments prepared eight different drafts, none of which were approved by parliament. Given that Romania is one of the European countries that is home to the greatest number of national minority groups, the previous government saw it as opportune to ensure that a law on national minorities be passed before finalizing the negotiations with the EU. It fell to the next government, however, to see this through.

In the first half of 2005 a ninth law on the status of national minorities was drafted and presented to the Romanian government. This draft has been successful in the Romanian Senate and whether or not it will be signed into law is dependent upon one final hurdle – the Chamber of Deputies – which is due to make a ruling on the draft in autumn 2005. The law itself consolidates and improves many rights already held by Romanian national minorities. Such areas as preservation, expression and promotion of national identity (which covers education, culture, mass media, religious freedom and the use of one's first language) are dealt with in this law. However, it also breaks new ground in several important areas. First, cultural autonomy will be introduced to Romania through the (pending) success of this draft law. Article 57(1) defines cultural autonomy as being 'the right of a national community to have decisional powers in matters regarding national, cultural, linguistic and religious identity, through councils appointed by its members'. Thus, Romania's national minorities will be able to establish bodies, or councils, of cultural autonomy, and will be given a number of powers to govern issues affecting them (such as education, religion and political representation). These elected bodies will receive funds from the Romanian government, and in addition will be able to raise further revenue through their own tax system. Second, the law provides a definition of a national minority that has been criticized by some as being too restrictive in that a minority group must have lived on the territory of Romania from the creation of the modern state, thus preventing new minority groups from claiming the same rights and benefits. In addition, the law has been seen as highly ambiguous. Finally, Article 74 of the law limits the benefits to a certain list of national minorities, which for instance does not include the French living in Banat, or linguistic minorities such as the Csangos or the Aromanians.

In December 2004, Hungary held a referendum on whether to grant dual citizenship to ethnic Hungarians living outside their homeland, thus illustrating the persistence of minority issues remaining cause for tension in Europe. The referendum was initiated by an NGO, the World Federation of Hungarians, with the goal of protection the Hungarian diaspora. However, the dual-citizenship proposal failed to reach the minimum percentage of registered voters at the polls.

European Court of Human Rights

On 26 February 2004, the Court announced its judgment in the case of *Nachova and Others v. Bulgaria*. The applicants were Bulgarian nationals of Roma origin, alleging that their relatives, shot by the military police, were deprived of their lives in violation of Article 2 of the Convention, that the investigation into the events was ineffective and thus in breach of that provision and of Article 13 of the

Convention, and that the state of Bulgaria had failed in its obligation to protect life by law. They also alleged that the events complained of were the result of discriminatory attitudes towards persons of Roma origin and entailed a violation of Article 14 of the Convention. The Court found that the Bulgarian authorities had failed in their duty under Article 14, read in conjunction with Article 2, to take all possible steps to establish whether or not discriminatory attitudes might have played a role in events. More importantly, for the first time in its history, the Court also found a violation of the guarantee against racial discrimination contained in Article 14 taken together with Article 2.

The Court followed two arguments for this finding. First, the Court found that the authorities had failed in their duty to establish whether discriminatory attitudes may have played a role in the murder of the two men of Roma origin. Second, the Court considered that the Bulgarian authorities' failure to discharge that duty had an impact on its examination of the complaint under Article 14. The Court usually applies the standard of 'proof beyond reasonable doubt'. However, the Court recognized that in cases of alleged discriminatory acts of violence, and where the authorities have not pursued an effective investigation into such acts, it may, when examining complaints under Article 14 of the Convention, draw negative interferences or shift the burden of proof to the respondent government.

In other cases dealing with national, ethnic or religion minorities, such as *Gorzelik and Others v. Poland*, *Balogh v. Hungary*, *Ilascu and Others v. Moldova* and *Russia, PY v. France*, the Court found no violation of the discrimination provision contained in Article 14. Currently before the Grand Chamber is the case *Blecic v. Croatia* which considers lost tenancy rights.

Political developments

The political attention to non-immigrant ethnic minorities in the enlarged European Union improved somewhat in 2004 with the signing of the Treaty Establishing a Constitution for Europe only to lose momentum in 2005 with the stalling of the ratification process. Moreover, minorities in other parts of Europe and in the Former Soviet Union have experienced increasingly intractable conflicts and little improvement towards durable solutions. Across the board, the socio-economic exclusion of immigrants and Roma/Sinti continues to exacerbate the overall situation. This is not to argue that governments and international actors are not addressing the issues. In addition to the EU Constitution signed in October 2004 including the respect for the rights of persons belonging to minorities among the core EU values, the World Bank initiated the Decade of Roma Inclusion in February 2005, and more governments have implemented the EU's Race and Equal Employment Directives devised to combat discrimination on the basis of race or ethnic origin. However, the stalled ratification process of the EU Constitution withholds the implementation of higher minority standards in the EU, and racism and xenophobia against immigrants is on the rise in many European countries. In Kosovo and certain parts of the FSU, ethnic exclusionism continues to dominate local politics.

EU enlargement

When the EU admitted 10 new member states on 1 May 2004, the list of ethnic minorities living in the EU grew considerably. In sheer numbers, the figure increased from around 50 million to 80–100 million, not including immigrants. Most of these new member states have adopted higher legal standards on minority rights than the 15 member states, and all 10 new member states have transposed the EU's Race Directive into domestic law, thus raising the normative barometer in the EU in general. This leaves the 'old' EU member states vulnerable to reproaches based on the 'double standards' argument inasmuch as the normative standards are lower in some of the original member states than in the newly admitted ones. The record of adherence to international standards remains bleak in those founding member states which have yet to ratify both the Council of Europe's 1992 European Charter on Regional and Minority Languages and the 1995 Framework Convention for the Protection of National Minorities.

However, a few member states managed to enter without full compliance, such as Latvia not having ratified the FCNM, and the three Baltic states plus the Czech Republic and Poland not having ratified the Charter on Regional and Minority Languages. Moreover, Latvia and Cyprus as well as Slovenia entered with considerable portions of their ethnic

minorities not yet afforded legal citizenship. Especially in Latvia and Cyprus, the political will to resolve the issues pertaining to ethnic minorities has been weak, although Latvia, under pressure from the OSCE's High Commissioner on National Minorities (HCNM), ratified the FCNM in June 2005. The situation of the communities in Northern Cyprus, while not usually addressed as a minority issue, remains unresolved after the failure of one of the simultaneous referenda brokered by the UN to reunite the island before admission to the EU. The northern part of the island is occupied by Turkish troops and therefore not under the control of the government of the Republic of Cyprus.

Arguably the most important political development in regard to the EU and minorities was the signing of the Treaty Establishing a Constitution for Europe in October 2004. In addition to the Constitution's Article I-2, which for the first time in EU treaty law makes a reference to the respect for the rights of the persons belonging to minorities, the European Charter of Fundamental Rights and Freedoms, adopted at Nice in 2000, is incorporated as Part II. This is not only important because the Charter thus becomes legally binding on the member states, but also because the Charter's Article II-81 on the prohibition of discrimination against national minorities, and Article II-82 on religious, cultural and linguistic diversity, thus would attain greater value. Of course, because of the rather restrictive nature of the provisions on minorities in the Constitution in that they do not convey any minority rights per se, the impact would be modest if the Constitution were to become law. The EU's approach to minority rights therefore remains rather minimalist, focusing mainly on non-discrimination cast in negative terms.

EU accession

The current accession states, Bulgaria and Romania, as well as the candidate states, Croatia and Turkey, are still subject to the conditionality rules set out in the Copenhagen Criteria. Arguably the most urgent problem to be addressed in these countries is Roma/Sinti exclusion and poverty, but Croatia also has the problem of returning refugees, which is a focus of international attention. Turkey, in contrast, is experiencing a major national identity problem with recognizing minorities.

Conflict and disputed territories in the Caucasus

Virtually all of the conflicts in the Caucasus are due to strained or non-existent minority–majority relations. Many ethnic minorities take issue with the label 'minority'. However, lessons learned over the past 10–15 years have allowed the negotiation processes in South Ossetia, Abkhazia and Nagorno-Karabakh to move beyond aspects of the status of ethnic minorities to address economic imbalances, power-sharing and issues of displaced persons and refugees. The exception remains Chechnya, where persistent massive human rights violations accompany a lack of will by the Russian authorities to negotiate for a settlement. The rebels have in 2005 announced their intent to spread their war throughout neighbouring republics. Recent rebel incursions into Dagestan are strong evidence that rebel leaders are not bluffing.

Following the 'Rose Revolution', Georgia's President Mikheil Saakashvili stated in his inaugural address in February 2004 that one of his main policy aims was to reunite the country and 'win back' Georgia's lost territories. Georgia resides within a region that has been prone to chronic instability. Conflict broke out in three regions of the South Caucasus during the period of the collapse of the Soviet Union. Two of those conflicts occurred on the territory of Georgia, in Abkhazia and South Ossetia, and remain unresolved to this day. As the South Caucasus takes on increasing importance in relation to oil supply and the threat of terrorism, the opportunities that may derive from the Rose Revolution, especially the issues of majority–minority relations and minority rights take on greater relevance.

Up until the Rose Revolution, it was considered inappropriate to discuss the territorial arrangement of the state, until the status of Abkhazia and South Ossetia was decided. This has created uncertainty. Nevertheless, there is what might be described as pseudo-federalism with respect to the autonomous region of Adjara. This region had been ruled by Aslan Abashidze from 1991 until his forced resignation in May 2004. Mr Abashidze had ruled Adjara, more or less as a personal fiefdom since 1991. Under the Shevardnadze administration he had drifted from being a supporter of the president towards being the leader of the opposition and back again. In 2002, the status of Adjara was recognized through a constitutional amendment. Following Mr

Abashidze's ouster, parliament reconfirmed the autonomous status of the region. Under the new arrangement, there is a supreme council of Adjara and a government for the region. However, as the president of Georgia retains an effective veto over the appointment of the government there, the degree to which genuine decentralization, let alone federalism, exists is debatable.

For a decade, negotiations seeking solutions to the conflicts in the enclaves of Abkhazia and South Ossetia have yielded no concrete results. Instead, at least in the short term, the Adjara scenario has led to increased tensions in relations with Russia, which had been improving immediately following the Rose Revolution. Russia continues to support the regimes in South Ossetia and Abkhazia and argues that Mr Saakashvili's policies are leading to destabilization in the South Caucasus. The Georgian government has called for an internationalization of the conflict and in particular is seeking the support of the OSCE in seeking a durable solution. However, while the president has promised that the area of South Ossetia would be marked by in his words 'greater autonomy than North Ossetia in the Russian Federation' there is little in the way of concrete proposals to clarify precisely what this means.

Further details on the minority rights situation in the Caucasus are given under the relevant country entries below.

Albania

Albania has made efforts in the protection of national minorities, including in the field of education and the provision of schools and classes for the Greek and Macedonian national minorities. However, the sizable minority of Egyptians has not received the same attention, and recognition remains a problem. There are plans to implement a national strategy for Roma, which is greatly needed as the Roma community is faced with immense problems in terms of discrimination and prejudice in a number of societal settings. The socio-economic gap between Roma and the rest of the population is considerable.

Armenia

Armenia began its attempts to improve the situation of minorities after 1998 when Robert Kocharyan became president. Before, many members of minorities had been leaving the country mainly due to its poor economic performance. This, together with international pressure to become party to international treaties, provided a growing sense of moral justification for granting minorities protection and cultural development. Nevertheless, the Kocharyan administration was slow to adopt improvements and the development of legislative mechanisms for the protection of the rights of national minorities was rudimentary up to 2004. The Constitution affords certain language and cultural rights to minorities, and the 2004 Law on Administrative Governance allows representatives of minorities, elected to local self-government, the right to present official letters in their first language accompanied by translation in Armenian. The Law on Radio and TV Broadcasting gives minorities the right to transmit information in minority languages

Right: Bosniak (Muslim) woman with pictures of her husband and son, killed in the Srebrenica massacre. Andrew Testa/Panos Pictures

and forbids any propaganda against minorities. Since the end of 2003, efforts have also been under way to draft a law on national minorities.

The Yezidi minority of Armenia suffers discrimination at the hands of the police and local authorities. The Yezidis speak a Kurdish dialect and practise a religion derived from Zoroastrianism, Islam and animism. They have been subject to unfair adjudication of land, water and grazing rights, bullging of their conscripts in the army as well as children in schools, and poor police response to serious crimes committed against their members. Members of the Yezidi community have tried to address their grievances with the presidential adviser on national minorities, but no government responses have been forthcoming.

Azerbaijan

The government of Azerbaijan has not attempted to elaborate a clear ethnic policy and appears to avoid solving problematic issues by postponing them while the socio-economic situation in the country continues to decline. In pursuit of the goal of promoting the state language, a Law on the State Language was adopted in 2002, which contains certain regrettable reductions in the legal guarantees for the protection of national minorities. These put at risk certain practices in the field of electronic media. Although the Constitution provides for the right to maintain minority culture and language, authorities have restricted minorities' effort to teach or print materials in their native languages. Farsi-speaking Tallish in the south of the country, Caucasian Lezghins in the north, displaced Meskhetian Turks from Central Asia, and displaced Kurds from the Armenian-occupied Lachin region have all experienced discrimination, restrictions on the ability to teach in their first languages, and harassment by local authorities. Anti-discrimination does not appear a government priority. Armenians and persons of mixed Armenian-Azerbaijani descent have been denied work, medical care and education and were unable to register their residences due to their ethnicity. Discrimination and harassment at work seems the norm, and in some cases local authorities have refused to pay pensions to members of the Armenian minority. Similarly, in the area occupied by ethnic Armenian forces, authorities have effectively banned ethnic Azerbaijanis from all spheres of civil, political and economic life.

Belarus

The government of Belarus as well as general society engage in significant discrimination against Roma, who number almost 70,000. An unemployment rate of 93 per cent and low levels of education characterize the Roma community. Due to negative stereotypes Roma are not hired by other citizens. The police harass Romani women selling produce or telling fortunes in the marketplace, and state media and government officials portray Roma negatively. The Ministry of Internal Affairs' Department of Drug Trafficking has asserted that at least 50 per cent of all Roma are drug dealers. Roma children speak primarily Romani and Belarusian, which poses enormous problems in the Belarusian school system where the language of instruction is Russian. Parents often withhold their children from kindergarten in an effort to avoid assimilation. As a result, Romani children are linguistically behind in the all-Russian classrooms, and teachers and fellow students often assume they are lazy or mentally incompetent. While Roma are able to receive higher education in the few private educational institutions, they are often denied access to higher education in state-run universities. The Roma Lawyer's Group has petitioned the government to permit the establishment of a public Roma school in Minsk, where there are schools for Jews, Lithuanians and Poles.

Bosnia and Herzegovina

If the authorities in Bosnia and Herzegovina are paying greater attention to the issues pertaining to national minorities, the record in each of the constituent federal entities is not improving. Isolated instances of political, ethnic or religious violence continue, as does discrimination against ethnic minorities. The political leadership at all levels continues to obstruct minority returns in certain localities, and the number of returns has decreased. Although the reconciliation process continues, there remains a lack of trust among ethnic groups, and especially hostility related to the return of refugees and displaced persons. Discrimination in employment and education remains a key obstacle to sustainable returns. Members of the ethnic majority are usually hired over minorities, and favouritism is shown to veterans and families of those killed during the war.

The government of Republic Srpska has

supported the return of Bosniaks and Croats, and Bosniak returns to the Srebrenica area has increased. However, the Srpska government also supports integration of displaced Bosnian Serbs within the Republic, using the war veterans' budget and, at the municipal level, land allocations.

In 2002, a Law on the Protection of Rights of Persons Belonging to National Minorities was adopted and amendments to the Election Law were made. Unfortunately, the Election Law remains highly discriminatory as segments of the population are barred from running for some of the top offices. A Council of National Minorities and corresponding bodies at the level of the federal entities have been proposed but have not been set up, despite concrete legal obligations. While access to political posts remains governed by rigid rules at the federal state level, some progress has been made within the federal entities to widen access to certain authorities.

Students in minority areas frequently face a hostile environment in schools that do not provide an ethnically neutral setting. Obstruction by nationalist politicians and government officials has slowed international efforts to remove discriminatory material from textbooks, abolish school segregation and enact other needed reforms. The Inter-Entity Textbook Review Commission, reviewing textbooks from the so-called national group of subjects that were in use in all primary and secondary schools in the country in order to remove any discriminatory or objectionable material, has found that there are textbooks in use not subject to the review process containing material that is inappropriate. Even though an action plan on Roma educational needs has been elaborated, Roma continue to lack access to education. Even though Roma children are permitted to attend schools in all areas of the country, their attendance is low as a result of pressures from within their own community and from local non-Roma communities discouraging Roma children from attending school.

Bulgaria

The Bulgarian government signed a Framework Programme for Equal Integration of Roma with representatives of the Roma community in 1999. The Programme was the result of years of hard work by the Roma community and experts prompted by the procrastination of the Bulgarian government on the issue. Implementation of the Programme did not progress well in the years following its adoption and compliance by the government to the Programme remains low. Discrimination against Roma is a major problem in Bulgaria, including discrimination at the hands of government agents.

Croatia

Although Croatia passed a Constitutional Law on National Minorities in 2001, it has been slow to put the political will behind implementation of certain components. In particular, the establishment of minority councils at the local level has proven slow. Nevertheless, there have been important changes in both legislation and practice, and the dialogue between the authorities and representatives of national minorities has improved. The work with reintegrating Serbian returnees is progressing, albeit at a less than satisfactory level to the extent that it appears as if the Croatian government is using the technique of stalling as a way of losing its Serbian minority. In 2003, the government adopted a National Programme for the Roma, which set out policies to help the Roma to integrate into all levels of society in a systematic manner. The Programme has been extensively criticized for its lack of concrete input from the Roma community and contradictory aims in terms of gender and child integration. As the Programme is also very poorly funded, it remains questionable whether it was conceived as a genuine attempt to integrate Roma.

Cyprus

In April 2004, Greek and Turkish Cypriots took part in separate simultaneous referenda on whether Cyprus would join the EU on 1 May 2004 as a re-united island based on a power-sharing agreement brokered by UN Secretary-General Kofi Annan. While 64.91 per cent of Turkish Cypriots accepted the Annan Plan, an overwhelming majority of 75.83 per cent of Greek Cypriots rejected the UN blueprint. The extent of the Greek Cypriot no vote seemingly brought an end to a large-scale effort to find a solution to one of the oldest items on the peacemaking agenda. In the aftermath of the referenda, the Commission decided to unleash an economic development package for the North. In addition to supporting improvements in infrastructure, the economic aid was destined to help the farming community of the North and to

facilitate export of goods to the South and outside the island. The dispensing of funds has yet to begin as the Greek Cypriot government has stalled this effort. The process was expected to get back on track after the European Council in December 2004 gave Turkey the date of 3 October 2005 to begin talks on accession on the condition that a number of signposts were reached. One of these was the signing of the 1962 European Customs Union with the new member states, including Cyprus. Turkey signed the document in 2005 while stating that this would not constitute recognition of the Republic of Cyprus.

Denmark

In June 2005, the Danish parliament passed a new law on decentralization, the Law on Regions. The law, which will come into effect in 2007, abolishes a number of administrative districts and establishes five large administrative regions. The aim of the law is, among others, to improve the implementation of subsidiarity in Denmark. The new law was preceded by heated political debates, not least the argument that subsidiarity would seem to be more effective in smaller regions rather than the five large regions proposed. The new region of Southern Denmark, which is home to the German minority in Denmark, has caused particular concern among the German minority as it will decrease the number of posts available to the minority. Elections will take place in November 2005.

Georgia

Although the onset of 'coloured' revolutions in the FSU has not as yet had any direct influence on the situations of minorities in the region, the changes in political attitudes coupled with continued pressure from international organizations and the EU are beginning to bear fruit. In November 2003 Georgia became the first country among the Commonwealth of Independent States (CIS) where entrenched and powerful vested interests were dislodged from government by opposition parties supported by massive popular protests. The unified stance of the three main opposition leaders in the wake of deeply flawed parliamentary elections, shored up by massive public support, sparked the resignation of the then president, Eduard Shevardnadze, in what became known as Georgia's 'Rose Revolution'. Subsequently, in February and March 2004, elections were held for the presidency and repeat elections for parliament that cemented the victory of reformists backed by substantial popular support, and an emerging programme for change. Georgia is expected to ratify the FCNM in October 2005.

The issue of minority rights ties in closely with and runs alongside the distinctive regional make-up of the country. Since independence, the development that has taken place in the country has tended to focus upon the capital Tbilisi and in other cities across the country. In contrast, rural areas have been left to subside into extreme poverty. A key component of how effectively Georgia develops is how minorities and regions of the country become integrated into the central whole. There are critical matters of importance with respect to areas of the country where densely concentrated minorities reside, namely Javakheti and Kvemo Kartli. These two regions have remained isolated from Georgia proper since independence, prompting fears that, unless sensitive integration policies are pursued, the latent threat of conflict will remain. More broadly, the Georgian government has yet to devise policy regarding minority rights and issues, even though around one-fifth of the country in population terms is made up of ethnic minorities.

In addition, the Georgian government is under pressure from the international community to allow repatriation of the Meskhetian Turks. The Stalin regime deported the entire Meskhetian Turkish population from south-west Georgia (Samtskhe-Javakheti) to Central Asia, particularly to Uzbekistan, in November 1944. Unlike other deported people, who were rehabilitated in the 1950s and 1960s, the Meskhetian Turks have neither been rehabilitated nor allowed to return to their land of origin, and their property has never been returned to them nor have they received compensation. Georgian authorities were reluctant to facilitate repatriation of Meskhetian Turks after independence, and the denial of citizenship and residence/working permits and the demand that they adopt a Georgian identity has dispirited many potential returnees. Lack of Georgian language skills has caused problems for integration among the repatriated community. Popular attitudes in Georgia, in particular among the Armenian populated region of Samtskhe-Javakheti, are unfavourably disposed towards repatriation. International organizations have faced severe

obstacles in defining the directions of assistance for the Meskhetian Turks. The political problems in facilitating lasting solutions are immense, both with regard to the legal protection of Meskhetian Turks and with regard to resettlement in Georgia. Nevertheless, in 2005 the Georgian government has made steps towards beginning a sustained process to address the issue, and it looks as if that process will continue, including gathering data on the social, economic and legal needs of potential returnees, in 2006 and beyond.

Germany

Germany officially recognizes four national minorities, the Danish, the Frisian, the Sorbs and the Roma/Sinti minorities. For years the minorities have been requesting support for a liaison office to the federal government and parliament. In 2005 the German government committed itself to establishing a liaison office. Education policy is in Germany delegated to the federal units, the Länder, which to a varying degree support minority schools from the public funds. In 2005, the Sachsen local government decided that the Sorbian schools in the state would no longer be eligible for exemption from the requirement of a minimum 20 pupils per class. The Sorbians in Sachsen, a Slav-speaking minority, have a constitutional right to minority schools but many schools operate with small classes. The planned closure of certain schools caused a heated political debate in Germany, and at the international level, both the Council of Europe and the Russian Duma have criticized the Sachsen government's plans. The minimum of 20 pupils is considered too high compared to other parts of Europe that comply with international standards for minority schools.

The impact of the political discourse for and against Turkey's accession to the EU has not made life easier for the Turkish immigrant community in Germany, which includes a large Kurdish minority. The rhetoric against Turkey's potential membership has more often than not been based on xenophobic attitudes against this large group of the German population, which has yet to be truly invited into mainstream society in Germany.

Greece

Greece is the only EU member state to ban proselytism in its Constitution, and the only EU member to have been condemned by the European Court of Human Rights for a lack of religious freedom. Although Greece has made progress in the protection of religious freedom, the run-up to the 2004 Athens Olympic Games found Greece displaying this Achilles' heel in its human rights record. Religious freedom in Greece today still depends on factors such as the opinion of the predominant religion. Specifically, the conflict between Church and state revolves around the recording of a person's religion on their identity card. Because of the Orthodox identification of the state with the Church, this practice was followed by the authorities until 2001, following a court ruling, when the government began to issue new identity cards that do not note religious affiliation. This decision caused a crisis in the relations between the state and the Orthodox Church, which strongly criticized the new practice. The Council of State, the highest administrative court, subsequently decided that including religious beliefs on identity cards violates religious freedom.

Attention to the violation of the rights of Roma minorities in Greece intensified in 2005, after reports of systematic violations of the right to adequate housing, and racist and discriminatory treatment of Roma in several towns in Greece. NGOs, human rights monitoring bodies and civil society activists have denounced forced evictions and demolitions of Roma homes since 2001, as well as cases of racist speech in public statements about the Roma. However, it would appear that complaints brought to the courts and to the Ombudsperson over such cases have not been adequately investigated, even though an increase in anti-Roma campaigns by local residents' associations has been documented.

Ireland

Ireland has made efforts to improve the situations of the Traveller communities, but much remains to be done, in particular in areas covering accommodation, education, employment, health care, and access to certain goods and services.

Latvia

The lack of a comprehensive legal framework and other policy measures for the protection and promotion of minority rights remains a concern in Latvia. This may of course be alleviated by the fact

that Latvia has now ratified the FCNM. Latvia initiated in 2001 a comprehensive Integration Programme that did not address minority issues per se but was nevertheless adopted as the result of a public debate on ethnic integration. The Programme focuses on civic participation and political integration; social and regional integration; education, language and culture as well as information; and states that the protection of minorities is one of its objectives. But the fact that several minority rights claimed by civil society and minorities (such as greater access to education in the first language, participation in mass media, greater promotion of a dialogue between minorities and the state, public participation of minorities, and the promotion of minority languages) are not addressed or are insufficiently addressed in the Integration Programme has rendered it ineffective. It has also been noted that protracted delays and low levels of financial support from the state have hindered the rapid adoption and implementation of the Integration Programme.

Naturalization applications have increased significantly since Latvia's accession to the EU, and the government has actively promoted the process by reducing financial and lingual requirements. Nearly one-fifth of Latvia's residents are non-citizens. Latvia's citizenship laws have been criticized for disenfranchising those who immigrated to Latvia during the Soviet period and who must now apply for citizenship, the majority of whom are ethnic Russians. Non-citizens are barred from participating in state and local elections and from holding certain civil service jobs. They are also not allowed to hold some private sector jobs. Political, social and economic discrimination of the Russian-speaking community continues and in December 2003, the European Court of Human Rights charged the Latvian government with restricting the rights of an ethnic Russian family and ordered the state to pay compensation.

Under the Education Law, the Latvian government continues to implement a bilingual education programme at the elementary school level, with the goal of providing more than half of the course content in Russian-language secondary schools in Latvian. However, although all non-Latvian-speaking students in public schools are supposed to learn Latvian and to study a minimum number of subjects in Latvian, there is a shortage of qualified teachers. State-funded university education is in Latvian, and incoming students whose native language is not Latvian must pass a language entrance examination.

Macedonia

Political life in Macedonia is dominated by ethnic Macedonians and Albanians, resulting in adverse effects on other minority groups, particularly in the arenas of education, language, political representation and economic well-being. Since the end of the conflict between Macedonians and Albanians in 2001, a number of political and legal overtures have been made, especially as a result of the Ohrid Agreement. However, the Agreement has also been a cause for friction between minority groups, particularly in 2004 when plans to implement the decentralization process, in particular the redistricting phase, were made public. Redistricting will drastically affect the ethnic composition of each of the districts, turning minorities into majorities and vice versa. As the Ohrid Agreement was a tool to end the violence in 2001 between the two major ethnic groups, the decentralization process neglects the needs of other minorities. Tensions arise due to the wish of minority groups to use the decentralization process to achieve threshold 'status' in order to realize their rights, in contrast to the ethnic Macedonian population, who will thus relinquish some power to national minorities.

The Macedonian government has committed itself to correcting the imbalances in ethnic representation in public institutions in the Ohrid Agreement and, while advances have been made in this area, particularly among the Albanian population, the percentage of minorities employed in public institutions is significantly lower than their portion of the population. In 2004, data suggests that there were no Albanians employed in the public administration of Kumanovo, and Roma participation in the institutional life remains virtually non-existent. There are only three representatives of the Roma community employed in state institutions, none of which directly create or influence state policy on issues of relevance to Roma. This exacerbates the problem of Roma integration.

However, other aspects in the implementation of the Ohrid Agreement have contributed positively to

the situation of national minority groups in Macedonia. Since 2001, there has been an 80 per cent increase in the employment of minorities; Albanians have obtained a level of representation in the parliament close to their actual share of the population; and a constitutional amendment was adopted that requires a 'double majority' for laws related to ethnic minorities.

A major problem affecting minority groups is the difficulty in obtaining Macedonian citizenship since one of the conditions for citizenship is to have a permanent source of income. This indirectly inhibits minorities, as they form a significant portion of the unemployed population, particularly Roma and Turks. The Ministry of Internal Affairs is often discriminatory towards Muslim (Albanians, Turks, Bosniaks) minorities, who often find that they are denied citizenship on the grounds that they are 'unsuitable for citizenship due to security reasons'. Lack of citizenship means that they are not represented in parliament, cannot run for political office and cannot access the same rights as other members of minority communities in Macedonia.

The political process continues to negatively influence the education of all ethnic groups in Macedonia. The education system has long been one of the major factors in the de facto segregation between ethnic Albanians and ethnic Macedonians. The insistence of both communities that their children be taught in their first language, resistance to learning each other's language and the persistence of the mono-cultural nature of education has been documented over 2001–4. This has an impact on the quality of education provided to all communities, and also facilitates growing intolerance among students and their families. The state has been slow to undertake the necessary effort to improve the infrastructure in the schools, including equipment, supplies and transportation of students. Worst affected are the rural areas and, by extension, the minority communities. For example, Albanian students are regularly placed in classes already over the capacity limit for both the student–teacher ratio and in terms of space. They also suffer from lack of heating and water, and an inability to be introduced to basic educational requirements such as laboratory work. Other ethnic communities are unable to provide quality education to students because of their isolation; as a result, many members of ethnic minorities do not continue their education past primary school. Among the worst cases is that of Turkish children who must travel great distances to attend school after the fourth grade, as after the fourth grade instruction in Turkish is available only in very few schools throughout the country. Many children do not continue their education after the fourth grade, as they cannot afford to travel the great distances, nor purchase the schoolbooks and materials required to continue their education.

Roma children are often treated as people of low intelligence, which adversely affects their self-esteem, motivation and eventually their ability to continue their education. Their work is marked lower than the equivalent work of non-Roma students, although this is difficult to prove in the absence of explicit grading criteria. This collective punishment is compounded by a lack of measures to prevent discrimination by non-Roma children. Often Roma children do not complete primary school, which has consequences for their integration into society. The lack of employment because of insufficient education in turn means that they are also denied health and social care, as well as the wherewithal to overcome these barriers, and other day-to-day problems.

Moldova

The situation of ethnic minorities in Moldova continues to be linked to the seemingly intractable independence struggle between the Moldovan government and the leadership of the breakaway region of Transdniestria where up to 40 per cent of the population is ethnic Moldovan. Negotiations were stalled in 2003 because of a Russian proposal to federalize Moldova and give Transdniestria wide self-government powers. In 2004, the Moldovan government attempted in vain to continue negotiations on a weaker federal model proposed by the OSCE. The Transdniestrian leadership, however, remained committed to the Russian proposal. In 2005 the new Ukrainian president, Viktor Yushchenko, proposed a conflict settlement which appears to be more palatable to both sides.

Although it has been debated whether the conflict in Moldova is ethnic or political in nature, the closing in 2004 by the Transdniestrian authorities of several Moldovan schools on the pretence that they were not properly registered indicates that is most probably a mixture of both. The closing of the

schools, which were teaching in the Moldovan language, was deplored by the HCNM, who likened the action to 'linguistic cleansing'. In June 2005 the authorities retracted and allowed the schools to be permanently registered. As to the situation of the Roma, there seems to be little action on the part of the Moldovan government, a point lamented by the Advisory Committee to the FCNM.

Poland

Poland has made efforts to support national minorities and their cultures, including through certain sectoral legislative provisions in such fields as the educational and electoral systems, and through the August 2003 adoption of the Programme for the Roma Community. Efforts have also been made to solve the issues linked to monuments and cemeteries affecting many national minorities, including Germans, Jews, Karaites, Lemks and Ukrainians. National minorities, including the Armenians, Belarusians, Russians, Slovaks and Ukrainians, have made demands for the establishment and support for cultural centres, museums and libraries.

Romania

In Romania, Roma representatives have been working with the various governments to devise an institutional framework for improving the conditions of Roma/Sinti groups. In the first half of 2005, the government, which was formed in December 2004, made a strong political showing by seeking to shepherd through a law on national minorities. The Hungarian minority party, the Democratic Alliance of Hungarians in Romania, won 6.17 per cent of the votes for the Chamber of Deputies and 6.23 per cent of votes for the Senate in the 2004 election. Subsequently, it became a member of the governing coalition and a strong proponent of the new law on national minorities. While there was a strong tendency by the previous government to 'neutralize' the Hungarian political movement, the current coalition appears more balanced and willing to work with the Hungarian party.

Russian Federation

The Russian federal government follows a politics that seeks to guarantee equality rather than granting concessions to ethnic minorities. While ethnic minorities still retain some positions of power in local governments, President Vladimir Putin has opposed special privileges for ethnic minorities and ethnic regions as part of his larger efforts to funnel power into a vertical, federal structure with federal districts governed by presidential representatives. Tax systems have been restructured, and restrictions have been put on governors to inhibit regional autonomy in favour of greater federal control.

Even though the Russian Constitution prohibits discrimination based on nationality, Roma minorities, as well as minorities from the Caucasus and Central Asia, face widespread governmental and societal discrimination. Racially motivated violence has also increased, and Muslims and Jews continue to encounter prejudice and societal discrimination. Legislation prohibiting racist propaganda and racially motivated violence is only invoked infrequently. Discrimination against ethnic minorities has been most acute after terror attacks in Russian cities. Following the February 2004 subway bombing in Moscow, the media were filled with popular demands to forbid any Caucasians from entering Moscow, while Moscow's Mayor Luzhkov promised to clamp down on illegal migrants in Moscow, and President Putin announced that Chechen separatists were to blame for the attacks.

The Russian authorities have also been accused of targeting visible minorities for racial profiling, resulting in unnecessary registration and passport checks, searches and even arbitrary arrests. Few discrimination cases are prosecuted in Russia because there is no comprehensive network of anti-discrimination laws, and lawyers and judges are not trained in litigating human rights issues within Russia. As a result, in most cases of ethnic discrimination, individuals are unable to obtain justice in Russia and their only recourse is then to the European Court of Human Rights.

In May 2005, the European Parliament adopted a resolution criticizing Russia for violating the rights of the Marii, a Finno-Ugric nation living mostly in the Marii-El Republic some 800 km east of Moscow. Citing the difficulty the Marii people face in being educated in their first language, political interference by the local administration in Marii cultural institutions and the limited representation of ethnic Mariis in administrative posts in the Republic, the resolution also lamented the lack of a free press in the Republic and mentioned the severe beating in February 2005 of Vladimir Kozlov, editor-in-chief of the international Finno-Ugric

newspaper *Kudo+Kodu* and director of Merkanash, a national public organization of Marii in Russia.

Serbia and Montenegro

The authorities of Serbia and Montenegro have taken decisive steps to protect national minorities in such fields as education and language rights. There are, however, wide variations between regions in terms of efforts taken to protect the languages and cultures of national minorities. Whereas in Vojvodina a number of initiatives have been introduced, the situation is considerably less developed, with respect to the protection of the Vlach national minority in north-eastern Serbia. The Union Charter of Human Rights and Minority Rights and Civil Freedoms, and the federal Law on the Protection of Rights and Freedoms of National Minorities contain promising innovations such as the setting up of the National Council of national minorities. It further recognizes the commitment of the Ministry for Human and Minority Rights to the implementation of the laws. However, the main problems in the protection of national minorities in Serbia and Montenegro pertain to the implementation of the relevant norms in practice and at the level of the constituent states, as the State Union is only to become active if either Serbia or Montenegro fails to provide for adequate protection of minorities (Article 9 of the federal law).

Serbia lacks a law on national minorities, which means that commitments to minority rights are implemented through subject-specific laws or not at all. In general, the commitment to minority rights protection of law-makers and the executive has been reactive, mainly in response to international pressure. Between 2002 and 2004 some 11 minority councils were established and they include all larger minorities with the exception of Albanians. A Serbian Council for National Minorities was established in September 2004 by the Serbian government, which includes the presidents of the national councils. The Serbian parliament also established an Ombudsperson Office in September 2005 with minority rights among its responsibilities. According to the 2002 Serbian Law on Local Self-Government, a Council for Interethnic Relations was set up in municipalities with minorities making up more than 10 per cent of the population. However, not all municipalities that qualify have established these councils, and in municipalities where minorities are not in large numbers, other systems need to evolve.

Although many minorities in Serbia have their own political parties, only the larger Hungarian and Bosniak minorities have been regularly represented at the national level. The main Hungarian party is the Alliance of Vojvodina Hungarians, and the two key parties of Bosniaks are the Party for Democratic Action and the Sandžak Democratic Party. Smaller minorities, especially Albanians, have been mainly effective in securing representation at the municipal level. After the representation of minority parties dropped from eight (representing 3.2 per cent of votes) to two (representing 0.8 per cent) in the December 2003 elections, the parliament amended the electoral law and abolished the threshold for minority parties.

In 2002, the Ministry for Human and Minority Rights established the Office for a Roma National Strategy, which developed a detailed national strategy in terms of the necessary reforms for the coming decade in all key fields. However, Roma remain marginalized throughout Serbia and are represented only in a few municipalities. The police force includes only few police officers from minority communities, with the exception of southern Serbia, where a special multinational Serb-Albanian police force was established in 2001.

Montenegro has not implemented the federal Law on National Minorities, and an ongoing initiative of a Law on National Minorities has not left the drafting stage. In the absence of these legal frameworks implementation of minority rights remains an ad hoc affair, not based on clear universal standards. Thus, for example, there is no clear legal provision for the recognition of minority languages in municipalities. In addition to the Ministry for Protection of the Rights of National and Ethnic Groups established in 1998, and the Republican Council for Protection of Rights of Members of National and Ethnic Groups, Montenegro established an Ombudsperson Office in 2003. The electoral law, which provides for a lower threshold for the registration of candidates in local and republican elections for Albanian candidates, was reduced in 2002 from five to four. That law has been repeatedly criticized by Office for Democratic Institutions and Human Rights (OSCE/ODHIR) election observers as it benefits only one minority. Generally, minorities are under-represented in

government and parliament whereas at the local level, minorities, with the exception Roma, are frequently represented in municipal councils, governments and administration. Minorities are insufficiently represented in sensitive fields, such as policing, and in state institutions. Where there is representation they tend to work in lower-ranking positions in the public administration.

A major challenge in Montenegro is the provision of Roma education. Only 8 per cent of Roma below the age of 18 attend school. Some 1,066 Roma attended elementary school in 2004 whereas in 2003, there were only 39 Roma children in secondary schools and four attending university. For the displaced Roma from Kosovo, school attendance is particularly difficult as the first language of 60 per cent of them is Albanian and for nearly all of the remaining 40 per cent it is Romani.

Kosovo

Since the international community first took over the administration of Kosovo in 1999, the issue of the future status of the Albanian-dominated entity has been a key factor in its regional relations, as well as in the democratization process. March 2004 saw a resurgence of ethnic violence. The events shocked both the international community and local institutions: protests against the alleged killing of three ethnic Albanian children escalated into violent clashes between ethnic Albanians and Serbs, and clashes with the international peacekeeping forces in Kosovo, UN police and the NATO-led Kosovo Force (KFOR). Although the previous four years were characterized by relatively positive developments in Kosovo, the violence in 2004 saw over 28 civilians and one KFOR soldier killed and hundreds wounded, 3,600 Serbs displaced, 30 Serbian churches and 200 Serbian houses destroyed. It has been argued that the origins of the event are to be found below the political level and beyond the control of the political parties. Kosovo Albanian leaders were as surprised by the events as the international community. June 2005 witnessed violence on a smaller scale; this time there were a number of coordinated attacks against the international presence in the province. Serbia continues to provide basic services such as health care and education, as well as documentation (birth and marriage certificates, passports) to ethnic Serbs living in Kosovo.

The Provisional Institutions for Self-Government (PISG) have, in conjunction with the UN in Kosovo (UNMIK), been integral to the implementation of standards for democracy and a final review of the PISG's progress to date has determined that status talks can begin in 2005. While in June 2005, the Special Representative of the UN Secretary-General admitted that the process of standards implementation, including issues of human and minority rights, had slowed down, the Norwegian ambassador to NATO, who was tasked to carry out an evaluation of the standards implementation process, reported to the Security Council in September 2005 that, notwithstanding the inadequate level of implementation, talks should go ahead. The UNMIK authority signed two technical agreements with the Council of Europe in 2004 to submit reports under the FCNM's monitoring system and the Committee for the Prevention of Torture. The official report for the FCNM has been submitted but the shadow report is still outstanding.

Slovenia

In Slovenia a large number of mainly former Yugoslavians remain without permanent residence and citizenship as a result of the Slovenian government's post-independence 'erasing' from the public registry of those who had not come forth before a certain deadline. Even though the Slovenian Constitutional Court in 1999 and again in April 2003 recognized the unlawfulness of the removal from the registry of more than 18,000 permanent residents and ordered the Slovenian authorities to retroactively restore their permanent resident status, only some 12,000 have had their residence permit reinstated. Following the 2003 Constitutional Court decision, the Slovenian Ministry of Interior has begun issuing permanent residence decrees with retroactive validity but, as of February 2005, only approximately 4,100 such decrees had been issued. Being without residence permits for these years has impacted negatively on the enjoyment of these individuals' pension and other social and economic rights.

Spain

After years of bloody clashes, terrorist attacks and broken cease-fires, the Spanish government banned the political wing of the militant organization, Euzkadi Ta Askatasuna (ETA), the Basque separatist Herri Batasuna party, indefinitely in March 2003.

Delegates of the party in the Basque regional parliament however held on to their seats by changing the name of the party. In March 2004, following the collapse of the Aznar government largely because of its unsuccessful political manoeuvring to blame ETA for the Madrid bombings, the new government of Jose Luis Rodriquez Zapatero came into power and subsequently achieved the support of the Spanish parliament in May 2005 to offer peace talks with ETA provided the group disarmed. Zapatero therefore called for ETA to disband and disarm. Previous governments have also attempted negotiations with ETA but this time Zapatero could bank on a change of minds and hearts of the Spanish people in favour of finding a peaceful solution to the conflict induced by the escalation in international and internal terrorism. The weakening of the ruling pro-autonomy moderate nationalist party in the Basque regional elections in April 2004 has also been seen as strengthening Zapatero's argument for talks. The arrest and indictment of a former Batasuna member, Arnaldo Otegi, has however put Zapatero's efforts in jeopardy.

In Spain, considerable socio-economic differences persist between a large number of Roma and the rest of the population. Members of the Roma communities face marginalization and social exclusion, but the Spanish government has made efforts to improve the situation of the Roma through the Governmental Roma Development Programme.

Turkey

With the December 2004 recognition of Turkey as an official candidate for EU accession, the long-suppressed issue of minority rights both by the government and in the collective consciousness of society was placed openly on the agenda. In seeking to fulfil the minority protection conditionality of the Copenhagen Criteria the government enacted a series of constitutional and legislative reform laws implicitly granting ethnic and linguistic minorities certain language rights and making some progress towards protecting the hitherto violated property rights of non-Muslims. However, the government carefully avoided any explicit reference that could suggest an official recognition of minority identities. It made minorities' exercise of their limited rights prohibitively difficult by attaching restrictive conditions to them and by conferring on officials a virtually unchecked authority in adopting secondary legislation.

Ukraine

While the 2004 presidential campaign in the Ukraine had a strong impact on the ethnic sphere of Ukrainian society, the present Ukrainian government has yet to approve any relevant comprehensive legislative documents to improve the current legislative framework on minorities. Unlike the 1990s, which witnessed a proliferation of legislation on minorities, 2004 and 2005 did not meet the expectations of many Ukrainian citizens, who hoped for drastic positive changes in the sphere of ethnic policy. Of 16 projects registered at the Parliamentary Committee on Human Rights, National Minorities and Interethnic Relations, only three dealt with ethno-political issues. One of these projects, on the renewal of the rights of persons deported on ethnic grounds, had been considered by the Ukrainian parliament and approved at the second reading but was vetoed by the former president.

Another law on the concept of minority rights policy is still under consideration, but the absence of a comprehensive minority rights law creates contradictions in Ukrainian legislation and difficulties in the exercise of human rights. While there is a political will to establish a comprehensive legislative framework on minorities, there is a lack of consensus among the main authorities over the key terms and concepts to be included. There is also a disagreement on what type of nation the Ukraine should be, poly-ethnic, multicultural or both. The new president of the Ukraine, Viktor Yushchenko has expressed a desire to overhaul the Ukrainian legislation on minorities in order to bring it up to European standards, including the existing law on national minorities adopted in 1992 which does not contain any provisions on the Crimean Tatars. This affected those Crimean Tatars who returned to their homeland after 1991 and found that they were denied citizenship rights, access to education, employment and housing.

The situation of the Crimean Tatars within Crimea, however, has improved somewhat. In May 2005, the leader of the Tatars, Mustafa Dzhemilev, and the Crimean Prime Minister Anatoliy Matviyenko signed a power-sharing agreement that ended four months of administrative deadlock over the peninsula. This agreement deals with the two main issues: the land that the Crimean Tatars

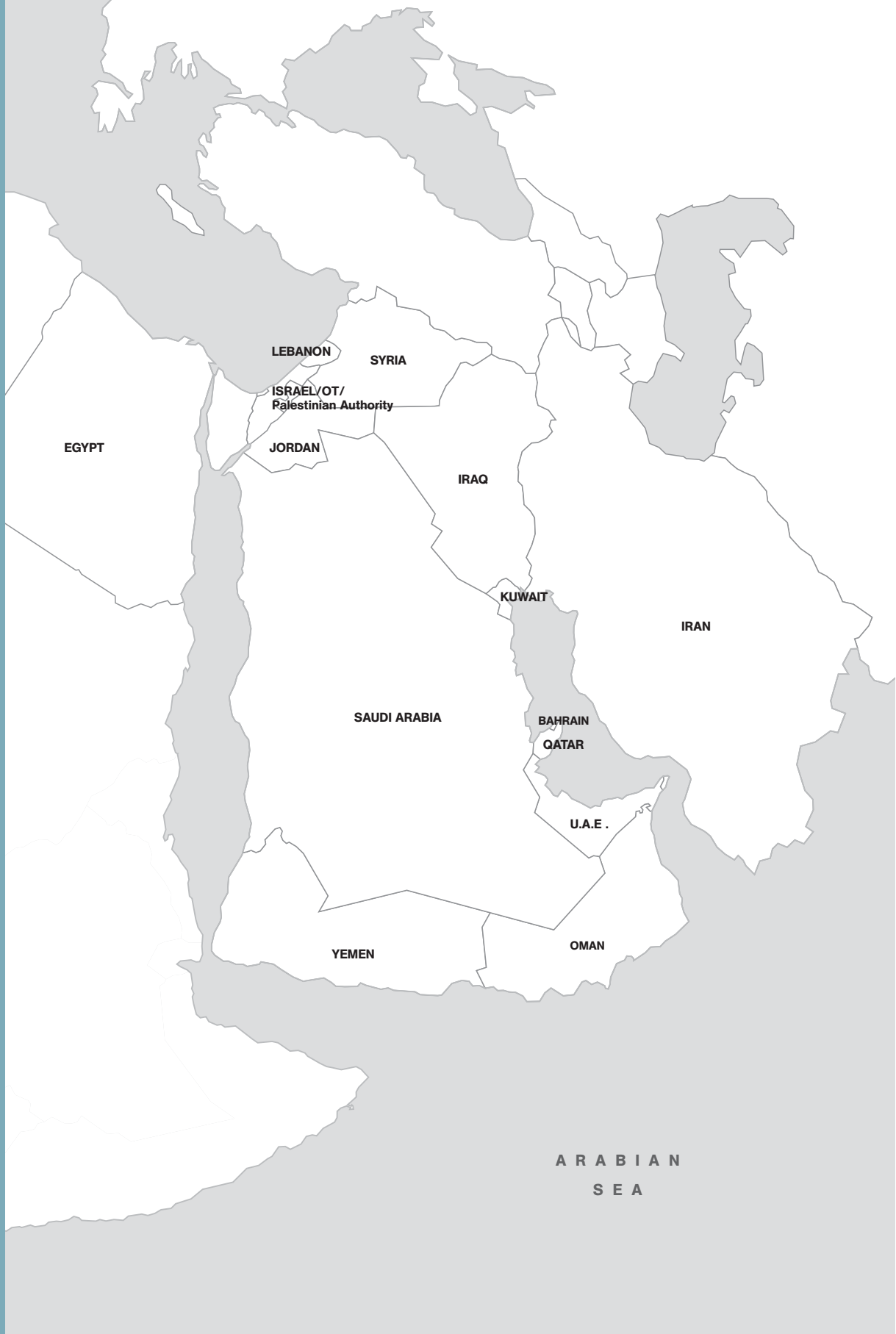
consider to have been confiscated during the Stalin regime, and the protection of their cultural and linguistic identity. According to the power-sharing agreement, the Crimean Tatars will participate in government and be entitled to a television channel and media broadcasting in their own language. At the same time, Mustafa Dzhemilev urged President Yushchenko to help restore the original names of Crimean Tatar cities and villages, and to submit to the Ukrainian parliament the law on restoring the rights of those deported on ethnic grounds as well as a law on the status of the Crimean Tatar People. He also suggested that the Ukrainian parliament pass an amendment to the law on the elections to the parliament of the Crimean Autonomous Republic that would guarantee Crimean Tatar representation. President Yushchenko cautioned the Crimean Tatars that this would require making amendments to the 1991 Declaration on the Sovereignty of the Crimean Tatar People. Ukrainian and Crimean Tatar minorities still suffer discrimination by the ethnic Russian majority in Crimea and have called for the Ukrainian and Crimean Tatar languages to be given a status equal to Russian.

The Ukrainian Constitution provides for the free development, use and protection of the Russian language and other minority languages, but the increased use of Ukrainian in schools and in the media is cause for concern as it renders the children of Russians disadvantaged when taking academic entrance examinations, since all applicants are required to take a Ukrainian language test. According to 2003 official statistics on languages used in schools, Ukrainian was the language of instruction in 16,532 schools, Russian in 2,215, Romanian in 97, Hungarian in 68, Moldovan in 9, Crimean-Tatar in 10 and Polish in 3. Ethnic Romanians have called for university-level instruction in Romanian or the establishment of a Romanian technical college. The Rusyns (Ruthenians) remain unrecognized as an official ethnic group even though they are recognized in neighbouring countries. Representatives of the Rusyn community have called for Rusyn-language schools and a Rusyn-language department at Uzhhorod University. Roma continue to face considerable societal discrimination, and opinion polls have shown that, among all ethnic groups, the level of intolerance is highest toward Roma. In particular, violence and abuse by police is of major concern with regard to Roma.

United Kingdom

In Northern Ireland the 1998 Good Friday Agreement which ended the years of 'troubles' and set the region on a path towards devolution, power-sharing and ostensibly peace, has been broken numerous times resulting in the British government suspending devolution powers. Since the last occasion on which devolution was suspended, in October 2002, it has not been restored. In an effort to restart the peace process, the British and the Irish governments promised in a December 2004 statement to restore power-sharing to Northern Ireland on the condition of that (1) all paramilitary activity cease, (2) weapons are decommissioned, (3) new political institutions are stabilized and (4) all communities support the police.

However, before the process could even begin, a Catholic, Robert McCartney was brutally murdered in January 2005, allegedly by agents of the Irish Republican Army (IRA), although this was denied by the IRA. Public opinion mounted against IRA as a result of the circumstances surrounding the McCartney murder, and in the campaign leading up to the May elections in the United Kingdom, the Irish Republican party Sinn Féin distanced itself further from the IRA. Following a good election for Sinn Féin, the IRA finally declared its readiness to disarm and end all violence in July 2005. A march by the Orange Order in Belfast in September 2005 however disrupted the peace yet again, and it remains unclear when devolution will be reinstated for Northern Ireland. ■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YEMEN
OMAN
ARABIAN
SEA

Middle East

Middle East

Nazila Ghanea

The Middle East is the region of the world with arguably the richest history of ethnic and religious diversity, but its minority situation is far from exemplary. These difficulties surrounding minorities are best understood within the broader context of human rights, governance and democracy. Nevertheless, the challenges faced by minorities in the region are above and beyond the restrictions faced by the general population and additional to them.

Impact of international affairs

Trends post-11 September 2001 have had a dual impact on the status of the Middle East's minorities. On the one hand, developments over the past four years have brought about much greater international attention on the human rights situation in the Middle East. On the other, with it has come overt international – and particularly US – pressure on democratization and human rights in the region. This carries with it the risk that minorities will be accused of being 'internationally sponsored' and suspect – thus becoming even more vulnerable to discrimination. The project of enhancing the rights of the region's minorities has therefore become both more risky and more promising.

This problem is very complex and there is a danger that minorities will, at least in the short term, became both endangered and sidelined – endangered, because the wars in both Afghanistan and Iraq were at least partially justified in terms of their rights; sidelined because, in the search for wider political support, their rights may actually prove too costly and be set aside by Western powers. The whole question of minorities in the Middle East is therefore enmeshed in great risk, and there does not seem to be any prospect of improvement in how they are perceived or how they are treated in the immediate future. There is the unfortunate danger that the increased radicalization, splintering of communities and conflict seen in the region in recent years may come to be unleashed against minorities of the region.

Although it is not a principal focus in this report, in the context of conflict in the Middle East the long-standing Arab–Israeli issue cannot go unmentioned. While it is difficult to chart clearly the regional tensions that draw upon and contribute to this conflict, it seems clear that it does not have a positive impact on minorities in the region. Anger, frustration, hatred, radicalization and violence in the region are often couched in terms of the overwhelming political impact of this conflict.

Regional institutions, treaties and landmark cases

There are no regional institutions, treaties and cases that effectively uphold minority rights in the Middle East region, and none are on the horizon. The three human rights instruments that will be discussed are the 1990 Cairo Declaration, the 2004 Arab Charter and the 2004 Sana'a Declaration on Democracy, Human Rights and the Role of the International Criminal Court.

The 1990 Cairo Declaration on Human Rights in Islam, adopted by the Organization of the Islamic Conference, does not uphold minority rights. The subjects indicated in the articles are 'human beings', 'everyone', 'every man' and 'each person'. No mention is made of minorities throughout. There are just some broad provisions on freedom of expression and participation in public affairs. The provisions of Articles 24 and 25 that the Declaration is subject to the Islamic Shari'a may further impact negatively on non-Muslim minorities.

The League of Arab States decided in 2003 to redraft the 1994 Arab Charter on Human Rights in order to bring it into line with international standards. The new Charter was adopted in 2004. The preamble to the Charter recognizes the region as the birthplace of many religions and civilizations, and expresses commitment to freedom and justice. Article 1 states that it seeks to place human rights at the centre of national concerns and to inculcate and entrench the universality and indivisibility of all human rights.

Most of the Charter refers to individual rights – with 'each human being', 'all persons' or 'every citizen' being assigned rights. Minorities find mention in Article 25, and there is reference to the right of peoples to self-determination following international formulations. Article 2 states that all peoples have the right to self-determination, and this is defined as including the right of peoples to freely choose their political system and pursue their 'economic, social and cultural development'. It is not explicit whether minorities could constitute 'peoples', but most experts interpret similar references in international instruments to exclude

minorities. Article 25 states: 'Persons belonging to minorities shall not be denied the right to enjoy their own culture, to use their own language and to practise their own religion. The exercise of these rights shall be governed by law.' Since 'law' is not defined, it offers a worrying loophole. Is it national or religious law, and in accordance with what standards? Clearly law can 'govern' the *denial* of the exercise of all of these rights to minorities. It is not clear how promising for minorities any future case law from the Charter could be, considering the numerous grounds for limitation provided by reference to 'law'.

The League of Arab States' 2004 Sana'a Declaration on Democracy, Human Rights and the Role of the International Criminal Court was adopted by an intergovernmental regional conference of 52 Arab, African and Asian countries in January 2004. The delegates recognized the principle that 'Cultural and religious diversity is at the core of universally recognized human rights', and that this diversity should not lead to confrontation but to dialogue and understanding. Principle (c) notes that democratic systems 'protect the rights and interests of everybody without discrimination, especially the rights and interests of disadvantaged and vulnerable groups' – presumably implying minorities as well. The participants' agreement to protect fundamental rights of adherence to 'religious beliefs and ethnic identity' is framed as applying to individuals rather than minority groups. Reference to ethnic identity, however, is welcome, as many instruments from this region are reluctant to refer to or recognize ethnic diversity for fear that this would weaken national unity.

One international case that has connotations for minorities in the region is that of the International Court of Justice (ICJ) July 2004 Advisory Opinion on the Israeli security barrier. In this landmark case, the ICJ focused on the construction of the wall on occupied territory as a breach of the right to self-determination of the Palestinian people as well as the question of the socio-economic impact of the wall on the freedom of movement of Palestinians. The Court was 'not convinced that the specific course Israel has chosen for the wall was necessary to attain its security objectives' and found that the construction of the wall violated both international humanitarian law and human rights law. The Israeli Supreme Court had itself previously ruled on the route of the security barrier because of the human rights impact on Palestinians, particularly the impact on livelihoods and freedom of movement.

Another ongoing case is that of the trial of Saddam Hussein before the Iraqi Special Tribunal. Among the charges against him are a number that directly relate to minorities: the 1982 massacre of Shias in Dujail after a failed assassination attempt against him, the 1988 poison gas attack killing thousands of Kurds in Halabja and the suppression of Shia revolts in 1991 and 1999.

Diversity of minority groups

The minority groups that will be considered are as follows:

1. National, ethnic, religious or linguistic minorities: the primary focus will be on settled communities. The religious minorities will be non-Muslims in the whole region except for Israel where it will be non-Jews.
2. Those excluded from full citizenship rights (other than those considered elsewhere).
3. Various groups not categorized as citizens according to national law: stateless persons, refugees, migrant workers and trafficked persons. Whereas the general focus of this publication is on settled communities, new migrant communities constitute such a large proportion of the population in so many Middle Eastern states that they cannot be neglected. Moreover their situation is deeply intertwined with ethnic and racial discrimination in general.

National, ethnic, religious or linguistic minorities

These minorities often suffer from the chauvinism of culture. This includes pan-Arabism as an ideology or Arabization as a policy and Persian chauvinism in Iran. It affects non-Muslims in Islamic countries and is implicated in the disadvantages faced by non-Jews in Israel. This cultural chauvinism is manifested in discriminatory policies and practices against minorities particularly in the realms of politics and law.

Power

Many of the countries of the region stipulate a particular religious and ethnic affiliation for the head of state. The presidents of Iran and Syria, for

example, are required by their respective Constitutions to be Muslim. Few, if any, senior posts are occupied by minorities, unless there is provision for specific representatives in parliament. A number of individuals from minority backgrounds have held positions of power in some of the Middle Eastern states, but there seems little trace of the impact of such power in terms of wider government policy as a whole.

Language

Linguistic policies are generally highly restrictive, with minority languages suffering either from government-sanctioned restrictions or de facto disadvantage in official circles, education and publication. For example, the Constitution of the Arab Republic of Egypt announces Arabic as the official language of the state in Part 1 Article 2. Syria, however, allows the teaching of languages other than the official Arabic language. The teaching of Armenian, Syriac, Chaldean and Hebrew are permitted in Syrian public schools. Arabic is the second official language in Israel.

Hate speech

While many of the constitutions assert non-discrimination on the basis of ethnicity, language or other factors, little exists by way of policies to implement this effectively. Few countries have laws to outlaw hate speech, or do so only in the case of offence to Islam. Anti-Semitic speech in sermons, editorials, political commentary and educational materials is rife in the Arab states and Iran. In some countries, such as Syria, government officials themselves have used the media to promote anti-Semitism. Sizable Jewish populations in countries such as Yemen and Iraq have all but disappeared due to the forced migration of many Jews from Arab countries after the Arab-Israeli war of 1948, and also because of subsequent voluntary migration to Israel as a result of discrimination.

Ethnic minorities

Ethnic minorities in Muslim countries face something of a dilemma. All Muslim states assert the fact that Islam recognizes the equality of all races and peoples. Within the Muslim Ummah, therefore, race is irrelevant. However, this equality in terms of religious law masks the ongoing social and political reality of discrimination against ethnic minorities – which the legal systems refuse to engage with. The Constitution of Afghanistan and the draft constitution of Iraq are recent exceptions in this regard, and have addressed this issue directly, but so far with questionable success. The trend in the region remains that of maintaining great social, economic and political advantages in the hands of a particular ethnic, national and/or religious group – either a majority group as in the case of Iran, or of a minority group as in the case of Syria and Bahrain. Among the most serious clashes in this region on the basis of ethnicity during 2004 and the first half of 2005 are those that have occurred in Syria and Iran.

Syria

Thousands of Kurds in Syria are considered stateless due to a 1960s government scheme which reclassified them and their descendants as non-citizens. According to the UNHCR this population of stateless Kurds now amounts to around 200,000. As stateless persons they are unable to obtain official documents – birth certificates, identity cards or passports – hence they cannot travel abroad, work for the government or benefit fully from health and educational facilities. Despite a May 2004 statement by the president that the government is committed to deal with the Kurdish citizenship issue, little progress has been made. More generally, the use of Kurdish language and expression is restricted and in June 2004 the government banned political activities by Kurdish parties. Clashes between Arab and Kurdish fans after a football match in March 2004 led to Syrian security forces in Qamishli opening fire on crowds for two days running. Anti-government riots spread to other cities and led to the killing of 38 people and detention of over 1,000 by the security forces. Most were released after a few months, but around 300 were only released in April 2005 through a presidential amnesty. On 8 April 2004, a 26-year-old Kurd was reportedly tortured to death in prison in Afreen. His family was denied a funeral and forced to bury him secretly in the presence of security forces. In May 2005, Sheikh Mohammed Mashouq al-Khaznawi, a cleric who had been outspoken about the discrimination against the Kurds, disappeared. The authorities announced to his family that his body had been found in June 2005. He had been tortured. His funeral in Qamishli was followed by a

demonstration by some 10,000 Kurds. It turned violent when protesters were beaten and Kurdish shops raided. Clashes have also occurred with Syria's Assyrian population, which is estimated at around 500,000. On 30 October 2004, two Assyrians were killed in the province of Hassakeh by a military officer who had threatened them and demanded money. Demonstrations from hundreds of members of the Assyrian community followed and led to the arrest of 16 Assyrians. The officer concerned was not charged, and the detained were only released in April 2005.

Iran

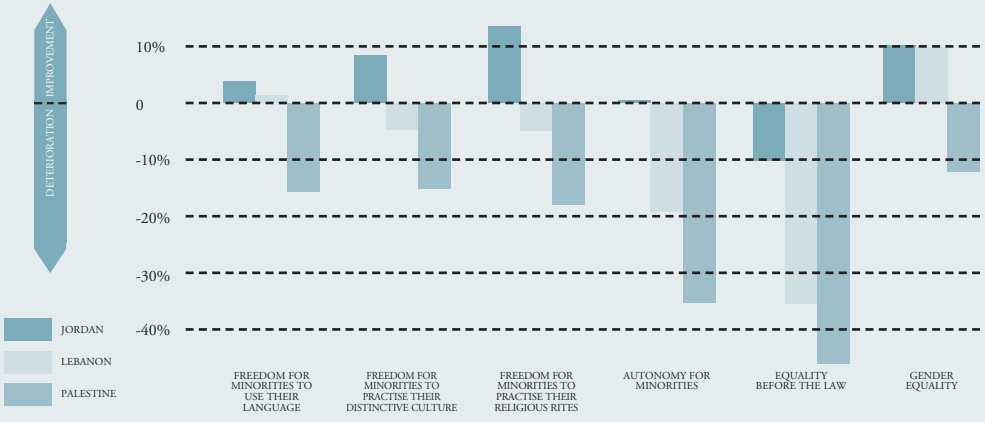
Article 19 of the Iranian Constitution states: 'All people of Iran, whatever the ethnic group or tribe to which they belong, enjoy equal rights; colour, race, language and the like, do not bestow any privilege.' The Islamic Republic of Iran's July 2002 report to the Committee on the Rights of the Child suggested that the lower socio-economic status of ethnic minorities reflected the fact that they happened to reside in poorer border regions. However, discrimination on the basis of religion and ethnicity is rife, with minority languages being repressed and varying degrees of economic and other disadvantage being suffered by minorities.

June 2004 had witnessed the arrest of over 100 Azeris by Iranian security forces on the charge of 'spreading secessionist propaganda'. Azeris are the least repressed of Iran's ethnic minorities, as they constitute a quarter of the national population and have long enjoyed close relations with the centre of power. However, even they suffer linguistic and cultural discrimination due to continued governmental concern with Azeri nationalism.

Kurds face greater repression and clashes have occurred between Kurds and Iranian government forces. Some Kurdish expression has been tolerated in recent years in terms of publications and broadcasting, but not in education. In 2003 there were killings of Kurdish political activists, party members and civilians. July–August 2005 witnessed the killing of around 20 Kurds and the injury of hundreds by Iranian security forces, while a number were detained. Security forces shot at protesters who were demonstrating against the killing of a young Kurdish man, Sayed Kamal Astam, known as Shivan Qaderi, in Mahabad on 9 July 2005. He had organized protests against the Iranian government during the June presidential elections. Qaderi's body was dragged through the town of Oromieh from the back of a jeep. Two Kurdish newspapers were also closed down, and activists and journalists were arrested. Ironically enough, on 6 July 2005 Kurdish and Sunni MPs had written to the Iranian President-elect, Mahmoud Ahmadinezhad, demanding that the rights of Kurds and Sunnis be protected as upheld in the Constitution.

Arabs constitute up to 4 million of the population of Iran and those residing in Khuzistan are known as 'Ahwazi Arabs'. They suffer great economic hardship as well as the repression of their language and their Sunni beliefs and practice. The year 2003 had seen the closing of two newspapers in Khuzistan and the detention of many activists. In

Public perception of the change in the enjoyment of minority and other rights over previous five years, 2003 Source: Arab Human Development Report 2004



April 2004, Sunni MPs wrote to the Iranian Supreme Leader, Ayatollah Khamenei, deploring the absence of Sunnis in high posts and complaining of anti-Sunni propaganda. In April 2005, demonstrations in a number of cities and towns in Khuzistan led to the killing of up to seven police and officials, after Iranian security forces attempted to break up massive anti-regime demonstrations. Over 30 people were killed and hundreds more injured or detained. The demonstrations had been sparked by the leaking of contents of a disputed governmental document which allegedly planned for the reduction of the Arab dominance of the Khuzistan region through bringing in settlers of Persian and Azeri ethnicity and forcibly moving Arabs away.

Iraq and Afghanistan

Ethnic tensions have also continued in Iraq and Afghanistan. While Iraq's Arabs and Kurds – Sunni and Shia – receive frequent mention, it also has Turkmen, Chaldo-Assyrians, Armenians, Shabak, Jews, Yazidis and Bahá'ís. The population is estimated to be over 60 per cent Shia, 35 per cent Sunni and 3 per cent other believers. The number of Jews in Iraq has dramatically reduced and one-third of the population of Christians is estimated by the State Department to have left the country since the mid to late 1980s. Attacks were carried out on Christians, with numerous bombings of churches and economic threats against them by the Sunnis. The reasons for these departures stem from fear and vulnerability politically as well as in socio-economic terms. Violence between the Shias and Sunnis in Iraq intensified over 2004–5, though much of it was believed to be carried out by insurgents from abroad. The reasons for this increased violence are numerous. To some extent it is a direct consequence of the removal of Saddam Hussein's decades-long strong grip on the country. However, the invasion of Iraq has also provided the pretext for numerous groups, sponsored by a range of powers, to vent their frustrations on the forces in Iraq, on Iraqi security personnel and also on large numbers of Iraqi civilians.

In Afghanistan, Shia Hazaras were historically the most repressed ethnic minority group, and their situation has seen little improvement. Whilst President Karzai has appointed six Hazaras to his cabinet, this has not filtered down to decrease discrimination being suffered at the grassroots by the approximately 19 per cent Hazara population of Afghanistan.

Israel/Occupied Territories/Palestinian Authority

Of Israel's population of some 6.8 million, around 5.2 million are Jews and 1.2 million or roughly 20 per cent are Arabs.

In Israel, the 2003 Orr Commission of Inquiry report found neglect and discrimination by the Israeli government with regard to its Arab population; a population which includes Muslim Arabs, Christian Arabs and Druze. The government responded by setting up a ministerial committee to implement the Orr Commission's recommendations and adopted that body's proposals in June 2004. Unemployment is higher among the Arab population (around 14 per cent for Arab males but 9 per cent among Jewish males). Jews do significantly better in education than Arabs, spending an average of three years more in school; and the government itself has acknowledged that investment per Arab pupil is roughly 60 per cent of that for Jewish students. In August 2004, Human Rights Watch reported that the Israeli Ministry of Education provided one full-time teacher for every 16.0 children in Jewish primary schools in 2003–4, but only one for every 19.7 children in Arab primary schools. There are currently 11 Arabs (all men) serving in the 120 member parliament, or Knesset, in this the sixteenth Knesset. The first Arab to hold a permanent appointment as a Supreme Court Justice in Israel was appointed in March 2004.

Increasingly, Arabs in Israel identify themselves as 'Israeli Palestinians'. However, Israel makes a sharp distinction between the 'Arab citizens' of Israel and 'Palestinians'; of the latter the largest number reside in the West Bank and Gaza Strip in very harsh conditions with large-scale unemployment. Their population amounts to over 3 million. This distinction is reflected in different laws. For example, according to the US State Department 2004 country report, a distinction is made between Palestinians and citizens (including Arab citizens) in Israeli prisons. Citizens aged 18 and over are treated as adults, but among Palestinians those aged 16 and over are treated as adults. It also reported that almost 500 Palestinian minors, aged 13 and upwards, were held in Israeli prisons. Palestinians

cannot apply for refugee status under Israeli refugee law, as they are considered to be under the protection of UNRWA (the UN Relief and Works Agency for Palestine Refugees).

Other countries

In the rest of the region, episodes involving discrimination against minorities on the basis of ethnicity have been of a much more long-standing nature. In Yemen, notable socio-economic discrimination against the Akhdam ethnic minority community – who constitute up to 5 per cent of the population and are said to descend from African slaves – continued, as did tribal violence. Discrimination was also suffered by citizens of African origin in Oman. In Jordan it was rural Bedouins who continued to suffer economic disadvantage.

Minority Muslim communities in Muslim countries

Since all Muslims are attached to the belief of the unitary Muslim religion, the situation of minority Muslim groups in a Muslim state proves quite problematic. Ongoing social and political discrimination and remoteness from power for Shias or Sunnis, for example, is neglected under the assertion of the principle of equality. The stark exception to this is the Lebanese Constitution's system of individual and political confessionalism, which remains in place from when it was a Mandate under the League of Nations. The November 2003 report of Lebanon to the Committee on the Elimination of Racial Discrimination explained that the practice of confessionalism with regard to personal status means that all laws of personal status are 'drawn up by the various communities under the authority of the State' and, for example, there is no possibility of civil marriage. Political confessionalism implies the distribution of political and administrative posts among the various communities. The state recognized the disadvantage of this system, that it 'does not provide for persons who do not wish to disclose their descent, ethnic origin or religious faith in order to participate in public life or to found a family'. In accordance with the October 1989 Taif Agreement, there is now a commitment to a step-by-step elimination of political confessionalism, though the report acknowledged resistance to this because of the fear that its abolition will destabilize national security. The Committee, in its April 2004 Concluding Observations however, encouraged the gradual elimination of this system as it hindered full realization of some provisions of the Convention on the Elimination of Racial Discrimination.

The most notable recent instances bringing the issue of Muslim minorities in Muslim majority states to the surface are clashes between the Shia and Sunni in Bahrain. The ethnic clashes in Iran's province of Khuzistan described above, however, could also be explained in terms of religious discrimination.

Two-thirds of the indigenous Bahraini population are Shia but they are discriminated against by the Sunnis who enjoy political and economic power.

Left: Shia women on the Ashura pilgrimage from Najaf to Kerbala, Iraq. Farah Nosh/ Panos Pictures

Shias are disadvantaged in terms of employment prospects, particularly in sensitive or high governmental posts and university employment, health, social security, housing and education. Attention was drawn to this discrimination in the April 2005 Concluding Observations of the UN Human Rights Committee. The US State Department report of 2004 found that electoral districts in Bahrain were drawn in order to maximize the chances of Sunni candidates being elected. On the positive side, however, it also reported that the Bahraini Interior Ministry established a community police programme in September 2004 in order to train 500 Shia men and women to patrol Shia neighbourhoods.

Furthermore, the Shias in Bahrain have access to a Jaafari Shia court, funded by the state, which has jurisdiction over personal status cases. In March 2004, around 150 Shia youth attacked a Manama restaurant and set fire to it and a number of cars. Police arrested 12 and questioned four, but all 16 were pardoned by the Emir. In April 2004, a Shia mosque was badly vandalized in Bahrain.

Discrimination against the Shias continued in the United Arab Emirates (UAE). The Shias maintain their own mosques and run their own court system for family cases. However, their sermons are closely monitored by the government and no Shias serve in top government posts. In Oman, Shias serve in prominent government posts and other sectors. The situation for the Shias in Saudi Arabia is much worse and institutionalized discrimination continues. According to the US State Department report of 2004 only two Shia judges were in practice and had to serve the large Shia community of the Eastern Province of Saudi Arabia. Shias are regularly arrested, detained and abused by the security forces; Shia books are banned, the testimony of Shias is given less weight in courts, and in 2005 only two of the 120 members of the Saudi Majlis al-Shura were Shia. There have also been a number of episodes of Shia–Sunni clashes in Saudi Arabia's Eastern Province, the most recent being in 2000. However, there have been some moves to try to reduce tensions since King Abdullah effectively took control a few years ago, and particularly since he came to power in August 2005. Saudi Arabia's Shias responded to his call for national dialogue between the two communities, and petitioned him directly with their requests in September 2005. These include the release of political prisoners and more political representation for the Shia. The International Crisis Group warned in its September 2005 report that while a return to outright conflict between Saudi Arabia's Shias and Sunnis was unlikely, tensions were higher than at any time since 1979 and there were no grounds for complacency.

In Shia-dominated Iran, however, Sunnis suffer discrimination, usually on the multiple grounds of both ethnicity and religion. Despite around 10 per cent of the population being Sunnis, there is no Sunni mosque in Tehran.

Other religious minorities

Despite a number of Middle Eastern countries having high proportions of religious minorities – particularly if one also factors in the religious affiliation of foreign workers – there is scant protection of their individual religious freedom, let alone their freedom to practise in association with others and to manifest their religion. Judaism or Islam are overwhelmingly dominant in Israel and the Arab countries of the region respectively. Most of the countries define a state religion, and religion is heavily intertwined with national identity and culture. As well as government-sanctioned restrictions or persecution in the political and legal spheres, there is the additional burden of societal discrimination. Since personal status laws are handled by religious authorities in most of these countries, non-recognition of a particular religion or belief community bears heavily on the excluded religions. It bears even more heavily on minority women, leading to multiple discrimination against them. Marriage, divorce, burial, inheritance, even education and travel may be at stake. In the case of Lebanon's confessional system, public life and the political system itself is predicated on assignment to affiliation of only the recognized religious groups. This compares with Yemen and a number of other states where non-Muslims are forbidden from holding elected posts.

There is a clear hierarchy between non-Muslim *Dhimmi* and other religious minorities. *Dhimmi* status stems from the Islamic concept of protected status for non-Muslim 'People of the Book': Christians and Jews. Over time this enhanced category of protection has been extended in some Muslim countries to Zoroastrians, Hindus and Sikhs. This differentiated categorization of

protection still leaves its traces in legal, political and societal tolerance of minorities in Muslim countries today. The practice of non-religious beliefs, particularly atheism or polytheism, is not recognized in most of the legal systems and is not tolerated or understood by Middle Eastern society in general – with Israel being an exception in this regard.

At best, there seems to be de facto tolerance of some religious freedoms in a manner that is partial, tokenistic and both controlled and limited by government. However, the law in most of the states does not allow, for example, the public teaching of religion by religious minorities, proselytizing, the conversion of Muslims to other religions or beliefs (though the reverse is acceptable), the equality of Muslim and non-Muslim before the law, the marriage of a Muslim woman to a non-Muslim man, personal status laws being respected for *all* non-Muslim groups and equal treatment in criminal procedures. One case of intolerance of conversion from Islam comes from Jordan where, on 13 September 2004, a Muslim convert to Christianity was arrested on apostasy charges. The Sharia court found him guilty on 23 November 2004, and he and his family had to leave Jordan. In the UAE, Yemen and other countries, proselytizing among Muslims and the conversion of Muslims to other religions is prohibited. This is also the case in the UAE even though the 2001 census showed the population as being 24 per cent non-Muslim (albeit that most of these are migrant workers). The UN Human Rights Committee, in concluding on Yemen's February 2004 report, found the prohibition on the conversion of Muslims 'in the name of social stability and security' to be in violation of the Convention. In the case of Israel, conversion to Judaism by non-Orthodox Rabbis is not recognized, leading to denial of personal status processes such as marriage, burial and so on. Jews cannot have civil marriages and cannot marry anyone from another faith in Israel. This is because all legal matters are monopolized by Orthodox Judaism. The Israeli Central Bureau of Statistics reported in 2005 that in 2002 over 8 per cent of all Israelis who had married had done so abroad.

Examples of the government-orchestrated representation of religious minorities include Bahrain, where the Emir has appointed a Christian and a Jew to the Shura Council. A further 21 are Shia and 17 Sunni. In Syria, all religions must register with the government and are then monitored by officials. Although religion is officially separate from citizenship, Jews have the unfortunate distinction of being the only citizens whose religion is required to be noted on their passports and identity cards, and they face more hurdles in travel and other official procedures. Most of these countries have allowed some places of worship of other religions to exist – for example Kuwait and Qatar – though many are then monitored by the government and not *all* religions are granted this freedom. In some countries, such as Kuwait, the law specifies that non-Muslims cannot become citizens. In Saudi Arabia and Iran, the situation of religious minorities is problematized further by the operation of morality or religious 'police'. In Saudi Arabia the Mutawwa'in use their own religious interpretations to decide who is committing 'crimes of vice', and can abuse, arrest and detain people before handing them over to the police.

Iran

In 2004 and 2005, religious persecution on the largest scale occurred in Iran and Egypt. According to the Iranian Constitution, the Twelver Ja'fari school of Islam is the official religion. However, Article 13 adds that 'Zoroastrian, Jewish, and Christian Iranians are the only recognized religious minorities, who, within the limits of the law, are free to perform their religious rites and ceremonies, and to act according to their own canon in matters of personal affairs and religious education.' Article 14 establishes a duty to treat non-Muslims according to Islamic justice and human rights, as long as they 'refrain from engaging in conspiracy or activity against Islam and the Islamic Republic of Iran'. The intentional exclusion of Iran's some 300,000 Bahá'ís cannot go unnoticed. For much of the period since 1979, Bahá'ís have been excluded from university education, severely restricted in employment opportunities, thousands of individual and community properties remain confiscated, they suffer from the absence of legal equality, pensions remain unpaid and the functioning of the religious community remains prohibited. Their intimidation and persecution is overtly government-sanctioned and they remain excluded from all spheres of public life in an attempt to force them to convert to Islam. The situation of the Bahá'ís in Iran has sharply deteriorated recently, with 16 being imprisoned by

government officials in three different localities in the months of July and August 2005 alone, purely on account of their beliefs. As of August 2005, 36 Bahá'ís were awaiting trial on charges stemming from their religious beliefs. The most recent governmental attempt to tempt their youth to convert comes from summer 2004. In July 2004, for the first time since 1979, Bahá'ís were allowed to participate in university entrance examinations, as there was no longer the requirement to state one's religious affiliation in the application form. Successful examination results were subsequently communicated to around 1,000 Bahá'í applicants on pre-printed forms that assigned the religious affiliation 'Muslim' to them. When they tried to take up the university entrance offers while also getting their forms corrected to 'Bahá'í' for religious affiliation, this possibility was refused them. Hence university entrance had once again been predicated on Bahá'ís accepting forcible conversion to Islam. The Islamic Republic of Iran's July 2002 report to the Committee on the Rights of the Child had claimed that the rights of ethnic and religious minorities were clearly protected. The Committee's March 2005 Concluding Observations did not accept Iran's claim of non-discrimination. It noted 'little progress' as 'members of unrecognized religions continue to be discriminated against and do not have the same rights as those of recognized religions', thus impacting on their access to social services, education for their children and even ill-treatment and imprisonment. It particularly noted that the Bahá'ís were subjected to 'harassment, intimidation and imprisonment on account of their religious beliefs' and denial of university admittance due to their religious beliefs.

In September 2004, 85 participants in a Christian conference were imprisoned, along with a lay preacher of the Assemblies of God Church, Reverend Hamid Pourmand. The 85 were released in a matter of days, but Pourmand was charged. As he was an officer in the Iranian army, and non-Muslims are prohibited such a position of superiority over Muslims, he was charged with having converted to Christianity without informing officials of his conversion. He was also charged with attempting to convert Muslims to Christianity. In May 2005, he was acquitted of the charges of apostasy and proselytism, for each of which he could have faced the death penalty. The charge of deceiving the Iranian army about his being a Christian remains, and for this he has been dismissed from the army and faces three years' imprisonment.

Egypt

The Constitution of the Arab Republic of Egypt definitively upholds Islam as the state religion and Islamic jurisprudence as 'the principal source of legislation'. Nevertheless, Article 46 further asserts the guarantee of 'freedom of belief and the freedom of practice of religious rites'. The US State Department report for 2004 noted that many Christians worship without harassment, however the 10 per cent Christian population of Egypt did face some discrimination. Muslims who convert to Christianity cannot change their religious affiliation on official records, while conversions to Islam are happily registered. Repairs to places of worship need the approval of security officials and Christians reported delays with such applications. Christians were excluded from most senior posts. According to the 2004 US State Department report:

'There were no Christians serving as governors, police commissioners, city mayors, public university presidents, or deans. There were few Christians in the upper ranks of the security services and armed forces. Discrimination against Christians also continued in public sector employment; in staff appointments to public universities; in failure (with the exception of one case in 2002) to admit Christians into public university training programs for Arabic language teachers that involved study of the Koran; and in payment of Muslim imams through public funds (Christian clergy are paid with private church funds).'

Christians also did not enjoy equality before the law in practice, as shown in the case of the killing of 21 Christians in al-Kush in early 2000. After years of pursuing the legal process, all the suspects were acquitted in June 2004.

Bahá'ís in Egypt face discrimination in every aspect of life simply because the government forbids them from stating their religious affiliation on their identity cards. The 1960 Law 263, which bans Bahá'í institutions and activities, also remains in force. The new computerized national identity card system in Egypt requires every person to declare themselves as either Muslim, Christian or Jew; otherwise a card will not be issued. The slot cannot

be left empty or filled in with 'other'. These cards are necessary in all official interactions: health services, school registration, university attendance, banking, applying for employment, even shopping in state markets. According to the NGO the Bahá'í International Community cards are even necessary for freedom of movement as they must be shown at police checkpoints. The August 2005 Bahá'í International Community statement at the UN Sub-Commission on Promotion and Protection of Human Rights stated that 'Without an ID card, an Egyptian citizen becomes a non-person, unable to live a normal life.' Therefore Bahá'í youth have, for example, been forced out of universities and fear leaving their homes. Hate speech against the Bahá'ís in the Egyptian media is reportedly on the rise, as is the number of fatwas being issued against them.

Excluded from full citizenship rights

Such groups are victims of the repressive and paranoid modern nation-state projects of the region. In some countries significant populations are not recognized as citizens either because of intentional exclusion by the state or lack of documentary evidence about their status. (Migrant workers and temporary residents will be discussed below.) In a few of the countries there have been some recent positive developments, allowing a process for the possible naturalization of some of the excluded.

Regarding its Kurdish population, Syria's October 2004 report to the Human Rights Committee seemed to make a non-falsifiable statement, that 'all citizens of Kurdish origin enjoy Syrian nationality … Kurds are considered to be fully assimilated into Syrian society where they act and react along with other Syrian citizens.' The next paragraph seemed to try to pre-empt counterclaims: 'Directives have been issued recently to resolve the situation of those who do not carry Syrian nationality.' The July 2005 Concluding Observations of the Human Rights Committee disputed this, noting that the rights enshrined in the International Covenant on Economic, Social and Cultural Rights were 'not fully guaranteed' to the Kurds. The Human Rights Committee expressed particular concern regarding the large number of stateless Kurds being treated as unregistered persons or aliens. The Committee asked that the rights of non-citizen Kurds be protected and nationality to be extended to those born in Syria.

The exclusion of 'Bidoons' (literally meaning 'without', i.e. without citizenship) from the enjoyment of economic, social and cultural rights, and discrimination against them (particularly the denial of Kuwaiti nationality to them), was highlighted in the Committee on Economic, Social and Cultural Right's June 2004 Concluding Observations on Kuwait report. Around 100,000 Bidoons (i.e. around 5 per cent of the population) face such discrimination because they have been unable to produce sufficient documentation. According to the US State Department report for 2004, the Kuwaiti government has actively discriminated against them since the mid-1980s in education, health care, employment and freedom of movement. However, in 2004, free education for the children of Bidoons was finally put in place and free health care announced for implementation in 2005. Bidoons registered by 2000 could go through the process of applying for citizenship. In October 2004, the Saudi government amended its naturalization laws so that some long-term residents could apply for citizenship. This was particularly pertinent to thousands of Saudi Bidoons, whose status was difficult due to their original nomadic lifestyle making it impossible for them to provide documents proving their status. The same problem is faced by Bedouins and their descendants in the United Arab Emirates.

The Jordanian government estimates that 150,000 Palestinian refugees in the country do not qualify for citizenship. It only granted them three-year travel documents, which do not imply citizenship, and granted West Bank residents who did not have other travel documents similar five-year documentation. According to human rights organizations, a further 1,200 citizens of Palestinian origin cannot travel back to Jordan because embassies abroad refuse to renew their passports. Around 400,000 Palestinians reside in Lebanon but they are not allowed to become citizens. Their socio-economic and political rights are severely curtailed. The question of citizenship is also a controversial issue in Israel, around whether in particular cases citizenship or identity cards are granted to Arabs so that they have rights as Israeli citizens, or whether they are considered Palestinians. Numerous cases on this matter go to court, as it has a key impact in terms of, for example, the right of one's spouse and children to get Israeli residency and political rights.

New migrant communities

Migrant workers

Migrant workers suffer multiple discrimination; the confiscation of passports, little or no protection under the labour laws, vulnerability to sexual assault, lack of equal protection under the law and disproportional representation among the prison population and in death penalty cases. Their problematic status combines with their racial origins, religious backgrounds, ethnicity and in some cases gender, to jeopardize their situation further, despite their large numbers in many Middle Eastern states.

Human Rights Watch, in its July 2004 publication, reported that the population of migrant workers in the six states of the Gulf Cooperation Council alone (Bahrain, Kuwait, Qatar, Oman, Saudi Arabia and the United Arab Emirates) amounted to 10 million. In many countries of the region, for example Saudi Arabia, pay scales are dependent on national origin, even for the same positions. Discrimination on the basis of national origin in terms of housing, social benefit, employment, pay, health and education is common throughout the region. A complex hierarchy of preferences in employment rights exists depending on whether one is a citizen, a Gulf Cooperation Council (GCC) citizen, Arab, Muslim or none of the above.

Non-citizens constitute around one-third of the around 700,000 population of Bahrain, 85 per cent of the population of the UAE and around a quarter of the Saudi population – but a reported 80 per cent of its prison population according to Human Rights Watch. Over 75 per cent of the population of around 750,000 of Qatar are non-citizens; foreigners make up approximately a quarter of the 2.3 million population of Oman and two-thirds of Kuwait's 2.7 million population. According to the US State Department report of 2004, 30–40 per cent of the attempted suicides in Bahraini psychiatric hospitals were carried out by foreign maids. Most non-citizens work in private businesses. In the case of Israel, in the vast majority of cases the law does not permit foreign workers to obtain citizenship or permanent residence status unless they are Jewish.

The most vulnerable of all migrant workers are domestic workers. Domestic foreign workers, who are overwhelmingly female, are particularly susceptible to sexual abuse, rape, physical abuse and forced prostitution. It is also very common for the salaries of domestic workers to be withheld, their passports confiscated and their freedom of movement restricted. The situation for domestic workers in the GCC states deteriorated to such a low level that Indonesia and Bangladesh imposed a ban on the employment of their nationals as domestic workers in these states, and in early 2005 the Philippines government considered a similar move. The ban was lifted in GCC states that agreed minimum wages and work conditions for these nationals. Many embassies with large numbers of domestic workers have safe houses and procedures for their repatriation. Some governments have also introduced procedures for the assistance of such domestic workers. Kuwait, for example, has special staff in the labour office and a police office for these problems.

In recent years, a number of countries of the region have banned the common practice of employers confiscating the passports of their employees, for example the UAE and Saudi Arabia. The November 2003 Lebanese report to the Committee on the Elimination of Racial Discrimination describes this practice as 'deplorable'. However, it asserted that this was not a racially motivated practice. Since foreign workers need a sponsor in order to legally work in most of these countries, the practice of not allowing foreigners to change employers increases their vulnerability. In the UAE for example, most workers need to leave the country for six months before applying for a new employer, in Kuwait they need to have been there at least two years and in Bahrain one year.

Some domestic workers and also camel jockeys are under age, and some are trafficked or live in conditions of forced labour or slavery. The UAE has made the employment of under-age camel jockeys, some of whom are trafficked, illegal. These children are being repatriated to their countries in partnership with UNICEF in a US$2.7 million project initiated in May 2005.

Trafficked persons

Few countries have specific laws on the prosecution of those involved in trafficking and the protection of victims of trafficking. For example, trafficking is not specifically prohibited by law in Bahrain and Kuwait. The media in the UAE is increasingly becoming prepared to cover stories about the trafficking of

women and girls, and the government has pledged to deal with the problem. In 2004, Saudi authorities uncovered a Yemeni-Saudi trafficking ring that dealt in children and trafficking for sexual exploitation. The Committee on the Rights of the Child's March 2005 Concluding Observations on the Islamic Republic of Iran expressed concern about the trafficking and sale of children for sexual purposes or 'temporary marriages'.

Refugees

The majority of the countries in the Middle East have no legal provision for the acceptance of refugees. Either refugees are handled by the UNHCR or they are dealt with on an exceptional and case-by-case basis. Refugees in Egypt, for example, are dealt with by the UNHCR. According to Article 42 of the Saudi Basic Law, political asylum is only granted 'if so required by the public interest'.

A large number of Palestinian refugees live throughout the region: 70,000 Palestinian refugees are registered in Egypt, and 700,000 Palestinians have been given Jordanian nationality while a further 120,000 have temporary residence permits. The November 2003 report of Lebanon to the Committee on the Elimination of Racial Discrimination notes that over 400,000 of the population of Lebanon are Palestinian refugees. Most reside in overpopulated camps as the government forbids the construction of permanent buildings in these areas. Only a small minority of Palestinians have work permits, and Lebanese law forbids Palestinians from working in 72 specified professions. They face numerous restrictions and severe discrimination in every aspect of life. In its April 2004 Concluding Observations, the Committee noted that Palestinian refugees faced discrimination in employment, health, housing and social services, and that they were discriminated against more than other non-citizens.

As noted above, Palestinians cannot apply for refugee status under Israeli refugee law, as they are considered to be under the protection of UNRWA (the UN Relief and Works Agency for Palestine Refugees).

The Islamic Republic of Iran's July 2002 report to the Committee on the Rights of the Child noted the large number of refugees in the country. The report indicated that refugee children without identity cards are educated informally rather than through official educational facilities in order not to encourage illegal migration. The Committee's March 2005 Concluding Observations noted that refugee children without full documentation were not enrolled freely in Iranian schools. Concern was also expressed about unaccompanied refugee children from Afghanistan being deported back there, or exploited for cheap labour.

Minorities in the Constitutions of Iraq and Afghanistan

Iraq

The March 2004 Law of Administration for the State of Iraq for the Transitional Period was operational from 30 June 2004 and is to continue until the coming into being of a new permanent constitution with an elected Iraqi government, expected by December 2005.

The fact that the August 2005 draft constitution defines the system of government in Iraq as federal has huge implications for majority–minority relations in Iraq. Of course, the very definition of who constitutes a 'minority' in Iraq has shifted. Kurds and Arab Shias would have been minorities in terms of lack of access to power in Baathist Iraq, but now it is the Arab Sunnis who fear such remoteness from power. Article 4 of the Transitional Law stated that 'the federal system shall be based upon geographic and historical realities and the separation of powers, and not upon origin, race, ethnicity, nationality, or confession'. However, the draft constitution does not repeat this clause. It outlines the powers of the federal authorities in Chapter 4, and states that the federal authority will maintain the unity of Iraq. It states that Iraq's oil and gas resources belong to the whole population and will be administered by the federal authorities in cooperation with the governments of the producing regions and provinces, and in a way that will ensure balanced development throughout the country.

The Kurds have been the most vocal and insistent regarding federalism, keen to maintain or even enhance their autonomy as enjoyed through the Transitional Law under the Kurdistan Regional Government. Federalism has long been the most contentious issue within the Iraqi constitutional debate. Its impact goes beyond Iraq's borders to the region as a whole. The Shia–Sunni tensions in Iraq have drawn comment from Iran and Saudi Arabia,

for example, and Kurdish autonomy in Iraq potentially impacts on Turkey's relationship with its Kurdish population. In September 2005, the Saudi Arabian Foreign Minister voiced fears that Iraq could split apart, disenfranchise its Sunni population and draw neighbouring countries into a wider conflict.

The two major issues that emerge in relation to minorities are the issues of the protection of minorities by the constitution and the question of balancing regional autonomy with centralizing tendencies. Much NGO activism and media attention has focused on the question of the protection of religious minorities in the new draft constitution. The fear was that reference to Islam as 'the main' source of legislation rather than 'a' source of legislation along with other sources of law (as stated in the Transitional Law) would compromise the rights of religious minorities by imposing Sharia law. The August 2005 draft constitution, however, reverted to the term of Islam being 'a' basic source of legislation in its Article 2. Religious minorities were further concerned about the reference that no law could be introduced in Iraq that contradicted the rules of Islam, as it could be used to repress minority rights and forbid conversion from Islam to other religions. It could further be interpreted to seriously impact women's rights, as it does in other Muslim countries such as Pakistan. The August 2005 constitutional draft, maintained language that no law could be against the rules of Islam, but *also* that it could not be against the principles of democracy or the rights and freedoms upheld in the constitution. Article 2 further guarantees full religious rights for all, while maintaining the Islamic identity of the majority, and recognizing Iraq as a multi-ethnic as well as multi-religious country. Since the Iraqi Supreme Federal Court has the duty to oversee the constitutionality of all legislation, it is tasked with ensuring that all three strands – of Islam, democracy and rights – are upheld. Ideally, this will bring about a balanced consideration of all three criteria in all legislation. The draft constitution and the Transitional Law of Administration both prohibited all coercion in matters of thought and religion. This was particularly important, though perhaps ineffectual, in light of the fact that according to a number of sources tens of thousands of minorities have escaped from Iraq since spring 2003. Linguistic minorities were concerned that only the Arabic and Kurdish languages were being overtly protected in earlier constitutional drafts – Arabic as the official language of Iraq, but Kurdish as well as Arabic in the Kurdish region. This left out clear protection for Iraq's Turkmen, for example, and concern surrounds the survival of the language and the continuation of their schools. The August 2005 draft, however, guarantees in Article 4 the right of Iraqis to educate their children in their first language (mother tongue) in governmental or private educational institutions. It further recognizes the Turkmen and Assyrian languages as official where they reside, and it allows each region itself to recognize – by referendum – further official languages if approved.

The draft constitution was approved in a referendum held on 15 October.

Afghanistan

The Afghanistan Constitution came into force on 4 January 2004. It recognizes Afghanistan as an Islamic Republic and as an 'independent, unitary and indivisible state'. With regard to religious minorities, it is interesting that it is the constitutional chapter on 'The State' that protects religious freedom rather than the chapter on 'Fundamental Rights and Duties of Citizens'. Article 2 recognizes Islam as the religion of the state and that 'Followers of other religions are free to exercise their faith and perform their religious rites within the limits of the provisions of the law.' Pashtu and Dari are recognized as the official languages of the state, but mention is made of nine other languages used in the country that are the third official languages in the areas where the majority speaks them. All these languages are to be effectively adopted and developed, and publications and broadcasting can be in all languages spoken in Afghanistan. However, the educational curriculum is to be unitary and based on Islam and 'national culture'.

The US State Department Country report noted continuing societal discrimination against minorities. This included restrictions on religious freedoms and the harassment of missionaries in Afghanistan. Social discrimination against the Hazara Shias, who have been discriminated against over a long period, continued. The State Department reported that 200 Hazaras returning from Iran in December 2004 were prevented from returning to their lands by a local leader in Herat.

Left: Women walking home from a polling station in Parwan, Afghanistan. Jeroen Oerlemans/Panos Pictures

As the previous penal code remains in force, blasphemy and apostasy are still theoretically punishable by death. Conflict between rival tribes and local commanders has led to casualties and insecurity impacted on the freedom of movement of ethnic groups. A particular instance of this was heavy fighting over natural resources between rival tribes in the provinces of Nangarhar and Logar. The State Department report highlights the effect this had on 10,000 Pashtuns hoping to return to their lands in the northern areas, from which they had been displaced since 1991. ■

Reference

Compiled by Marusca Perazzi

Notes for Table 1

Sources of the indicators are as follows:

- *Conflict indicators*: Marshall/Gurr/Khosla, Center for International Development and Conflict Management, University of Maryland. Self-determinations conflicts in early 2005 were ranked on a scale of 0-5 as follows: 5=ongoing armed conflict; 4=contained armed conflict; 3=settled armed conflict; 2=militant politics; 1=conventional politics. Major armed conflicts were classified as 2=ongoing in early 2005; 1=emerging from conflict since 2001.
- *Prior genocide or politicide*: Harff, US Political Instability Task Force (formerly State Failure Task Force). 1=one or more episodes since 1945.
- *Indicators of Group Division*: Failed States Index, Fund for Peace and the Carnegie Endowment for International Peace, 2005.
- *Democracy/Governance Indicators*: Annual Good Governance Indicators, World Bank, 2005.
- *OECD country risk classification*: Organisation for Economic Cooperation and Development, country risk classification prevailing at October 2005. Where no classification is given, a value of 8 was accorded.

Full bibliographic references are given in the Select Bibliography.

Indicators were rebased as necessary to give an equal weighting to the five categories above, with the exception of the prior geno-/politicide indicator. As a dichotomous variable this received a lesser weighting to avoid too great a distortion to the final ranking. Resulting values were then summed.

The full formula is:
(A/2) + (Bx1.25) + (Cx2) + (D+E+F)/6 + (G+H+I)/-1 + (Jx0.625)

Note that Sri Lanka, Cambodia and Georgia are ranked artificially low due to the absence of data on some of the indicators.

Notes for Table 2

Figures for self-determination conflicts (see under Table 1) are here combined with figures from the Minorities at Risk (MAR) group discrimination dataset, correlated by group. Group names are from MAR and may vary from those given in Table 1. All data from Center for International Development and Conflict Management, University of Maryland. The 70 highest results are given. The discrimination dataset records overall levels of political and economic discrimination for all groups in the Minorities at Risk Project for the period 1950–2003. Only the most recent data (for 2003) is quoted here.

Table 1
Peoples under Threat 2006

Country	Group	Conflict indicators		C. Prior genocide/politicide
		A. Self-determination conflicts	B. Major armed conflict	
Iraq	Shi'a, Sunnis, Kurds, Turkmen, Christians, smaller minorities	4	2	1
Sudan	Fur, Zaghawa, Massalit and others in Darfur; Dinka, Nuer and others in South; Nuba, Beja	5	2	1
Somalia	Issaq, Darood (Puntland), Bantu	4	2	1
Afghanistan	Hazara, Pashtun, Tajiks, Uzbeks	4	2	1
Burma/ Myanmar	Kachin, Karenni, Karen, Mons, Rohingyas, Shan, Chin (Zomis), Wa	5	2	1
Dem. Rep. of Congo	Hema and Lendu, Hunde, Hutu, Luba, Lunda, Tutsi/Banyamulenge, Twa/Mbuti	1	2	1
Nigeria	Ibo, Ijaw, Ogoni, Yoruba, Hausa (Muslims) and Christians in the North	5	2	1
Burundi	Hutu, Tutsi, Twa	0	2	1
Angola	Bakongo, Cabindans, Ovimbundu	5	1	1
Indonesia	Acehnese, Chinese, Dayaks, Madurese, Papuans)	5	2	1
Cote d'Ivoire	Northern Mande (Dioula), Senoufo, Bete, newly-settled groups	0	2	0
Uganda	Acholi, Karamojong	1	2	1
Ethiopia	Anuak, Afars, Oromo, Somalis	5	0	1
Russian Federation	Chechens, Ingush, Lezgins, indigenous northern peoples, Roma	5	2	1
Philippines	Indigenous peoples, Moros (Muslims)	5	2	1
Pakistan	Ahmadiya, Baluchis, Hindus, Mohhajirs, Pashtun, Sindhis	5	0	1
Liberia	Dan, Krahn, Ma, other groups	0	1	0
Rwanda	Hutu, Tutsi, Twa	0	1	1
Algeria	Berbers	2	2	1
Bosnia and Herzegovina	Croats, Bosniac Muslims, Serbs	4	0	1
Laos	Hmong	5	0	0
Nepal	Political/social targets, Dalits	0	2	0
Colombia	Political/social targets, Afro-descendants, indigenous peoples	3	2	0
Serbia and Montenegro	Ethnic Albanians, Croats, Roma, Ashkali, Serbs (Kosovo)	4	0	1
Iran	Arabs, Baha'is, Baluchis, Kurds, Turkmen	4	0	1
Chad	Southerners	3	0	0
Zimbabwe	Ndebele, Europeans	1	0	0
Haiti	Political/social targets		0	0
Uzbekistan	Tajiks, Islamic political groups, Russians	1	0	0
Equatorial Guinea	Bubi	0	0	1

Indicators of group division			Democracy/Governance indicators			J.OECD country risk classification	Total
D. Massive movement – refugees and IDPs	E. Legacy of vengeance – group grievance	F. Rise of factionalized elites	G. Voice and Accountability	H. Political Stability	I. Rule of Law		
9.4	8.3	10	-1.71	-2.87	-1.97	7	22.04
9.4	7.8	8.7	-1.81	-2.08	-1.59	7	21.17
8	7.4	8.7	-1.58	-2.39	-2.31	7	21.17
8	8	8	-1.35	-2.03	-1.81	8	20.69
8	6.3	7.5	-2.19	-1.21	-1.62	7	20.03
9.4	9	9.1	-1.64	-2.27	-1.74	7	19.61
3	6.5	8.3	-0.65	-1.78	-1.44	7	18.21
7.2	7.1	8.6	-1.13	-2.04	-1.5	8	17.99
8.6	6.3	8.1	-1.02	-0.95	-1.33	7	17.26
7	6.3	8.8	-0.44	-1.38	-0.91	5	16.54
8	7.7	9.1	-1.46	-2.28	-1.42	7	16.17
7.6	6.9	8.1	-0.64	-1.27	-0.79	7	15.84
8	6	8.9	-1.11	-0.98	-1	7	15.78
6	7.5	9.2	-0.81	-0.85	-0.7	4	15.64
7	6.5	9.2	0.02	-1.01	-0.62	5	15.52
5	6.9	9.3	-1.31	-1.59	-0.78	6	15.46
7.8	7.3	7.9	-1.24	-2.2	-1.76	7	14.66
7.8	8	8.9	-1.09	-0.92	-0.9	7	14.65
9	6.4	9.2	-0.91	-1.42	-0.73	3	14.54
8	8.6	8.7	-0.14	-0.85	-0.76	7	14.34
6.7	6.3	9.7	-1.55	-0.76	-1.27	7	14.24
8	5.6	8	-1	-1.74	-0.82	7	14.04
8	6.9	9.2	-0.47	-1.69	-0.7	5	14.00
6	7.5	9.6	0.12	-0.97	-0.72	7	13.80
8	7.3	9.1	-1.36	-0.91	-0.83	4	13.67
9.1	7.1	9.4	-1.09	-1.2	-1.15	7	13.58
8	6.4	7.9	-1.48	-1.86	-1.53	7	13.46
8	7.7	8.5	-1.5	-1.87	-1.66	7	13.44
8	6.8	9.4	-1.75	-1.37	-1.3	7	13.33
6	6.3	9.8	-1.71	-0.3	-1.05	7	13.12

Table 1 (continued)
Peoples under Threat 2006

Country	Group	Conflict indicators		
		A. Self-determination conflicts	B. Major armed conflict	C. Prior genocide/politicide
Syria	Kurds	0	0	1
Azerbaijan	Armenians	4	0	0
Central African Republic	Political/social targets, Aka	0	0	0
Bangladesh	Ahmadiya, Hindus, other religious minorities, Chittagong Hill Tribes	3	0	0
Turkmenistan	Political/social targets, Russians	0	0	0
Sierra Leone	All groups incl. Krio, Limba, Mende, Temne	0	1	0
Cameroon	Westerners	2	0	0
North Korea	Political/social targets, religious minorities	0	0	0
Guatemala	Indigenous peoples	0	0	1
Eritrea	Afars	0	0	0
Belarus	Poles	0	0	0
Lebanon	Druze, Maronite Christians, Palestinians, Shi'a, Sunnis	2	0	0
Vietnam	Montagnards	2	0	1
Tajikistan	Uzbeks, Russians	0	0	0
Yemen	Political/social targets	0	0	0
Kyrgyzstan	Uzbeks, Russians	1	0	0
Guinea	Fulani, Malinke	0	0	0
Cuba	Political/social targets	0	0	0
China	Tibetans, Uighers, Hui, religious minorities	4	0	1
Libya	Political/social targets	0	0	0
Togo	Ewe, Kabre	0	0	0
India	Assamese, Bodos, Nagas, Tripuras, other Adivasis, Kashmiris, Sikhs, Muslims, Dalits	5	2	0
Ecuador	Afro-descendants, Indigenous peoples	2	0	0
Turkey	Kurds, Roma	5	0	0
Ukraine	Tatars, Russians (Crimea)	2	0	0
Dominican Republic	Haitians	4	0	0
Venezuela	Indigenous peoples, Afro-Descendants	0	0	0
Bhutan	Lhotshampa, Nepalese	2	0	0
Kenya	Borana, Endorois, Kalenjin, Maasai, Ogiek, Somalis, Turkana	0	0	0
El Salvador	Political/social targets	3	0	1
Sri Lanka	Tamils, Muslims	4	1	1
Cambodia	Cham, Vietnamese	0	0	1
Paraguay	Indigenous peoples	0	0	0
Tanzania	Zanzibaris	1	0	0

Indicators of group division			Democracy/Governance indicators			J.OECD country risk classification	Total
D. Massive movement – refugees and IDPs	E. Legacy of vengeance – group grievance	F. Rise of factionalized elites	G. Voice and Accountability	H. Political Stability	I. Rule of Law		
8	7.5	8.2	-1.72	-0.66	-0.4	7	13.11
6	6	9.6	-0.97	-1.52	-0.85	6	12.69
5	8.8	10	-1.2	-1.43	-1.44	7	12.41
7	7.6	8.7	-0.69	-1.24	-0.86	6	11.92
5	4.9	9.8	-1.9	-0.92	-1.43	7	11.91
8	7.5	8.6	-0.49	-0.61	-1.1	7	11.84
7	5.1	8.2	-1.18	-0.9	-1	7	11.84
6	7.2	8	-2.05	-0.67	-1.15	7	11.78
6	7.4	9.1	-0.39	-0.85	-0.96	6	11.70
8	5.4	9.2	-1.96	-0.14	-0.78	8	11.65
8	7	9.4	-1.54	-0.24	-1.31	7	11.53
8	7.5	9.2	-0.81	-0.83	-0.32	7	11.45
8	5.6	6.4	-1.54	0.16	-0.59	5	11.43
5	6.2	9.5	-1.12	-1.19	-1.18	7	11.32
8	6.4	9.4	-0.99	-1.48	-1.11	6	11.30
5	5.4	9.7	-1.06	-0.91	-1.04	7	11.24
6	6.1	9.2	-1.12	-0.91	-1.09	7	11.05
8	6.3	8.6	-1.88	0.18	-1.12	7	11.01
5	7.4	8.4	-1.54	-0.07	-0.47	2	10.80
8	6.7	8.4	-1.79	-0.02	-0.65	7	10.69
6	7	7.9	-1.22	-0.55	-1.01	7	10.64
6.2	5.4	6.8	0.27	-0.81	-0.09	3	10.57
6	5.6	8.6	-0.19	-0.83	-0.71	7	10.47
8	7.3	9.1	-0.15	-0.6	0.04	5	10.40
7	6.9	9.1	-0.62	-0.27	-0.83	6	10.30
8	7.1	9.2	0.27	-0.01	-0.54	6	10.08
8	6.8	7.2	-0.46	-1.1	-1.1	6	10.08
8	5.5	10	-1.18	0.84	0.27	8	9.99
8	6.7	8.4	-0.34	-0.96	-0.98	6	9.88
5	5.6	9.7	0.26	-0.23	-0.34	4	9.69
			-0.16	-1.06	-0.03	5	9.63
			-0.89	-0.6	-0.98	8	9.47
5	6.9	8.7	-0.23	-0.71	-1.09	6	9.21
7.2	7.6	7.5	-0.35	-0.38	-0.49	6	9.19

Table 1 (continued)
Peoples under Threat 2006

Country	Group	Conflict indicators		C. Prior genocide/politicide
		A. Self-determination conflicts	B. Major armed conflict	
Honduras	Miskitos, Garifuna	0	0	0
Morocco	Berbers, Saharawis	4	0	0
Kazakhstan	Russians	1	0	0
Mozambique	Northerners	0	0	0
Georgia	Adzhars, Abkhazians, South Ossetians	4	0	0
Peru	Indigenous peoples, Afro-descendants	2	0	0

Indicators of group division			Democracy/Governance indicators			J.OECD country risk classification	Total
D. Massive movement – refugees and IDPs	E. Legacy of vengeance – group grievance	F. Rise of factionalized elites	G. Voice and Accountability	H. Political Stability	I. Rule of Law		
6	5.3	9.1	-0.02	-0.69	-0.61	7	9.10
8	5.9	8.2	-0.55	-0.23	-0.05	4	9.01
5	7.2	9.6	-1.21	-0.11	-0.98	4	8.93
8	5.7	8.2	-0.13	-0.15	-0.6	7	8.91
			-0.34	-1.26	-0.87	7	8.85
7	6.6	8.9	-0.04	-0.68	-0.63	4	8.60

Table 2 Discrimination and Self-Determination Conflicts

Country	Group	Political Discrimination	Economic Discrimination	Self-determination conflicts	Total
Burma/ Myanmar	Karens	4	4	5	13
Burma/ Myanmar	Shan	4	4	5	13
Burma/ Myanmar	Zomis (Chin)	4	4	5	13
Indonesia	Acehnese	4	4	5	13
Israel	Palestinians	4	4	5	13
Nigeria	Ijaw	4	4	5	13
Russian Federation	Chechens	4	4	5	13
Angola	Cabinda	4	3	5	12
Burma/ Myanmar	Rohingyas	4	4	4	12
China	Tibetans	4	4	4	12
Sri Lanka	Sri Lankan Tamils	4	4	4	12
Sudan	Nuba	4	4	3	11
Turkey	Kurds	4	2	5	11
Burma/ Myanmar	Kachins	3	4	3	10
Croatia	Serbs	3	3	4	10
India	Tripuras	2	3	5	10
Indonesia	Papuans	1	4	5	10
Iran	Kurds	4	2	4	10
Lebanon	Palestinians	4	4	2	10
Brazil	Amazonian/ Indigenous	4	3	2	9
India	Kashmiris Muslims	3	1	5	9
Pakistan	Baluchis	2	2	5	9
Senegal	Casamancais (Diola)	4	2	3	9
Algeria	Berbers	4	2	2	8
Bhutan	Nepalese	4	4	0	8
Burma/ Myanmar	Mons	3	2	3	8
Cambodia	Vietnamese	4	4	0	8
Cameroon	Westerners	4	2	2	8
Croatia	Roma	4	4	0	8
Dem. Rep. of Congo	Tutsis	4	4	0	8
Dominican Republic	Afro-Americans	4	4	0	8
Ecuador	Indigenous Lowland	3	3	2	8
Ethiopia	Somalis	1	2	5	8
Iran	Baha'is	4	4	0	8

Country	Group	Political Discrimination	Economic Discrimination	Self-determination conflicts	Total
Laos	Hmong	2	1	5	8
Mexico	Indigenous Peoples	3	3	2	8
Morocco	Saharawis	2	2	4	8
Nigeria	Ogoni	2	4	2	8
Pakistan	Hindus	4	4	0	8
Serbia and Montenegro	Croats	2	3	3	8
Sudan	Southerners	4	4	0	8
Turkmenistan	Russians	4	4	0	8
Zimbabwe	Europeans	4	4	0	8
Bangladesh	Hindus	4	3	0	7
Congo (Rep of)	Lari	3	4	0	7
Djibouti	Afars	1	3	3	7
Ecuador	Indigenous Highland	3	4	0	7
France	Noncitizen Muslims	4	3	0	7
Greece	Roma	4	3	0	7
Guyana	Afro-Guyanese	4	3	0	7
Honduras	Black Karibs	3	4	0	7
India	Assamese	1	1	5	7
India	Scheduled Tribes	1	1	5	7
Indonesia	Chinese	4	3	0	7
Iran	Turkmens	4	3	0	7
Kazakhstan	Russians	3	3	1	7
Macedonia	Albanians	1	3	3	7
Mauritania	Black Moors	3	4	0	7
Nicaragua	Indigenous & Creoles	2	2	3	7
Niger	Tuaregs	2	2	3	7
Nigeria	Ibos	0	3	4	7
Pakistan	Ahmadis	4	3	0	7
Peru	Indigenous Lowland	2	3	2	7
Philippines	Igorots	1	1	5	7
Philippines	Moros (Muslims)	1	1	5	7
Saudi Arabia	Shi'is	4	3	0	7
Serbia and Montenegro	Sandzak Muslims	3	3	1	7
Thailand	Malay-Muslims	1	1	5	7
United Kingdom	Catholics	1	3	3	7
Uzbekistan	Tajiks	3	3	1	7

Status of Ratification of major international and regional instruments relevant to minority and indigenous rights

as at October 2005

■ Ratification, accession or succession.

□ Signature not yet followed by ratification.

Rights of individual petition:

▸ Declaration under Article 14 of ICERD

● Ratification Optional Protocol to ICCPR

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	International Convention on The Prevention and Punishment of the Crime Of Genocide 1948	International Convention on the Elimination of All Forms of Racial Discrimination 1965	International Covenant on Civil And Political Rights 1966	International Covenant on Economic, Social And Cultural Rights 1966
Africa				
Algeria	■	■▸	■●	■
Angola			■●	■
Benin		■	■●	■
Botswana		■	■	
Burkina Faso	■	■	■●	■
Burundi	■		■	■
Cameroon		■	■●	■
Cape Verde		■	■●	■
Central African Republic		■	■●	■
Chad		■	■●	■
Comoros	■	■		■
Congo		■	■●	■
Cote d'Ivoire	■	■	■●	■
Democratic Republic of the Congo	■	■	■	■
Djibouti			■●	■
Egypt	■	■	■	■
Equatorial Guinea			■●	■
Eritrea		■	■	■
Ethiopia	■	■	■	■
Gabon	■	■	■●	■
Gambia	■	■	■●	■
Ghana	■	■	■●	■
Guinea	■	■	■●	■
Guinea Bissau		□	□	■
Kenya		■	■	■
Lesotho	■	■	■●	■
Liberia	■	■	■○	■
Libyan Arab Jamahiriya	■	■	■●	■
Madagascar		■	■●	■
Malawi		■	■●	■
Mali	■	■	■●	■
Mauritania		■	■	■
Mauritius		■	■●	■
Morocco	■	■	■	■
Mozambique	■	■	■	
Namibia	■	■	■●	■
Niger		■	■●	■

Convention on the Elimination of All Forms of Discrimination against Women 1979	Convention on the Rights of the Child 1989	LO 111 Discrimination (Employment and Occupation) Convention, 1958	ILO 169 Convention concerning Indigenous and Tribal Peoples in Independent Countries 1989	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990	ICC Rome Statute of the International Criminal Court 1998	African Charter on Human and Peoples' Rights 2003	African Charter on the Rights and Welfare of the Child 1990
■	■	■		■	□	■	■
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Status of Ratification of major international and regional instruments relevant to minority and indigenous rights

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Nigeria		■	■	■
Rwanda	■	■	■	■
Sahrawi Arab Democratic Republic				
Sao Tome and Principe		□	□ ○	□
Senegal	■	■▸	■●	■
Seychelles	■	■	■	■
Sierra Leone		■	■	■
Somalia		■	■	■
South Africa	■	■▸	■●	□
Sudan	■	■	■	■
Swaziland		■	■	■
Togo	■	■	■●	■
Tunisia	■	■	■	■
Uganda	■	■	■●	■
United Republic of Tanzania	■	■	■	■
Zambia		■	■●	■
Zimbabwe	■	■	■	■
Americas				
Antigua and Barbuda	■	■		
Argentina	■	■	■●	■
Bahamas	■	■		
Barbados	■	■	■●	■
Belize	■	■	■	□
Bolivia	■	■	■●	■
Brazil	■	■▸	■	■
Canada	■	■	■●	■
Chile	■	■▸	■●	■
Colombia	■	■	■●	■
Costa Rica	■	■▸	■●	■
Cuba	■	■		
Dominica			■	■
Dominican Republic	□	■	■●	■

Convention on the Elimination of All Forms of Discrimination against Women 1979	Convention on the Rights of the Child 1989	LO 111 Discrimination (Employment and Occupation) Convention, 1958	ILO 169 Convention concerning Indigenous and Tribal Peoples in Independent Countries 1989	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990	ICC Rome Statute of the International Criminal Court 1998	African Charter on Human and Peoples' Rights 2003	African Charter on the Rights and Welfare of the Child 1990
■	■	■			■	■	■
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						■	□
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■	■	■			□	■	■

						American Convention on Human Rights 1969	Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights 1988
■	■	■			■		
■	■	■	■	□	■	■	■
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■	■	■		■	■		
■	■	■	■	■	■	■	□
■	■	■	■		■	■	■
■	■	■			■		
■	■	■		■	□	■	□
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■	■	■	■		■	■	■
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■	■	■	■		■	■	■
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Status of Ratification of major international and regional instruments relevant to minority and indigenous rights

as at October 2005

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	International Convention on The Prevention and Punishment of the Crime Of Genocide 1948	International Convention on the Elimination of All Forms of Racial Discrimination 1965	International Covenant on Civil And Political Rights 1966	International Covenant on Economic, Social And Cultural Rights 1966
Ecuador	■	■▸	■●	■
El Salvador	■	■	■●	■
Grenada			■	■
Guatemala	■	■	■●	■
Guyana		■	■●	■
Haití	■	■	■	
Honduras	■	■	■●	■
Jamaica	■	■	■●	■
México	■	■▸	■●	■
Nicaragua	■	■	■●	■
Panamá	■	■	■●	■
Paraguay	■	■	■●	■
Perú	■	■▸	■●	■
Saint Kitts and Nevis				
Saint Lucia		■		
Saint Vincent and the Grenadines	■	■	■●	■
Suriname		■	■●	■
Trinidad and Tobago	■	■	■●	■
United States of America	■	■	■	□
Uruguay	■	■▸	■●	■
Venezuela	■	■▸	■●	■
Asia				
Afghanistan	■	■	■	■
Bangladesh	■	■	■	■
Bhutan		□		
Brunei Darussalam				
Cambodia	■	■	■	■
China	■	■	□	■
Democratic People's Republic of Korea	■		■	■
India	■	■	■	■
Indonesia		■		
Japan		■	■	■
Kazakhstan	■	■	□	□
Kyrgyzstan	■	■	■●	■
Lao People's Democratic Republic	■	■	□	□
Malaysia	■			

Convention on the Elimination of All Forms of Discrimination against Women 1979	Convention on the Rights of the Child 1989	LO 111 Discrimination (Employment and Occupation) Convention, 1958	ILO 169 Convention concerning Indigenous and Tribal Peoples in Independent Countries 1989	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990	ICC Rome Statute of the International Criminal Court 1998	American Convention on Human Rights 1969	Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights 1988
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Status of Ratification of major international and regional instruments relevant to minority and indigenous rights

as at October 2005

■ Ratification, accession or succession.

□ Signature not yet followed by ratification.

Rights of individual petition:

▸ Declaration under Article 14 of ICERD

● Ratification Optional Protocol to ICCPR

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	International Convention on The Prevention and Punishment of the Crime Of Genocide 1948	International Convention on the Elimination of All Forms of Racial Discrimination 1965	International Covenant on Civil And Political Rights 1966	International Covenant on Economic, Social And Cultural Rights 1966
Maldives	■	■		■
Mongolia	■	■	■●	
Myanmar	■			■
Nepal	■	■	■●	□
Pakistan	■	■		■
Philippines	■	■	■●	■
Republic of Korea	■	■▸	■●	■
Singapore	■			■
Sri Lanka	■	■	■●	■
Tajikistan		■	■●	■
Thailand		■	■	■
Timor-Leste		■	■	■
Turkmenistan		■	■●	■
Uzbekistan	■	■	■●	■
Viet Nam	■	■	■	■
Europe				
Albania	■	■	■	■
Andorra		□		
Armenia	■	■	■	■
Austria	■	■▸	■	■
Azerbaijan	■	■▸	■	■
Belarus	■	■	■	■
Belgium	■	■▸	■	■
Bosnia and Herzegovina	■	■	■	■
Bulgaria	■	■▸	■	■
Croatia	■	■	■	■
Cyprus	■	■▸	■	■
Czech Republic	■	■▸	■	■
Denmark	■	■▸	■	■
Estonia	■	■	■	■
Finland	■	■▸	■	■
France	■	■▸	■	■
Georgia	■	■▸	■	■
Germany	■	■▸	■	■

Convention on the Elimination of All Forms of Discrimination against Women 1979	Convention on the Rights of the Child 1989	LO 111 Discrimination (Employment and Occupation) Convention, 1958	ILO 169 Convention concerning Indigenous and Tribal Peoples in Independent Countries 1989	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990	ICC Rome Statute of the International Criminal Court 1998	European Charter for Regional or Minority Languages 1992	Framework Convention for the Protection of National Minorities 1995
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	International Convention on The Prevention and Punishment of the Crime Of Genocide 1948	International Convention on the Elimination of All Forms of Racial Discrimination 1965	International Covenant on Civil And Political Rights 1966	International Covenant on Economic, Social And Cultural Rights 1966
Greece	■	■	■	■
Holy See		■		
Hungary	■	■▸	■	■
Iceland	■	■▸	■	■
Ireland	■	■▸	■	■
Italy	■	■▸	■	■
Latvia	■	■	■	■
Liechtenstein	■	■▸	■●	■
Lithuania	■	■	■●	■
Luxembourg	■	■▸	■●	■
Malta		■▸	■●	■
Monaco	■	■▸	■	■
Netherlands	■	■▸	■●	■
Norway	■	■▸	■●	■
Poland	■	■▸	■●	■
Portugal	■	■▸	■●	■
Republic of Moldova	■	■	■○	■
Romania	■	■▸	■●	■
Russian Federation	■	■▸	■●	■
San Marino		■	■●	■
Serbia and Montenegro	■	■▸	■●	■
Slovakia	■	■▸	■●	■
Slovenia	■	■▸	■●	■
Spain	■	■▸	■●	■
Sweden	■	■▸	■●	■
Switzerland	■	■▸	■	■
The former Yugoslav Republic of Macedonia	■	■▸	■●	■
Turkey	■	■	■○	■
Ukraine	■	■▸	■●	■
United Kingdom of Great Britain and Northern Ireland	■	■	■●	■
Middle East				
Bahrain	■	■		
Egypt	■	■	■	■
Iran (Islamic Republic of)	■	■	■	■
Iraq	■	■	■	■

Convention on the Elimination of All Forms of Discrimination against Women 1979	Convention on the Rights of the Child 1989	LO 111 Discrimination (Employment and Occupation) Convention, 1958	ILO 169 Convention concerning Indigenous and Tribal Peoples in Independent Countries 1989	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990	ICC Rome Statute of the International Criminal Court 1998	European Charter for Regional or Minority Languages 1992	Framework Convention for the Protection of National Minorities 1995
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Israel	■	■	■	■
Jordan	■	■	■	■
Kuwait	■	■	■	■
Lebanon	■	■	■	■
Oman		■		
Qatar		■		
Saudi Arabia	■	■		
Syrian Arab Republic	■	■	■	■
United Arab Emirates		■		
Yemen	■	■	■	■
Oceania				
Australia	■	■▸	■●	■
Cook Islands				
Fiji	■	■		
Kiribati				
Marshall Islands				
Micronesia (Federated States of)				
Nauru		□	□	
New Zealand	■	■	■●	■
Niue				
Palau				
Papua New Guinea	■	■		
Samoa				
Solomon Islands		■		■
Tonga	■	■		
Tuvalu				
Vanuatu				

Sources:
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http://www.iccnow.org/countryinfo/worldsigsandratifications.html
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http://www.achpr.org/
http://www.cidh.oas.org/
http://www.oas.org/juridico/english/Sigs/b32.html

Convention on the Elimination of All Forms of Discrimination against Women 1979	Convention on the Rights of the Child 1989	LO 111 Discrimination (Employment and Occupation) Convention, 1958	ILO 169 Convention concerning Indigenous and Tribal Peoples in Independent Countries 1989	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families 1990	ICC Rome Statute of the International Criminal Court 1998		
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Excerpts from relevant instruments concluded or coming into force 2004–2005

Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights

Entered into force: 25 January 2005

Excerpts

Article 1 Establishment of the Court
There shall be established within the Organization of African Unity an African Court Human and Peoples' Rights hereinafter referred to as "the Court", the organization, jurisdiction and functioning of which shall be governed by the present Protocol.

Article 2 Relationship between the Court and the Commission
The Court shall, bearing in mind the provisions of this Protocol, complement the protective mandate of the African Commission on Human and Peoples' Rights hereinafter referred to as "the Commission", conferred upon it by the African Charter on Human and Peoples' Rights, hereinafter referred to as "the Charter".

Article 3 Jurisdiction
The jurisdiction of the Court shall extend to all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant Human Rights instrument ratified by the States concerned. In the event of a dispute as to whether the Court has jurisdiction, the Court shall decide.

Article 4 Advisory Opinions
At the request of a Member State of the OAU, the OAU, any of its organs, or any African organization recognized by the OAU, the Court may provide an opinion on any legal matter relating to the Charter or any other relevant human rights instruments, provided that the subject matter of the opinion is not related to a matter being examined by the Commission. The Court shall give reasons for its advisory opinions provided that every judge shall be entitled to deliver a separate of dissenting decision.

Article 5 Access to the Court
The following are entitled to submit cases to the Court:
- The Commission
- The State Party, which had lodged a complaint to the Commission
- The State Party against which the complaint has been lodged at the Commission
- The State Party whose citizen is a victim of human rights violation
- African Intergovernmental Organizations
- When a State Party has an interest in a case, it may submit a request to the Court to be permitted to join.
- The Court may entitle relevant Non Governmental organizations (NGOs) with observer status before the Commission, and individuals to institute cases directly before it, in accordance with article 34 (6) of this Protocol.

[…]

Article 34 Ratification
[…]
At the time of the ratification of this Protocol or any time thereafter, the State shall make a declaration accepting the competence of the Court to receive cases under article 5 (3) of this Protocol. The Court shall not receive any petition under article 5 (3) involving a State Party which has not made such a declaration.
[…]

Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms

Entered into force: 1 April 2005

Excerpts

Article 1 – General prohibition of discrimination

1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.
2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.

[…]

Arab Charter on Human Rights 2004

Text adopted by the Arab Standing Committee for Human Rights

Adopted: 23 May 2004

Excerpts

Article I

The present Charter seeks in the context of the national identity of the Arab States and their sense of belonging to a common civilization, to achieve the following objectives:

a) To place human rights at the centre of the key national concerns of the Arab States so as to make them lofty and fundamental ideals that shape the will of individuals in the Arab States and enable them to improve their lives in accordance with noble human values;
b) To inculcate in human beings in the Arab States a sense of pride in their identity and attachment to the land, history and common interests of their homeland and to imbue them with the culture of human brotherhood, tolerance and openness towards others, in accordance with universal principles and values and with those proclaimed in international human rights instruments;
c) To prepare the new generations in the Arab States for a free and responsible life in a civil society that is characterized by solidarity and founded on the interdependence between awareness of rights and commitment to duties and governed by the values of equality, tolerance and moderation;
d) To entrench the principle that all human rights are universal, indivisible, interdependent and interrelated.

Article 2

a) All peoples have the right of self-determination and to control over their natural wealth and resources, and the right to freely choose their political system and to freely pursue their economic, social and cultural development.
b) All peoples have the right to national sovereignty and territorial integrity.
c) All forms of racism, Zionism and foreign occupation and domination constitute an impediment to human dignity and a major barrier to the exercise of the fundamental rights of peoples; all such practices must be condemned and efforts must be deployed for their elimination.
d) All peoples have the right to resist foreign occupation.

Article 3

a) Each State party to the present Charter undertakes to ensure to all individuals subject to its jurisdiction the right to enjoy the rights and freedoms set forth herein, without distinction on grounds of race, colour, sex, language, religious belief, opinion, thought, national or social origin, wealth, birth or physical or mental disability.
b) The States parties to the present Charter shall take the requisite measures to guarantee effective equality in the enjoyment of all the rights and freedoms enunciated in the present Charter so as to ensure protection against all forms of discrimination on any of the grounds mentioned in the preceding paragraph.
c) Men and women have equal human dignity and equal rights and obligations in the framework of the positive discrimination established in favour of women by the Islamic Shariah and other divine laws and by applicable laws and international instruments. Accordingly, each State party pledges to take all the requisite measures to guarantee equal opportunities and effective equality between

men and women in the enjoyment of all the rights set out in this Charter.
[…]

Article 11
All persons are equal before the law and have the right to enjoy its protection without discrimination.
[…]

Article 25
Persons belonging to minorities shall not be denied the right to enjoy their own culture, to use their own language and to practise their own religion. The exercise of these rights shall be governed by law.
[…]

Article 34
a) The right to work is a natural right of every citizen. The State shall endeavour to provide, to the extent possible, a job for the largest number of those willing to work, while ensuring production, on the freedom to choose one's work and equal opportunities, without discrimination of any kind as to race, colour, sex, religion, language, political opinion, union affiliation, national or social origin, disability or other status.
[…]
e) Each State party shall ensure to workers who migrate to its territory the requisite protection in accordance with the laws in force.
[…]

Article 43
Nothing in this Charter may be construed or interpreted as impairing the rights and freedoms protected by the domestic laws of the States parties or those set forth in the international and regional human rights instruments which the States parties have adopted or ratified, including the rights of women, the rights of the child and the rights of persons belonging to minorities.
[…] ■

Appendices

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

Adopted by General Assembly resolution 47/135 of 18 December 1992

The General Assembly,

Reaffirming that one of the basic aims of the United Nations, as proclaimed in the Charter, is to promote and encourage respect for human rights and for fundamental freedoms for all, without distinction as to race, sex, language or religion,

Reaffirming faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small,

Desiring to promote the realization of the principles contained in the Charter, the Universal Declaration of Human Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and the Convention on the Rights of the Child, as well as other relevant international instruments that have been adopted at the universal or regional level and those concluded between individual States Members of the United Nations,

Inspired by the provisions of article 27 of the International Covenant on Civil and Political Rights concerning the rights of persons belonging to ethnic, religious and linguistic minorities,

Considering that the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live,

Emphasizing that the constant promotion and realization of the rights of persons belonging to national or ethnic, religious and linguistic minorities, as an integral part of the development of society as a whole and within a democratic framework based on the rule of law, would contribute to the strengthening of friendship and cooperation among peoples and States,

Considering that the United Nations has an important role to play regarding the protection of minorities,

Bearing in mind the work done so far within the United Nations system, in particular by the Commission on Human Rights, the Subcommission on Prevention of Discrimination and Protection of Minorities and the bodies established pursuant to the International Covenants on Human Rights and other relevant international human rights instruments in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Taking into account the important work which is done by intergovernmental and non-governmental organizations in protecting minorities and in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Recognizing the need to ensure even more effective implementation of international human rights instruments with regard to the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Proclaims this Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities:

Article 1

1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.
2. States shall adopt appropriate legislative and other measures to achieve those ends.

Article 2

1. Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.
2. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.
3. Persons belonging to minorities have the right to participate effectively in decisions on the national

and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.
4. Persons belonging to minorities have the right to establish and maintain their own associations.
5. Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.

Article 3

1. Persons belonging to minorities may exercise their rights, including those set forth in the present Declaration, individually as well as in community with other members of their group, without any discrimination.
2. No disadvantage shall result for any person belonging to a minority as the consequence of the exercise or non-exercise of the rights set forth in the present Declaration.

Article 4

1. States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.
2. States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.
3. States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.
4. States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.
5. States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country.

Article 5

1. National policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.
2. Programmes of cooperation and assistance among States should be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.

Article 6

States should cooperate on questions relating to persons belonging to minorities, inter alia, exchanging information and experiences, in order to promote mutual understanding and confidence.

Article 7

States should cooperate in order to promote respect for the rights set forth in the present Declaration.

Article 8

1. Nothing in the present Declaration shall prevent the fulfilment of international obligations of States in relation to persons belonging to minorities. In particular, States shall fulfil in good faith the obligations and commitments they have assumed under international treaties and agreements to which they are parties.
2. The exercise of the rights set forth in the present Declaration shall not prejudice the enjoyment by all persons of universally recognized human rights and fundamental freedoms.
3. Measures taken by States to ensure the effective enjoyment of the rights set forth in the present Declaration shall not prima facie be considered contrary to the principle of equality contained in the Universal Declaration of Human Rights.
4. Nothing in the present Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of States.

Article 9

The specialized agencies and other organizations of the United Nations system shall contribute to the

full realization of the rights and principles set forth in the present Declaration, within their respective fields of competence.

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Who are Minorities?

There is no universally accepted definition of 'minorities', and the word is interpreted differently in different societies. The United Nations (UN) has failed to agree a definition of what constitutes a minority, beyond that implied in the title of the UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities. Attempting a more precise statement has been fraught with difficulties: in some cases the motivation for a tighter definition has been to deny certain rights to certain peoples.

Minority Rights Group International (MRG) focuses its work on non-dominant ethnic, religious and linguistic communities, who may not necessarily be numerical minorities. MRG's work includes initiatives with indigenous and tribal peoples, migrant communities and refugees. These communities may not wish to be classified as minorities for various reasons. We also recognize that these groups are not homogenous – some members face further marginalization due to age, class, disability, gender or other factors.

The groups MRG works with are among the poorest and most marginalized groups in society. They may lack access to political power, face discrimination and human rights abuses, and have 'development' policies imposed upon them. MRG seeks to protect and promote the basic rights of these communities. We believe that recognition of minority and indigenous peoples' rights is crucial to establishing and maintaining just and peaceful societies. ■

Contributors

Dr James Chin is Director of the Institute of East Asian Studies (IEAS) at Universiti Malaysia Sarawak. He has worked in Singapore, the United Kingdom, Australia, New Zealand and Papua New Guinea, and published widely on South East Asian (especially Malaysian) and South Pacific politics. Prior to an academic career, he worked as a financial journalist. He holds a PhD in political science from Victoria University, New Zealand. Associate Professor Chin was the author of the South East Asian section of the *World Directory of Minorities* (MRG, 1997).

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A report of this size also involves contributions from a large number of other individuals, including many MRG staff. Special thanks to the anonymous reviewers of the different sections, to Gideon Burrows of NGO Media, and to Richie Andrew, Chris Chapman, Katrina Naomi, Kathryn Ramsay, Sophie Richmond and Paul-André Wilton. ■

State of the World's Minorities 2006

"The way in which we treat minorities is the measure of civilization of a society"
Mahatma Gandhi

In the era of globalization, societies are becoming more diverse. Every country around the globe exhibits some ethnic, religious or cultural diversity. Instead of an asset to be celebrated, however, governments too often treat this as a threat. States in every world region repress the rights of their minorities, or even deny their existence. For some minorities or indigenous peoples, their very survival is at stake.

In addition to the war in Iraq, which remained the focus of intense media attention, over 20 further major armed conflicts were ongoing in other parts of the world in 2005, as well as a range of lower-intensity conflicts. In three-quarters of these armed conflicts, violence was targeted at specific ethnic or religious groups. Yet many of these conflicts could have been prevented if minority and indigenous rights had been respected.

This first edition of the State of the World's Minorities looks at key developments over the last year affecting the human rights and security of ethnic, religious or linguistic minorities and indigenous peoples. It includes:

- a Preface by the UN Special Adviser on the Prevention of Genocide, Juan E Méndez
- analysis of trends and legal developments by leading authorities on minority rights
- an overview by world region highlighting main developments and areas of concern
- statistical data on Peoples under Threat 2006
- ratification tables for the main minority rights treaties and extracts from recently-concluded treaties.

This major new reference work provides an objective analysis of how minorities and indigenous peoples are treated around the globe – and with it a measure of the civilization of our societies.

minority rights group international