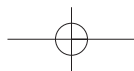
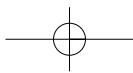
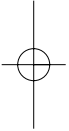
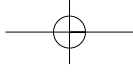


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THE SITUATION OF HUMAN RIGHTS DEFENDERS

Following the 11th September 2001 attacks and the bombing in Bali in October 2002, the fight against terrorism was still, in 2003, one of the major concerns of Asian governments. This is reflected in the motto of the 9th Summit of the South East Asian Nations (ASEAN) held in Bali, Indonesia, in October 2003: «Towards an ASEAN economic and security community». During the summit ASEAN and India adopted a joint Declaration on co-operation in the fight against terrorism. Earlier, in January 2003, the 14th meeting of the European Union (EU) Ministers of Foreign Affairs and ASEAN also adopted a joint Declaration on co-operation in the fight against terrorism. Lastly the South Asian Association for Regional Co-operation (SAARC) adopted a protocol on terrorism at the Summit of Heads of State held in January 2004. This legitimate concern for security has however given rise to abuses, with respect for human rights being considered of secondary importance.

In such a particularly repressive context, it is increasingly difficult for the women and men who defend human rights to denounce violations committed by the authorities. In 2003, on the Asian continent, defenders were victims of assassination (*Indonesia, Nepal, Philippines*), violence and intimidations by the Police or armed groups (*India, Pakistan*), arrests under national security or State security legislation (*China, Iran, Laos and Vietnam*), solitary confinement (Vietnam), or prosecution without arrest (*Pakistan, Malaysia*).

In addition to the unfavourable context defenders are confronted with, they are at risk in countries weakened by internal conflicts, such as *Indonesia, Nepal* or the *Philippines*. In *Afghanistan*, the Taliban have assassinated staff members of intergovernmental and non-governmental organisations, who have become targets, in the same way as any persons, even Afghans, working with those organisations¹.

¹ On 27th March 2003 Mr. Ricardo Munguia, an International Committee of the Red Cross (ICRC) delegate, was assassinated by the Taliban in the Uruzgan province. On 16th December 2003, Mrs Bettina Goislard, working for the United Nations High Commissioner for Refugees, was killed by the Taliban at Ghazni (south-west of Kabul).

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There are still several countries in Asia where it is impossible for Human Rights defenders to work, such as *North Korea, Bhutan, Laos* and *Burma*. It should be noted that during his mission to Burma, which was considered to be a sign of the country's opening up, the United Nations Special Rapporteur on the human rights situation in Burma cut short his visit when a microphone was discovered hidden in the room in which he interviewed political prisoners². The arrest on 31st May 2003 of the Secretary General of the National League for Democracy (NLD), Aung San Suu Kyi, and the brutal attack on her convoy is another sign of the deterioration of the human rights situation in the country³.

In countries such as *Vietnam* and *China* defenders manage - with extreme difficulty and at enormous risk - to circulate information on Human Rights violations committed by the authorities. In these countries however, in addition to arrests and prison sentences inflicted on defenders, the authorities impose stringent controls on new information technology, and thereby on the circulation of information itself.

Lastly, the international human rights NGOs still have no access to a certain number of Asian countries (*China, Bhutan, North Korea, Iran, Laos, Vietnam*).

The fight against terrorism and erosion of rights

The multiplication of so called security policies, laws and procedures, or measures related to the fight against terrorism, has had a considerable impact on the action of Human Rights defenders in Asia. In this context defenders are faced with a climate in which the defence of the right to a fair trial, the presumption of innocence or the prohibition of torture are considered by a certain number of States as being beside the point. Security considerations easily outweigh the requirement to respect rights and principles. It is far more difficult for defenders to get across a message of peace and justice in a climate in which positions are more radical, more community-oriented, and where repression is increasing.

² See United Nations document A/58/219, 5th August 2003.

³ As a result of the brutal attack on the convoy there were nearly 80 people killed and at least 150 missing.

THE SITUATION OF HUMAN RIGHTS DEFENDERS

In *Malaysia* in particular, the government has submitted to Parliament for adoption amendments to the Penal Code and the law against money-laundering that bear on «terrorism-related offences». Under these amendments, the penalties incurred for «terrorist» acts can range from seven years' prison sentences to life sentences, and the death penalty. The provisions concerned are couched in vague terms and cover acts that range from «serious bodily injury to a person» to those that «cause prejudice to national security or to public safety».

In *Indonesia*, on 6th March 2003, Parliament promulgated the «Perpu» anti-terrorist decrees n° 1/2002 and n° 2/2002. These two decrees were adopted by the government following the terrorist attack on 18th October 2002 in Bali. «Perpu» n° 1/2002 allows individuals to be detained for up to six months without being charged and without trial. Powers of investigators are increased, in that they can open personal mail and record telephone conversations, or any other communication, for a period of up to one year. Reports by the secret services can henceforth be used as legal evidence, which bestows considerable power on those services. As for the terrorist activities, they are very broadly defined, to the extent that political activities and legitimate opposition to the government can be considered to be terrorist activities.

In the *Philippines*, two anti-terrorist laws - H.B. 5923 and S.B. 2540 - are presently being examined by the two chambers of Congress. Whereas in law H.B. 5923 the maximum penalty is a life sentence, law S.B. 2540 carries the death penalty. These laws are couched in imprecise terms, as was stressed by the United Nations Committee on Human Rights during the examination of the report presented by the government of the Philippines in October 2003⁴. Furthermore the Committee noted that the definition concerning terrorism was also vague and imprecise, which could have a negative impact on the realisation of the rights guaranteed by the International Covenant on Civil and Political Rights.

In *Singapore*, the Computer Misuse Act was amended in November 2003 in order to authorise preventive action against computer terrorism; in other words, threats to the computer system that could imperil natio-

4 See United Nations document, CCPR/CO/79/PHI, 1st December 2003.

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nal security, essential services, defence or the external relations of the nation. Before this, the security forces could only intervene after an electronic attack had taken place. Many voices were raised in Singapore to express concern over the possibility of the law being used abusively as an instrument of oppression.

Freedom of expression, of assembly and of association

In certain Asian countries, the exercise of the freedoms of expression, of assembly and of association is so restricted that human rights defenders have practically no possibility of getting organised, and sometimes none at all: such is the case in *Burma, China, North Korea, Laos* and *Vietnam*⁵. In other countries, the capacity to organise is hindered to varying degrees.

In *India*, the restrictive provisions of the Foreign Contribution Regulation Act (FCRA), which require any organisation or individual seeking to receive funds from abroad to obtain prior authorisation from the Ministry of the Interior, or the requirement that any NGO wishing to organise a meeting at which foreign participants would be present must first get permission from the Ministry of the Interior and any other Ministry concerned, are examples of the many difficulties that human rights defenders are up against.

In *Singapore*, an array of restrictive legislation - including the Public Entertainment and Meeting Act (PEMA), and the Societies' Act, which governs inter alia the setting up of NGOs -, makes it more difficult for independent Human Rights organisations to operate.

In *South Korea*, on 19th November 2003, the National Assembly Committee on Domestic Affairs approved a draft revision of the legislation on meetings and demonstrations, considerably restricting freedom of expression, of assembly and of association. This draft revision - which in particular gives the police the power to oppose assemblies whenever they think fit - is presently being examined by the Legal-Judicial Committee.

In *Pakistan*, NGOs can register either under the law on registration of companies (1960), or under the Ordinance on the registration and

⁵ See Compilation of cases below.

THE SITUATION OF HUMAN RIGHTS DEFENDERS

control of welfare organisations (1961). The mission sent by the Observatory and the FIDH to Pakistan in October 2003 was told that since 2002 a draft bill on NGOs has been in preparation in the Pakistani Centre for Philanthropy (PCP), but has not yet been submitted to Parliament. The PCP is an organisation set up in order to assist the government in promoting and regulating social activities in the country.

The NGOs seen by the mission expressed the fear that the new law would strengthen government control over their activities, forcing them to de-register and re-register subsequently, and imposing a limited, and therefore restrictive list of activities open to NGOs. This draft bill, which has been in preparation since 2002, is like a sword of Damocles suspended over the heads of Human Rights defenders.

In practice, Human Rights defenders continue to be subjected to various forms of harassment and repression in Pakistan, while at the same time a certain number of trade unions, in particular in public sector enterprises, are still banned. The situation is particularly difficult in the North West Frontier Province (NWFP), where NGOs are threatened, at times violently, by extremist Islamic groups⁶.

In *Bangladesh*, the conservative and nationalist government is less and less tolerant towards criticism of its policies, perceiving critics as being supporters of the Awami League, an opposition party subjected to vigorous repression. This trend has been accompanied by a strengthening of the power of the military, in particular in the framework of the Clean Heart operation, organised from October 2002 to January 2003; the aim was to eradicate crime, but political opponents and Human Rights defenders were also targeted.

In 2003 the authorities made increasing use of the libel law in order to prevent publication of articles criticising government policy. The numerous restrictions to trade union freedoms are still in place, and NGOs have often been subjected to pressure and intimidation. The government has banned all NGOs dealing with women's rights, supposedly because they do not conform to Islamic values.

The exercise of freedom of expression, of assembly and association has felt the full force of the consequences of the restrictions imposed by

⁶ *Idem*.

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legislation on national security and the fight against terrorism. Governments have used such legislation to justify censorship of information on Human Rights and for taking retaliatory action against defenders. The following are among the charges made: «libel and slander against the authorities», «spreading false information of such a nature as to disturb the public peace», «insulting the police», «attack on the image or reputation of the State», and «sedition». All these charges are linked to national security concerns.

New information technology is another area in which freedom of expression has been seriously restricted in some Asian countries. In *China* and *Vietnam* several cyber-dissidents were arrested and imprisoned in 2003 for having spread human rights information on the Internet⁷. In *Malaysia*, the independent newspaper *Malaysiakini*, which so far has been spared government censorship, was subjected in 2003 to a police investigation under the 1948 Sedition Act, for freely circulating on the Internet. This Act is part of the legislative repressive arsenal developed by the authorities for restricting fundamental freedoms - in the name of national security. Journalists working for the newspaper are regularly subjected to threats and persecution⁸.

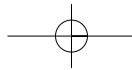
When reports are published revealing Human Rights violations in certain countries, acts of reprisal are regularly committed against the defenders and NGOs that wrote them. These acts are committed by government agents or militias linked to the authorities. Following the publication of a report that contained allegations of ill-treatment of migrant workers in *Malaysia*, the director of the NGO responsible for the publication was charged in 1995 with having «published false information with intent to harm», under the 1994 Printing, Press and Publication Act (PPDA). At the end of the longest trial ever held in Malaysia, on 14th October 2003 she was sentenced to 12 months' imprisonment⁹. In *Pakistan*, it was also shortly after the publication of the annual report of the Human Rights Commission of Pakistan (HRCP) that the co-ordinator of one of its regional offices was arbitrarily arrested¹⁰.

7 *Idem.*

8 *Idem.*

9 *Idem.*

10 *Idem.*



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In *Indonesia*, the National Commission for Human Rights - a national institution - received threats¹¹.

In *Thailand*, Burmese democrats and non-governmental organisations, whose presence in Thailand has traditionally been tolerated by the Thai authorities, ran into difficulties at the end of 2002, which continued in 2003¹².

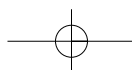
A positive evolution regarding freedom of expression has however taken place in the Hong Kong administrative region of *China*. The Chinese government, following considerable mobilisation at the national and international level, was compelled to withdraw its draft «anti-subversive» bill, implementing Article 23 of the Fundamental Law. This bill purported to replace the existing offence of treason by a new definition; to establish the offence of secession from the People's Republic of China; to reactivate and redefine the offences of sedition and issuing of seditious publications; to establish the offence of subversion; to broaden the present provisions concerning the theft of official secrets; to extend the provisions on «foreign» political organisations endangering national security, and to increase the powers of the police in matters of access to, searching for and seizure of evidence without the authorisation of a court. If the proposed legislation had been adopted, it would have violated both the international provisions concerning freedom of opinion and expression, and the right to peaceful assembly and the freedom of association.

Defenders in a context of general violence: in times of armed conflict

In *Indonesia*, following the failure of the peace negotiations and the collapse of the fragile Agreement for the cessation of hostilities (COHA) in May 2003, putting an end to a six months' truce between the Free Aceh movement (GAM) and the security forces, the Indonesian government declared a State of Emergency in the province; this in fact permitted the launching of military operations against the GAM, to the detriment of the civilian population. Under the martial law, the military

¹¹ *Idem.*

¹² *Idem.*



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control, inter alia, all means of communication, including radio broadcasts and telephone communications, and of publication. They can also detain a person for up to 20 days - the period can be extended to 50 days -, without having to level any charge. The martial law was initially supposed to be in force for six months, but it was extended to 2004. In this context, the situation of Human Rights defenders is extremely dangerous and precarious. They receive threats, and are victims of disappearances and assassinations. Others have had to leave the province¹³. Aceh is de facto banned from the national and international press, and from contact with humanitarian and Human Rights organisations.

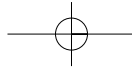
In *Papua*, similar events to those concerning Aceh are taking place, such as an increasing military presence and the gradual closing of the province. Human Rights defenders have been subjected to increasing pressure on the part of the Indonesian armed forces for having investigated Human Rights violations and shown the direct responsibility of certain members of the Indonesian army and of the police¹⁴.

In *Nepal*, since the breaking off of the peace negotiations in August 2003, the number of cases of extra-judicial executions, forced disappearances, torture and arbitrary arrests, has considerably increased. A sign of the deterioration of the Human Rights situation in the country is the fact that the Nepalese government has sought to undermine the independence of the National Commission for Human Rights by proposing the setting up of a parallel human rights unit controlled by the Prime Minister.

In the *Philippines*, human rights defenders are in the front line when they document and denounce the serious human rights violations perpetrated in the context of the anti-insurgency campaign waged by the government against the New Popular Army (NAP), the armed branch of the communist party. On 21st April 2003, Eden Marcellana, Secretary general of the Tagalog-South office of the Alliance for Advancement of People's Rights (KARAPATAN), and Eddie Gumanoy, President of the

¹³ *Idem*.

¹⁴ Declaration under the auspices of Survival International and the International League of Women for Peace and Freedom, 59th session of the Commission for Human Rights,
<http://www.survival-international.org/fr/papua%20un.htm>.



KASAMA-TK peasant group, were found dead shortly after being kidnapped when they were investigating human rights violations committed in the eastern province of Mindoro. The presumed authors of these assassinations are armed men acting with the support of the 204th infantry brigade of the army of the Philippines, commanded by Colonel Jovito Palparan Jr. At the end of December 2003, the preliminary enquiry was not yet finished.

Economic, social and cultural rights

Legislation on trade union rights is still very restrictive in several countries in Asia, where the right of workers to organise freely is strictly controlled, and where anyone voicing a claim is often sacked, arrested, imprisoned and subjected to ill-treatment¹⁵.

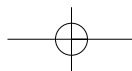
In *South Korea*, dozens of trade unionists are still in prison for having called for an improvement of their working conditions. Although Mr. Dan Byung-ho, President of the Korean Confederation of Trade Unions (KCTU) was released in April 2003, on 18th March 2002 he had been sentenced by the court of first instance of Seoul to two years' imprisonment for having co-ordinated a general strike¹⁶. During the demonstrations and protests organised by the trade union Equality-migrant worker section (ETU-MB), in response to the repressive measures inflicted on migrant workers in South Korea since 24th October 2003, several members of ETU-MB have been the victims of aggression, arrest or deportation. Such was for instance the fate of Mr. Khademul Islam Bidduth, leader of the trade union, who was arrested during a demonstration on 26th October and deported on 30th December 2003 to Bangladesh.

In *Bangladesh, Pakistan and India*, restrictions to the freedom of association and to the right of collective bargaining remain a matter for concern.

In *Burma, China, North Korea, Laos and Vietnam*, independent trade unions are strictly banned, and any attempt to exercise an independent trade union activity is very severely repressed. By way of example, two

¹⁵ For more information, see the annual report for 2003 of the International Confederation of Free Trade Unions (ICFTU) at <http://www.icftu.org>.

¹⁶ For more information, see annual report for 2001.



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Chinese trade union activists who were arrested in March 2002 during workers' demonstrations were transferred on 8 October 2003 to a prison known for being one of the most brutal in China. Those inmates are deprived of necessary medical treatment, which is contrary to Chinese legislation¹⁷.

The situation of human rights defenders who try to obtain recognition of the rights of indigenous communities in Asia is still precarious. In India for example, in June 2003, Mrs. Medha Paktar, a member of the Narmada Bachao Abndolan organisation, which defends the rights of the Adivasis communities affected by the construction of the Sardar Sarovar dam, went on a seven day hunger strike to protest against the refusal of the Maharashtra government to grant adequate compensation to the Adivasis families whose houses were in danger of being submerged. The government gave her the assurance that the persons concerned would obtain reparation¹⁸. At the end of December 2003 however, the Maharashtra government had as yet taken no concrete steps.

Mobilisation for the national, regional and international protection of defenders

The civil society

On 28th November 2003, in Tamil Nadu, in *India*, the first conference on Human Rights defenders organised by eleven NGOs, including People's Watch-Tamil Nadu¹⁹, was attended by defenders and victims of Human Rights violations. In its final resolutions, the conference called in particular for the setting up of a Human Rights defenders bureau in Tamil Nadu, charged with recording and verifying Human Rights violations, drawing up a report on them and taking all appropriate steps with the governments of Tamil Nadu and India, the national Human Rights institutions and the Special Representative for Human Rights Defenders, in order to afford protection to the defenders.

¹⁷ See Compilation of cases below.

¹⁸ See Urgent appeal OMCT IND 040603.ESCR and 040603.1 ESCR.

¹⁹ This conference was organised following a police raid on the premises of this small organisation on 5th November 2003. See Compilation of cases below.

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A regional conference entitled «Asian consultation on Vienna + 10, 10 years after the 1993 Vienna World Conference on Human Rights» was held in Bangkok on 15th and 16th December 2003. The final declaration of the conference called in particular on the governments of Asia to: «Recognize the important role of NGOs in the promotion and protection of all human rights at all levels in the light of the Declaration on Human Rights Defenders and to co-operate with the Special Representative of the UN Secretary General on Human Rights Defenders».

International organisations

During the 59th session of the Commission on Human Rights, in April 2003, the Special Representative of the UN Secretary General on Human Rights Defenders presented her report for 2002. In response to an invitation from the Thai government, she visited the country from 18th to 27th May 2003. She received answers to her requests for an invitation from the governments of Singapore and Indonesia, the latter having declined to invite her. She also sent requests for an invitation to the governments of Bhutan, India, Malaysia, Pakistan and Nepal.

In her report, the Special Representative stressed her concern at the rapid multiplication of «security», or «anti-terrorist» policies, laws and procedures that could have an impact on the action of Human Rights defenders, or which could be diverted from their aim so as to hinder such action, or which even sometimes targeted the defenders directly. This concern was analysed at greater length in her report to the General Assembly, in which she addressed the use of security legislation against human rights defenders, and the role of human rights defenders in emergency situations²⁰.

Commonwealth

From 22nd to 23rd October 2003 in Colombo, (Sri Lanka), the Human Rights Unit of the Commonwealth Secretariat organised, with the South Asian Human Rights Documentation Centre and the Lawyers for Human Rights and Development in Sri Lanka, organized a seminar on the United Nations Declaration on Human Rights

²⁰ United Nations document, A/58/380, 18th September 2003.

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Defenders in Asia. The seminar, the first of its kind, was attended by the national Human Rights commissions and representatives of the civil society in Bangladesh, India, Malaysia, Singapore and Sri Lanka, as well as by international NGOs such as FIDH and OMCT. The final declaration of the seminar called in particular for better co-operation between the various national, regional and international players involved in the issue of human rights defenders²¹.

European Union

The European Parliament addressed the question of human rights defenders in several resolutions.

In its resolution on the situation in the Indonesian province of Aceh, it noted the attack perpetrated by the army and the police on 19th October 2003 against the training programme on human rights monitoring organised by the National Commission on Human Rights (Komnas Ham).

Lastly, the European Parliament passed two resolutions on freedom of expression and religion in Vietnam²², which address in particular the situation of the Unified Buddhist Church of Vietnam (UBCV), and which call on the government of Vietnam to «repeal decree 31/CP²³ and all the other laws that repress peaceful activities on the grounds that they constitute a threat to national security²⁴».

In the framework of the Common Foreign and Security Policy in 2003, the Council of the European Union welcomed in particular the reduced prison sentence of Mr. Pham Hong Son, a Vietnamese cyber-dissident²⁵.

20 United Nations document, A/58/380, 18th September 2003.

21 See the official Commonwealth website,
http://www.thecommonwealth.org/news/oct2003/story3_wk4.htm.

22 See Resolutions of the European Parliament on the freedom of expression and religion in Viet-Nam, P5_TA (2003) 0225 and P5_TA (2003) 0526.

23 See Compilation of cases below.

24 Resolution of the European Parliament on the freedom of expression and religion in Viet-Nam, P5_TA(2003)0225, item 8.

25 See Compilation of cases below and «European Union's Statement in Mr. Pham Hong Son's case», 11th Septembre 2003.

HUMAN RIGHTS DEFENDERS HARASSED

CHINA

Mr. Zheng Enchong's sentence²⁶

On 6th June 2003, Mr. **Zheng Enchong**, a Shanghai lawyer involved in the defence of economic and social rights of displaced persons, was arrested and led to the Shanghai Public Security Bureau Detention Center. He was assisting displaced families in more than 500 cases relating to Shanghai's urban redevelopment projects. Mr. Zheng's first family visit occurred on 20th August only. His house was searched at least twice. During the searches, Public Security police warned his wife, Ms. Jiang Meili, not to speak to the foreign media or other parties outside of China.

On 28th October 2003, Mr. Zheng Enchong was sentenced to three years in prison and deprivation of his political rights for one year, on charges of «illegally providing state secrets to entities outside of China» (article 111 of the Criminal Law of the People's Republic of China) by the Shanghai Second Intermediate People's Court.

Mr. Zheng Enchong was accused of sending two communications to Human Rights in China (HRIC). The first one referred to a message from Mr. Zheng Enchong about the fact that 500 policemen surrounded more than 500 workers who were on strike on 9th May 2003 following

²⁶ See Urgent Appeals CHN 001/0803/OBS 041, 041.1, 041.2 and 041.3.

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the announcement that three-quarters of Shanghai Yimin Food Product n° 1 factory's workers would be laid-off. The second document was a copy of an internal article of Xinhua News agency entitled «Reporters covering conflict sparked by forced removal come under attack». However HRIC never received this article from him and the Court acknowledges that this document never reached the organisation. Both communications were considered as «state secrets» by the Shanghai State Secrets Bureau.

Mr. Zheng Enchong had been tried behind closed doors on 28th August 2003. Mr. Zheng Enchong's wife, Mrs. Jiang Meili, and other observers had been barred from the court on the grounds that the case involved state secrets. Represented in court by his lawyers, Mr. Enchong had pleaded not guilty in the trial.

On 19th November 2003, Ms. Jiang Meili and her sister, Ms. Jiang Zhongli, while in Beijing to meet with Zheng Enchong's lawyer, Mr. Zhang Sizhi, about Zheng Enchong's planned appeal, were abducted by officials of Shanghai's Letters and Petitions Bureau and immediately put on a train for Shanghai. Mrs. Jiang Meili's sister was released upon their return to Shanghai. Mrs. Jiang Meili herself was held a little longer, but was finally allowed to return home at around 3 p.m. on 20th November.

On 18th December 2003, the Shanghai appeal court upheld the three-year sentence of lawyer Zheng Enchong on charges of circulating state secrets. He remains imprisoned at the Shanghai Detention Center.

Alarming prison conditions for labours activists²⁷

On 8th October 2003, two labours activists, Mr. **Yao Fuxin** and Mr. **Xiao Yunliang**, imprisoned since March 2002, were transferred from the Jinzhou Prison to the Lingyuan Prison, considered to be one of the most brutal prisons in China. Lingyuan Prison is a huge penal colony, located in Liaoning Province close to the border of Inner Mongolia. The transfer was made despite the extremely poor health of both prisoners. Mr. Yao Fuxin and Mr. Xiao Yunliang's health has rapidly deteriorated since their transfer to Lingyuan prison, due to the lack of proper medical facilities available in that prison.

²⁷ See Urgent Appeal CHN 002/1103/OBS 060, 060.1 and Annual Report 2002.

HUMAN RIGHTS DEFENDERS HARASSED

In December 2003, Yao has been sent to the prison hospital after losing consciousness twice due to a heart condition and because is also suffering from hearing loss and partial paralysis. Xiao is suffering from pleurisy and is almost entirely blind. He has oedema throughout his body, and his hands are numb from prolonged use of handcuffs. Both men are kept in isolation and surveillance around the clock, and other prisoners are not allowed to speak with them. Yao and Xiao's families have requested that they be released for medical treatment outside of the prison system, a right that is provided for in Chinese law. But prison officials notified Yao's family that their request had been denied because of the «special circumstances» of Yao's case. As of December 2003, Xiao's family is still awaiting a decision regarding their request.

Mr. Yao Fuxin and Mr. Xiao Yunliang had been arrested as the leaders of a mass workers demonstration, that took place in March 2002 against corruption and unpaid benefits in the city of Liaoyang, Liaoning Province. They had been tried in January 2003 on charges of «subverting state power» (Article 105 of the criminal law) and on 9th May 2003, they had been sentenced to seven and four years in prison respectively. Their appeals had been subsequently rejected by a higher court.

Cyber-activists in jail²⁸

The circulation of information relative to human rights on the Internet can be sanctioned on grounds such as inciting the overthrow of state power, toppling the socialist system, destroying national unity, promoting «cults» (interpreted to mean groups such as the Falungong spiritual movement) or supporting the independence of Taiwan or Tibet. Sophisticated filtering technology enables government officials to monitor international traffic and block news, political sites, certain human rights NGOs websites and Tibetan and Taiwanese sites. The majority of the Web sites concerned are Western based.

As of December 2003, the following human rights defenders, who had used the Internet to promote human rights and democracy in China were still in jail:

²⁸ See Open Letter to the Chinese authorities of the 3rd December 2003 and annual report 2002.

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On 27th November 2003, Mr. **Jiang Lijun** was condemned to four years in prison. Mr. Jiang Lijun had been arrested on 6th November 2002, then transferred to Beijing's Qincheng Prison because he had posted political views in favour of democracy on the Internet. He was tried on 4th November 2003 on charges of «incitement to subvert state power».

Mr. **Ouyang Yi**, a political activist criticizing the Chinese government and using the Internet to spread his demands for democratic reforms was tried on 16th October 2003. He had been arrested on 4th December 2002 and charged on 7th January 2003 with «incitement to overthrow state power» by the Chengdu Public Security Bureau. The Court has not rendered a decision yet, although he faces up to 15 years in prison. Mr Ouyang Yi is currently being detained at the Sichuan Province n° 1 Detention Center.

Mr. **Yan Jun**, another Internet activist, was detained on 2nd April 2003 and formally arrested on 9th May. His trial began in closed proceedings on 27th October and his sentence has not been announced yet. While in detention, he has been constantly beaten by other prisoners under the encouragement of Public Security Police.

Internet activist Mr. **Li Zhi**, from Dazhou city, Sichuan province, was formally arrested on 3rd September 2003 on charges of «conspiracy to subvert state power». He was detained since 8th August. Mr. Li Zhi had frequently expressed his views in Internet bulletin boards and chat rooms. Under those charges, Mr. Li Zhi could be sentenced to up to 15 year in prison.

Mr. **Jin Haike**, Mr. **Xu Wei** and Mr. **Zhang Honghai** founded the New Youth Society in May 2000, a study group that discussed political and democratic reforms, and published its findings and theoretical ideas on the Internet. On 13th March 2001, the Beijing state security bureau detained them along with Mr. **Yang Zili**, another New Youth Society member. On 28th August 2001, they were tried by the n° 1 Intermediate People's Court on charges of «incitement to subvert state power», and found guilty of the charges on 28th October 2003. Mr. Jin Haike and Mr. Xu Wei were each sentenced to ten years in prison at the Beijing State Security Bureau Detention Center. Mr. Yang Zili and Mr. Zhang Honghai, were sentenced to eight years each. On 4th November 2003, a Beijing Court heard their appeals, but they were rejected on 11th November 2003. The four men have repeatedly complained to the n° 1 Intermediate People's Court that they have been

tortured in prison, but the Court has refused to initiate an investigation.

Mr. **Huang Qi**, an Internet activist and web master who gained notoriety for publishing several articles about the 4th June massacre on his Tianwang web site, was detained on 3rd June 2003. He was arrested on charges of «organizing national separatism, destroying national unity, (...) organizing, plotting or carrying out activities aimed at subverting state power» and «overthrowing the socialist system» on 5th June 2003. He is currently serving a five-year sentence at Chengdu Public Security Bureau n° 1 Detention Center. According to some information, Huang would have been tortured while in prison.

Mr. **Tao Haidong**, released in January 2001 from Reeducation Through Labor to which he had been condemned for publishing a book, was arrested again on 9th July 2002, while he was posting articles on web sites in China and overseas. On 8th January 2003, he was tried in secret at the Urumqi People's intermediate court and found guilty of «incitement to overthrow state power», for which he received a seven-year prison sentence. He is being held at the Urumqi Dadaowan Detention Center.

Mr. **Wang Daqi** was arrested on 24th January 2002, and sentenced on 19th December 2002 to one year in prison on charges of «inciting the overthrow of state power» because of articles he had published in his magazine Ecology. He is being detained at the Hefei Luosigang Detention Center in Anhui province.

Mr. **Jiang Lijun** was arrested on 6th November 2002, then transferred to Beijing's Qincheng Prison because he had posted political views on the Internet. He was tried on 4th November 2003 on charges of «incitement to subvert state power». Mr Jiang Lijun's crime was to publishing essays and comments on political issues in China. He was condemned on 28th November 2003 to four years in prison.

Mr. **Luo Yongzhong** was detained by public security officials on 13th June 2003 at his apartment in the Northeastern city of Changchun, Jilin province. Mr. Luo Yongzhong had published more than 150 articles online on topics such as the plight of the disabled and the need for constitutional reform. He was charged with subversion and sentenced to three years imprisonment and two years of deprivation of his political rights upon release on 14th October 2003.

In a positive development, on 28th November 2003, Mr. **Li Yibin**, editor of the online magazine «Democracy and Freedom», detained

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since November 2002, was released as well as Ms. **Liu Di**, known by her Internet pen name as «the Stainless Steel Mouse», who was released on bail. Mrs. Liu Di was ordered not to speak to journalists. Moreover, Mr. **Du Daobin** and Mr. **Luo Changfu**, who had organised a campaign in favour of her release were arrested in October 2003. Mr. Luo Changfu received a three-year prison sentence in November 2003. As of December 2003, Mr. Du Daobin is still awaiting trial.

INDIA

Threats against family members of Mr K. G. Kannabiran²⁹

On 2nd October 2003, at about 9.00 p.m., Dr. **Kalpna Kannabiran**, the daughter of Mr. **K.G. Kannabiran**, lawyer and President of the National People's Union for Civil Liberties (PUCL) in Andhra Pradesh (A.P), and a well known women's rights activist, received an anonymous telephone call warning her that her two young daughters would be kidnapped and killed. On the same night, she immediately lodged a written complaint with the Tukaram Gate Police Station.

On the following day at about 11.00 a.m., two youths came to the residence of Mr. K.G. Kannabiran under the pretence of selling cane furniture. When they attempted to enter the house, they were stopped by Ms. **Vasanth Kannabiran**, the wife of Mr. K.G. Kannabiran and a renowned women's rights activist and writer, who got them to leave. When they left the house, Ms. Vasanth Kannabiran saw them, getting on a motorcycle whose front head lamp had the word «Police» printed on it.

These threats targeting Mr. K.G. Kannabiran and his family appear to be linked to PUCL's condemnation of the attempt on the life of Mr. Chandrababu Naidu, Chief Minister of Andhra Pradesh near Tirupati, on 1st October 2003. Human rights activists have indeed been

²⁹ See Urgent Appeal IND 001/1003/OBS 051.

the victims of reprisals in the past, due to their denunciation of the use of violence following the injuring or the killing of police officers or political personalities in Andra Pradesh.

Attack on People's Watch-Tamil Nadu premises³⁰

On 5th November 2003, at about 7.30 a.m., several uniformed policemen and women, without name badges, barring one inspector, Mr. Vellaiyan, made a sudden entry into the People's Watch-Tamil Nadu (PW-TN) office. They stated that they were authorised to search the premises by an order of the Judicial Magistrate of Sivakasi, allegedly for harbouring a criminal. They made a videotape of the premises without any prior notice with the aim of searching a person accused in connection with crime n° 129/2003 of Mr. Puthupatti Police Station within the jurisdiction of Sivakasi Taluk of Viruthunagar District of Tamilnadu. The police made a video both inside and outside of the People's Watch office. They refused to give the copy of the search warrant to Mr. **Henri Tiphagne**, Executive Director of PW-TN, wherein he claimed that no accused was found on the premises of PW-TN. On the following night, a sub-inspector of police came to the premises of PW-TN and asked for the Director.

These events against PW-TN and his Director, who is also serving within the National Core Group on NGOs of the National Human Rights Commission (NHRC), may be linked to their activities in the public hearings recently conducted by the National Commission for Women (NCW) and the State Commission for Women in Virudhunagar, Madurai on 27th and 28th October 2003. PW-TN was one of the main human rights organisations which facilitated the depositions of numerous victims concerning police abuses before the NCW panel. It is reported that, during the hearing, Mr. Henri Tiphagne was personally threatened by some senior police officers who were present because PW-TN presented several cases of police excess including sexual abuses, kidnapping of children, of witnesses, etc. They threatened him saying that he and his staff would face serious trouble if they continue such exposure.

³⁰ See Urgent Appeal IDN/ 002/1103/OBS 061.

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INDONESIA

Obstacles to the work of the National Human Rights Commission of Indonesia (KOMNAS HAM)³¹

On 20th May 2003, 1 000 civilian militias arrived at the headquarters of the National Human Rights Commission of Indonesia (KOMNAS HAM) and threatened its members with violence if the organisation continued to investigate into the 1965 massacre. Indeed, during the 1965 massacre, the Suharto Government is thought to have been responsible for the extermination of an estimated 1 million unarmed civilians, the political imprisonment and torture of 200,000 political opponents and the life-long exclusion and discrimination of anyone with suspected links to Communism. Nothing has as yet been done by the authorities concerning this massacre. The investigation team of KOMNAS HAM was to present its first report on 15th May 2003, which had been rescheduled for 6th June 2003.

On 20th October 2003 at 3 p.m., around 20 troops and 20 police officers came to the Seulawah pavilion where the National Human Rights Commission of Indonesia (KOMNAS HAM) was holding a training session³². They turned off the lights in order to sabotage the training programme. The members of the military and the police tried to come in, but Mr. **Billah**, the head of KOMNAS HAM's Aceh team, prevented them from doing so. They asked for the lists of participants, but Mr. Billah refused to give the lists and also refused to stop the meeting, leading to an exchange of words and negotiations with the police who wanted to take him to headquarters for questioning. In the morning session, two military representatives from the regional martial law authority (PDMD) had been included in the training programme, based on their request to be included as «participants». Both of them had left the training session by 3 p.m.

On 21st October, PDMD troops still occupied the Seulawah pavilion. The police members denied that they had been informed about the

31 See Urgent Appeal IDN 001/0503/OBS 026.

32 See Press Release 21st October 2003.

training course and members of the military said that permission was needed to hold the training.

Before this training course, KOMNAS HAM had informed the PDMD and also Polresta, the Police authority in Banda Aceh, that they would be holding this course. Furthermore, as part of the government, KOMNAS HAM clearly does not require permission to hold such a session. The training session could eventually proceed but under miserable conditions.

KONTRAS and the Association of Law and Human Rights Advocates attacked³³

On 26th May 2003, during the commemoration of the International Week of the Disappeared, about 30 people from the Pemuda Panca Marga (PPM, The Youth of the Veterans) with paramilitary uniforms, demonstrated in front of the office of the Commission for Missing Persons and Victims of Violence (KONTRAS). They attacked KONTRAS, and in particular its founder Mr. **Munir**, for their criticism against the Indonesian government's policy in handling the Aceh problem.

On 27th May 2003, 150 PPM members again attacked the office of KONTRAS while a press conference was conducted in relation to the International Week of the Disappeared. They insulted employees by forcing them to sing the national anthem and mocking them as pseudo-nationalists when they refused to sing it. Worse still, they physically assaulted them resulting in physical injuries and eventual hospitalisation. Furthermore, these people entered into the office premises and violently destroyed office equipment and paraphernalia. The PPM members left and then went to the office of the Association of Law and Human Rights Advocates (PBHI). They wounded one of the PBHI's staff members, who succeeded in forcing the assailants to leave.

During these attacks, the police were present, but did not intervene. Later the police said that the group of persons was too large to control. Three members of KONTRAS were wounded in the attack.

³³ See Urgent Appeal IDN 001/0503/OBS 026.

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KONTRAS filed a case concerning this attack. The police launched an investigation but as far as December 2003, no progress was made.

The office of KONTRAS had already been raided in March 2002 by over 100 civilians, members of the «Families of the victims of Cawang 1998». During that raid, Mr. Munir had been attacked, two other members of the organisation beaten up, many computers destroyed and documents on human rights violations in Indonesia were stolen. The attack on KONTRAS had certainly aimed at putting pressure on the organisation to stop its investigation into the deaths of students during the 1998 clashes in Cawang (department of East Jakarta) and during the 1998 and 1999 events of Trisakti and Semanggi³⁴.

Assassination and disappearance of two Human Rights volunteers³⁵

Mr. **Abdussalam Muhamad Deli**, a 23 year old volunteer of the Human Rights and Legal Aid Post (PB-HAM) East Aceh, an NGO that carries out advocacy through data collection, campaigning and legal assistance, has been missing since 11th May 2003. He was travelling from Central Langsa on a small public bus to visit his family's village. The bus was stopped by unknown men in civilian clothing on the main road between Banda Aceh, the capital of Aceh, and Medan. They forced him out of the bus into a «Kijang» car with dark windows and drove away in the direction of the city of Langsa. Volunteers from PB-HAM East Aceh have asked about Abdussalam's whereabouts to the police and authorities of East Aceh.

On the same day, Mr. **Raja Ismail**, a 50-year-old volunteer of PB-HAM East Aceh, was reportedly abducted outside Langsa. According to the information received, Mr. Raja Ismail left his house in Kuala Simpang, Aceh Tamiang district, to bring some data on victims of violence to the office of PB-HAM in Langsa. On the night of 11th May 2003, he had still not returned to his house. On 13th May, his body was found in the Titi Kembar River in Langsa Lama village, East Aceh district. The corpse showed signs of strangling and there were knife wounds and bruises.

³⁴ See Urgent Appeal IDN 001/0302/OBS 020.

³⁵ See Urgent Appeal IDN 001/0503/OBS 026.

Attack on the Legal Aid Institution³⁶

On 28th June 2003, in Banda Aceh, at 1.05 p.m., seven plain clothed members of the security forces turned up at the office of the Legal Aid Institution (LBH). The men, who drove up in a Panther vehicle, are thought to be members of the Police Mobile Brigade (Brimob). They entered the LBH office where they met Mr. **Afridal Darmi SH**, the director of the LBH and asked him where **Asiah**, the coordinator of the investigation division of KONTRAS Aceh, was. They left after Mr. Afridal Darmi had informed them that KONTRAS, which had previously shared an office with LBH-Aceh, had recently moved to another office. It is believed that the police was looking for Asiah because of her role in gathering information on human rights violations collected by KONTRAS volunteers in the field.

At 2.00 p.m., the same group of men came to the LBH office again and asked to speak to Mr. Afridal Darmi and to Mrs. **Syarifah Murlina**, a lawyer from LBH's litigation staff, but they were not in the office. Having failed to locate the two lawyers, they then entered the LBH office and carried out a search. They kicked down the door of the litigation room and threw books off of the shelves. They tried in vain to open the filing cabinet in the database room. They threatened to return later. As of December 2003, LBH and its members have not faced any new attacks. However, they are working under very difficult conditions, as LBH can not travel to another area in Aceh under martial law. Their activity is only focused in the capital town of Aceh (Banda Aceh). Moreover, Mrs. Syarifah Murlina feels that she is under military surveillance. Regarding Asiah, she has been evacuated to another province as the situation was becoming too dangerous for KONTRAS Aceh volunteers in the field.

³⁶ See Urgent Appeal IDN 001/ 0503/OBS 026.1.

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IRAN

Release after completing sentence³⁷

In December 2002, a court of appeal confirmed the sentencing of Mr. **Mohammad Ali Dadkha** to five months' imprisonment, but cancelled the ruling forbidding him to exercise his profession as a lawyer for ten years. Mr. Dadkha was released in May 2003 after having completed his sentence, but is still forbidden to leave the country. A member of the Teheran bar, Mr. Dadkha had been prosecuted owing to his pleading in court in defence of several journalists and political prisoners, in November 2001.

The four months' prison sentence against Mr. **Abdolfattah Soltani**, handed down on 9th July 2002, was confirmed by the court of appeal, while the ruling depriving him of the right to exercise his profession was reversed. Mr. Soltani served his prison sentence and was released in June 2003. He had been convicted for having, in his defence pleadings, stressed the fact that his clients had been subjected to ill-treatment during their interrogation.

Prosecution and detention of Mr. Zarafchan³⁸

Mr. **Nasser Zarafchan** is still in prison, and several requests that his sentence be suspended for medical reasons have been ignored. On 25th November 2003 the High Court rejected his appeal. Mr. Zarafchan is Mrs. Sima Pouhandeh's lawyer; she is the widow of Mohammed Djafar Pouhandeh (writer and Human Rights defender, assassinated in 1998). Mr. Zarafchan was sentenced to three years' imprisonment by the Teheran military court in November 2001 for «possession of firearms and alcohol». He was also sentenced to two further years' imprisonment and fifty whiplashes on account of statements he had made during a press interview on the assassination of Iranian intellectuals.

Mr. Zarafchan lodged an appeal. On 15th July 2002 the Teheran military court confirmed the initial verdict. As the appeal to the Supreme

³⁷ See Annual Report 2002.

³⁸ See urgent appeal IRN 004/0012/OBS 125.03.

Court is not suspensive, Mr. Nasser Zarafchan was arrested on 7th August 2002, and is presently detained in the Evin prison. His lawyer has in vain called for the suspension of his sentence owing to his worrying medical condition. The Supreme Court rejected his appeal in November 2003.

As the United Nations Working Group on Arbitrary Detention indicated in the report it drew up following its visit to Iran in February 2003 (E/CN4/2004/3/Add2, paragraphs 49 and 50): «The Group has noted that lawyers have been prosecuted or sentenced simply for having, as a legitimate part of their role as defence counsel, drawn the attention of the court to the ill-treatment suffered by their clients or malfunctions in the system of justice. As an aggravating circumstance, these lawyers have for the most part been tried by revolutionary tribunals, and even, in one case {Zarafchan}, by a military tribunal, rather than initially being submitted to the authority of the lawyers' disciplinary panel provided for by law».

Detention in prison³⁹

In December 2003 several intellectuals and journalists were still in prison for having exercised their right to freedom of expression. Such is in particular the case of two journalists, Mr. **Akbar Ganji** and Mr. **Hassan Youssefi-Eshkevari**. Akbar Ganji, of the daily newspaper *Sobh-é-Emrooz*, was arrested on 22nd April 2000, sentenced to ten years' imprisonment in January 2001, and is still in prison. He is accused of having revealed details concerning the murder of intellectuals and opponents to the regime at the end of 1998, and of having accused certain politicians of being involved. Hassan Youssefi Eshkevari was arrested in August 2000 and sentenced to seven years' imprisonment in October 2002. He is still in prison.

Legal proceedings⁴⁰

Mr. **Mohammad Seyfzadeh**, Mr. Soltani's lawyer, was sentenced in 2002 to four months' imprisonment and three years' deprivation of the

³⁹ See Annual Report 2002.

⁴⁰ *Idem*.

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right to exercise his profession. His appeal is still pending. If his appeal is rejected, he can be arrested at any moment.

Threats⁴¹

Mrs. **Shirin Ebadi**, lawyer and Human Rights defender, was awarded the Nobel Peace Prize in October 2003. On 3rd December 2003, militiamen linked to Hezbollah prevented Mrs Ebadi from entering the premises of the university where she had been invited to deliver a speech on women's rights. The militia men blocked the entrance shouting slogans such as «death for Shirin Ebadi» and «Shirin Ebadi agent from the US, agent from the West». Mrs. Ebadi had to hide in the university's cellar and was subsequently escorted back home.

LAOS

Legal restrictions⁴²

Article 31 of the Laos Constitution states that «Lao citizens have the rights and freedom of speech, press and assembly; and have the right to set up associations and to stage demonstrations which are not contrary to the law». Nevertheless, these rights are limited by the Lao Penal Code which forbids slandering the State, distorting party or state policies, inciting disorder, or propagating information or opinions that weaken the State and participation in an organization for the purpose of demonstrations, protest marches, or other acts that cause «turmoil or social instability», providing for imprisonment of between one and five years.

⁴¹ *Idem* and Urgent Appeal IRN 005/1203/OBS 067

⁴² See Open Letter to the Prime Minister of the Lao People's Democratic Republic on 20th August 2003.

Human rights movements

These legal restrictions impede freedom of expression of Lao human rights defenders. Indeed, any person who dares express positions that are contrary to official positions or ask for democratic reforms faces systematically risk of arrest and detention.

In October 1999, five members of the «Lao Students Movement for Democracy of 26th October 1999», Mr. **Thongpaseuth Keuakoun**, Mr. **Khamphouvieng Sisaath**, Mr. **Seng-Aloun Phengphanh**, Mr. **Bouavanh Chanhmanivong** and Mr. **Keochay** who were among a group of people who had attempted to publicly call for the respect of human rights, the release of political prisoners, a multi-party political system and elections for a new National Assembly, were arrested and sentenced to 20 years imprisonment for «generating social turmoil, endangering national security». They are currently detained in Samkhé's prison, in the province of Vientiane.

Other people who participated in similar gatherings have simply «disappeared» as is the case with 15 people arrested during a demonstration in Champassak Province, in November 2000, and whose whereabouts remain unknown⁴³. This is also the case with about 20 civil servants, teachers and students who took part in a pro-justice and pro-human rights gathering, in Paksé (Champassak Province), in October 2001. After being detained in a detention center of the special police, they were led to an unknown place and no more information has since been available concerning their case.

Moreover, setting up human rights defence groups is still impossible. Although the Constitution provides citizen with the right to organize and join associations, in practice this right is severely restricted. The Government registers and controls all associations and prohibits associations that are critical of the government.

⁴³ Savath Khanthong, Visiane Bouaphanh, Bounma Thavisay, Somchay Phiseth, Somphone Vongphanh, Khamphanh Nanthavong, Khampha Panya, Phetphongphanh, Khamphanh Khaosaat, Bay Vongsay, Say Kéosavang, Bounmy Namdy, Touy Vongsavang, Bounnong Vankham.

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Social movements

Despite Lao's signature of the International Covenant on Economic, Social and Cultural Rights in 2000, trade union freedom still does not exist. The Laos authorities have taken no action regarding the two core International Labour Organisation (ILO) Conventions on freedom of association (n° 87 and n° 98).

Even though the 1994 Labour Code states that «workers and employers shall have the rights to organize and belong to any mass and social organization that has been formed lawfully» the practice shows that the government does not register worker's organizations that are not affiliated to the Lao Federation of Trade Unions (LFTU), the single national centre, which is directly controlled by the Lao People's Revolutionary Party (LPRP).

MALAYSIA

Raid in a newspaper's offices⁴⁴

On 20th January 2003, 10 police officers from the Kuala Lumpur Dang Wangi District Police Station and the Computer Crime Department of the Bukit Aman National Police Headquarters raided the offices of the *Malaysiakini*, the online daily newspaper which has been in operation since 1999. This raid was launched in connection with a police complaint lodged by the youth wing of the United Malay National Organisation (UMNO) on 17th January 2003 concerning a letter published by *Malaysiakini*, which the UMNO youth claimed to have seditious content for questioning the Malay special rights and instilling hatred towards the government and non-Malay Malaysians.

The police officers confiscated 15 computers and 4 servers in *Malaysiakini*'s office and had therefore full access to all confidential information. The police also took away the organisational chart of

⁴⁴ See Open Letter to the Prime Minister of Malaysia on 21st January 2003.

HUMAN RIGHTS DEFENDERS HARASSED

Malaysiakini and Mr. Steven Gan, editor-in-chief was asked to record a witness statement at the Dang Wangi District police station on 21st January 2003. According to the police, the raid was conducted under the Sedition Act, which provides power to the police to seize materials in order to preserve evidence⁴⁵.

As of December 2003, the police have concluded their investigation into the case and the decision lies with the Attorney-General as to whether to institute criminal proceedings⁴⁶.

During its international mission of inquiry conducted in March 2002⁴⁷, the Observatory had been informed about pressure exerted on the online newspaper that had previously benefited from a loophole in the legislation. Although the government has launched a project to establish an «Asian Silicon Valley» and pledged freedom of information on the Internet⁴⁸, government officials have repeatedly threatened to prosecute the newspaper if it «endangered national security». Publicly vilified for its supposedly defamatory articles on Malaysia, journalists of *Malaysiakini* have been subjected to discrimination, e.g. an unofficial «ban» for interviews from all government officials, which is however not strictly enforced.

45 The Sedition Act (1948) contains a very broad definition of seditious acts including acts that bring hatred or contempt or excite disaffection against any ruler, the government or the administration of Justice. It also prevents the questioning of the special position of Malays and citizenship rights of the non-Malays. A violation of the act is punishable by up to three years in prison. This law forms part of a framework of very repressive legislation, in particular concerning what is perceived as a threat to the National Security, like the Internal Security Act, which is at the disposal of the authorities to restrict fundamental freedoms. For more information see the Mission report of the Observatory: *Malaysia: Human Rights Defenders Under Close Surveillance*, March 2003.

46 See Suara Rakyat Malaysia's Executive Summary 2003.

47 See Mission report of the Observatory: *Malaysia... op.cit.*

48 The MultiMedia Super Corridor (MSC) was one of Dr Mahathir's pet projects. In order to attract foreign investors he pledged in section 3 of the Communications and Multimedia Act complete freedom of information on the Internet.

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Obstacles to freedom of circulation⁴⁹

On 18th August 2003, Ms. **Cynthia Gabriel**, Executive Director of the human rights organization Suara Rakyat Malaysia (SUARAM), was denied entry into Sarawak by Immigration officers at Miri Airport. Ms. Cynthia Gabriel was to attend a workshop entitled «Workshop on Globalisation and its Impact on Indigenous Peoples in Malaysia» in Miri, Sarawak. Immigration officers at the airport told Ms. Gabriel that she was denied entry as her name was blacklisted since 1998. The officers kept her passport and booked a return ticket for her on 19th August, to Kuala Lumpur. Upon negotiation, she was allowed to stay overnight and was told to be back at the airport at 5.30 a.m. She was then given back her passport and took the plane. Ms. Cynthia Gabriel has still not been officially informed of the reasons why she had been denied entry and no official explanation was given about the black list.

On 8th September 2003, indigenous rights activist, Mr. **Colin Nicholas**, coordinator of the Centre for Orang Asli Concerns (COAC) was similarly refused entry on the grounds of the black list while trying to enter Sarawak for a conference⁵⁰.

Ms. Irene Fernandez's sentence⁵¹

On 16th October 2003, Ms. **Irene Fernandez**, Director of Tenaganita, an NGO working with migrant women, was sentenced to 12 months in prison by the Magistrates Court 5B, in Kuala Lumpur. She was granted bail for RM 3000 and she filed an appeal to the High Court on 17th October. However, the High Court has not rendered its decision yet⁵².

49 See Open Letter to the Minister of Home Affairs of Malaysia on 20th August 2003.

50 Sarawak has a different set of immigration rules from those used in Peninsular Malaysia as a result of an agreement signed during the formation of Malaysia in 1963. Sarawak retains exclusive control over who enters the state. Malaysians living in other states must go through immigration checks. See Suara Rakyat Malaysia's Executive Summary 2003.

51 See Press Release of 15th October 2003, Press Release of 17th October 2003 and the report of the mission of the Observatory, *Malaysia... op. cit.*, March 2003.

52 See Appeal Update 27th November 2003, Tenaganita.net

The judgement was initially due to take place on 17th March 2004, once the submission from the defence and the prosecution would have been gathered. However, on 7th October 2003, the Magistrate, Ms. Juliana Mohamed, requested the use of the Court for the decision on Ms. Irene Fernandez's trial and on 9th of October 2003, Ms. Irene Fernandez's lawyers received a letter from the Magistrate requesting them to send the written submissions by 11th October. Since Mrs. Irene Fernandez's senior counsel for the trial, Mr. Pura Valen, was not in the country at that time as he had left Malaysia on 7th October to conduct a two-week investigation mission in Pakistan mandated both by the FIDH and the Observatory, the sudden change of date put Ms. Fernandez in a difficult situation regarding her defence. The Observatory expressed its concern that the new date might have been set up on purpose in order to profit from the absence of Ms. Irene Fernandez's senior counsel for the trial.

Ms. Fernandez had been charged in 1995 with «publishing false information with malevolent intentions» under Section 8A of the Printing, Presses and Publications Act following the publication of a report entitled «Memorandum on abuses, acts of torture and inhuman treatment towards migrant workers in detention camps». This report contained allegations of ill-treatment of migrant populations, based on Ms. Fernandez's interviews with over 300 migrant workers. Ms. Fernandez's trial began in 1996 and is known as the longest trial thus far in the history of Malaysia.

In November 2003, the Malaysian Magistrates Court, without adequate explanation, denied Mrs. Fernandez the right to travel to important human rights and HIV/AIDS meetings in the U.S. and Canada, including a meeting with the UN Acting High Commissioner for Human Rights at the Carter Center. On 5th December, Irene Fernandez's second attempt to attend human rights events abroad failed again when the Kuala Lumpur magistrate's court rejected her application for the return of her passport. The rejection has forced Fernandez to forego attending a «hearing» for human rights defenders in Germany on 10th December, an event organised by German parliamentarians.

Mrs. Fernandez had surrendered her passport to the court in October as part of her bail condition and has since then not retrieved it.

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Release after expiry of the detention order⁵³

2003 was highlighted by the release of six « reformasi » leaders after the expiry of the two-year detention order. They had been accused of attempting to topple the government in April 2001 and had been detained under the ISA (Internal Security Act): **Tian Chua**, vice-president of the Keadilan Party (National Party of Justice), labor and student activist, **Saari Sungib**, a leader of the Keadilan Party, **Mohamed Ezam Mohd Noor**, Youth Chief of the Keadilan Party, **Hishamuddin Rais**, film-director, **Lokman Adam**, Youth leader of the Keadilan Party, and Dr. **Badrulamin Bahron**, Central Committee member of the Keadilan Party.

NEPAL

Killing of Mr. Chet Prakash Khatri⁵⁴

Mr. **Chet Prakash Khatri**, a human rights defender working in the Binauna Village Development Committee (VDC) of Banke district, was killed on 24th December 2003, at approximately 3.30 p.m., by a group of unidentified individuals in Sarragaon (Phattepur VDC-7), in the Rapti River, an area close to the Indian border, on his way home from Gangapur VDC. The victim's body had a mark of a cord on his broken neck and a wound on his chin.

Some media blamed the killing on Maoist rebels. However, the Secretary of the CPN-Maoists Paban issued a press statement on 28th December 2003, condemning the accusation as «unsubstantiated». Also, five Nepalese political parties, the Nepali Congress, the CPN-UML, the People's Front, the Nepal Peasants' and Workers' Party and Nepal Sadbhawana Party (Anandi Devi), issued a joint press statement condemning the government's unwillingness to investigate the case. The victim's family members filed a complaint with the District Police Office of Nepalgunj in Banke District.

⁵³ See Annual Report 2002.

⁵⁴ See Urgent Appeal NPL 001/1203/OBS 072.

Mr. Khatri was working as a facilitator for a Peace Programme launched by INSEC in that area. He was training students and locals on safety measures during conflicts. Mr. Khatri was also working on children rights and was affiliated to Bheri Environmental Excellence Group (BEE Group), an NGO.

Trial of Mr. S. K. Pradhan⁵⁵

On 19th September 2001, Mr. **S.K. Pradhan**, Secretary General of the People's Forum for Human Rights and Democracy (PFHRD), a Bhutan organisation based in Nepal, was arrested and charged with complicity in the murder of the President of the Bhutan People's Party (BPP), Mr. R.K. Budahathoki - killed in Damak on 9th September 2001. On 20th September 2001, Mr. Pradhan was transferred to the Chandragai prison in Jhapa. He was arrested following a complaint filed by Mr. Balaram, Secretary General of the BPP. However, it seems that Mr. Pradhan was not in Damak at the time of the crime, but 500 kilometres away, in Katmandu. He was returning from the UN World Conference on racism in South Africa. On 5th February 2002, Mr. Pradhan sent a petition to the Supreme Court of Nepal in Katmandu, asking for his release on bail. His petition was turned down on 20th February. The Supreme Court upheld the rulings of the Court of Appeals and the Court of the Chandragari District, saying that according to Nepalese law, Mr. Pradhan is a refugee and therefore cannot be released on bail. On 5th September 2002, the Regional Court of Chandragari reopened Mr. Pradhan's case and the cases of people jailed for Mr. Budahathoki's murder. Nine Bhutan refugees and a Nepalese chauffeur were also charged. One of the refugees, Mr. Pemba Sherpa, committed suicide on 17th October. Witnesses for the defence were summoned from 23rd September to 2nd October 2002; witnesses for the accusation from 14th to 26th November. However, only 3 out of the 13 witnesses appeared before court, thus slowing down the proceedings. On 29th January 2003, the Jhapa district court finished hearing the statements of all the witnesses and eyewitnesses produced by the prose-

⁵⁵ See Annual Reports 2001 and 2002.

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cution including the testimony of Balaram Poudyel, the complainant. However, four witnesses failed to turn up at the court.

After the completion of legal formalities on 8th April 2003, the case was handed over to several judges and the final verdict, which was postponed on various occasions, has still not been set. More than two years after the crime, Mr. Budahathoki's murderers have not been brought to justice and there are serious doubts as to Mr. Pradhan's involvement. He has been in jail since 19th September 2001.

PAKISTAN

Bomb attack against a women's NGO⁵⁶

On 8th January 2003, there was a bomb attack on the premises of Khwendo Kop. The authorities then provided security guards, but withdrew them later. The activities of the NGO are regularly criticised by extremist groups, as being contrary to the values of Islam. Khwendo Kop is a very active NGO in the field of women's rights in the tribal zones (NWFP, North West Frontier Province).

Banning of a project in favour of women⁵⁷

In January 2003, in the North West Frontier Province (NWFP), the conservative government in Peshawar forced an NGO to give up a project for the well-being of women (*Mera Ghar*). This was a joint project by the Aurat Foundation and a German NGO. The Aurat foundation had received funds to create a centre for receiving women without any resources. The clergy denounced the project as being an attempt to distance the women from the traditional values of Islam, and the NWFP government decided to put an end to the project.

⁵⁶ See the information gathered by the Observatory's international investigative mission to Pakistan, November 2003.

⁵⁷ *Idem*.

Kidnapping of a Human Rights activist⁵⁸

On 23rd March 2003, Mr. **Akhtar Baloch**, co-ordinator of the Hyderabad office of the HCRP, Human Rights Commission of Pakistan, was kidnapped. He had left the annual meeting of the HRC in Hyderabad with a colleague, who was driving him back home. Around 7 p.m. their car was immobilised by two armed men on motor cycles. A car then arrived on the scene. Three other armed men got out, and threatened the driver, telling him to go away. Mr. Baloch was forcibly bundled into the vehicle and taken to an unknown destination. He was released several days later, in front of a Gulfishan wedding room, in Hyderabad. He had been abducted despite the fact that there was no charge against him, nor any official enquiry concerning him. He has stated that he was on numerous occasions during his detention questioned about the activities of the HRC and how it was financed. Before releasing him, his kidnapers warned him not to make the facts known publicly. At his own request, he has been transferred from Hyderabad to Karachi.

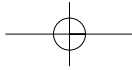
According to Mrs. Asma Jahangir, former President of the HCRP and Special Rapporteur of the United Nations Commission for Human Rights on extra-judiciary, summary or arbitrary executions, the action could have been designed to intimidate the HRC, which had criticised the action of the State and denounced Human Rights violations committed by the Pakistani government. The HRC had published its annual report at the beginning of March. The HRC has requested that the authors of this arbitrary detention, in which the secret services are involved, be prosecuted and brought to trial.

Ban on leaving the country⁵⁹

On 14th October 2003 the name of Mr. **Shahbaz Bhatti**, President of the All Pakistan Minorities Alliance, a non-governmental organisation comprising all the religious minorities, was added by the authorities to the Exit Control List. This prevents him from leaving the country. For

⁵⁸ See urgent appeal PAK 001/0303/OBS 015.

⁵⁹ See the Observatory's investigative mission to Pakistan.



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a year, Mr. Bhatti had received threats on several occasions, and warnings that he should cease his activities (telephone calls and visits to the organisation's offices). Mr Bhatti expressed opposition to laws and policies that discriminated against religious minorities, including laws on the Huddud and on blasphemy.

SOUTH KOREA

Trade union leader released⁶⁰

On 2nd April 2003, Mr. **Dan Byung-ho**, Chairman of the Korean Confederation of Trade Unions (KCTU), was released before the term of his sentence. Mr. Dan Byung-ho had been sentenced on 18th March 2002 in Seoul, to two years in prison for coordinating the general strike of 21st June 2001. He had been found guilty of the five charges against him and in 15 of the 16 cases laid by the Prosecutor's Office counsel. He had been convicted for «conspiracy and interference in private economic affairs» (Article 314 of the Criminal Code, used on a regular basis by the Korean government to declare strikes illegal), «obstruction to security forces» and «breach of the law on industrial relations».

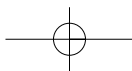
THAILAND

Threats against Dr. Cynthia Maung's Mae Tao Clinic⁶¹

On September 29th, the Mae Tao Clinic, which provides healthcare service to asylum seekers and migrants on the Thai-Burmese border,

⁶⁰ See Urgent Appeal KOR 001/0302/OBS 022 and Annual Report 2002 and 2001.

⁶¹ See Urgent Appeal THA 001/1003/OBS 049.



was inspected by Thai authorities. The authorities told Dr. **Cynthia Maung**, the director of the Clinic, that she should prepare for the arrest and deportation of medics and school teachers who had previously been registered as migrant workers with the Ministry of Labour.

In November 2003, a short term solution was found and Dr. Cynthia herself and up to a 100 co-workers were given six-month work permits. As of December 2003, discussions are still taking place in order to find longer term solutions and ways of avoiding the closure of Mae Tao Clinic, as well as the deportation of its employees.

VIETNAM

Cyber-activists arrested⁶²

On 17th March 2003, Dr. **Nguyen Dan Que**, a Vietnamese dissident and human rights activist, was arrested in front of his house in Ho Chi Minh City at approximately 8 p.m. The spokesman of the foreign office of the Socialist Republic of Vietnam declared that Dr. Nguyen Dan Que was caught in the act of violating the law because he was going to a cybercafe to «send information abroad» which under Vietnamese national security laws constitutes a crime of espionage. The police also searched his house and confiscated his computer, his mobile phone and numerous documents. As of December 2003, he is still in detention in the office of the central department of internal affairs in Ho Chi Minh City, awaiting for his trial which date remains unknown. Dr. Nguyen Dan Que had published, on 13th March 2003 a written statement, denouncing infringements on the freedom of expression and of the press in Vietnam.

Dr. Nguyen Dan Que had already spent more than 18 years in prison because he had advocated democratic reforms. In 1991, he had been sentenced to 20 years imprisonment, but was released in 1998 as part of

⁶² See Urgent Appeal VTN 001/0303/OBS 013 and annual report 2002.

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an amnesty with the condition that he resettle in the United States. Having refused to leave Vietnam, he had been under heavy surveillance and had regularly faced police harassment.

The use of the internet to call for political reform has led to the arrest of various citizens. Mr. **Nguyen Vu Binh**, a journalist arrested on 25th September 2002, was sentenced on 31st December 2003 to 7 years in prison for «spying» (Article 80 of the Criminal Code) because he had disseminated on Internet a text called «Some Thoughts on the China-Vietnam Border Agreement». Mr. **Pham Hong Son**, a doctor arrested on 27th March 2002, was sentenced to 13 years in prison for «spying» because he had translated articles on democracy downloaded from the US Embassy website (Article 80 of the Criminal Code) on 18th June 2003. However, under international pressure, his sentence was reduced to 5 years imprisonment. He is being detained in Prison B14 near Hanoi.

On 20th December 2002, Mr. **Nguyen Khac Toan** was sentenced to 12 years in prison and to 3 years probation by the People's Court of Hanoi also for «spying» (Article 80 of the Criminal Code). He had been arrested in a cyber cafe in Hanoi and the police had searched his house and confiscated various documents⁶³. The real reason under his arrest seems that he had been helping farmers to file complaints to the National Assembly about State corruption and confiscation of land, and sending copies of these complaints overseas.

Retired Colonel **Pham Que Duong**, a respected Communist Party veteran and military historian, arrested in December 2002 for filing an application to set up an independent anti-corruption association and calling for democratic reforms, is awaiting his trial, as scholar **Tran Khue**, also arrested in December 2002.

Religious leaders in detention

In 1981, the Government of Vietnam declared the Unified Buddhist Church of Vietnam (UBCV), as illegal. For many years, monks from the UBCV have been subjected to systematic repression on the part of the Vietnamese authorities because of their commitment to religious free-

⁶³ See Annual Report 2002.

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dom, human rights and democracy⁶⁴. These acts of repression have continued in 2003, despite a landmark meeting on 2nd April 2003, between Prime Minister Phan Van Khai and UBCV Patriarch Thich Huyen Quang and the temporary release of Thich Quang Do on June 28th 2003, from administrative detention, which had raised hopes that Vietnam might move towards greater religious tolerance.

Detention of Mr Thich Tri Luc⁶⁵

In April 2002, Mr **Thich Tri Luc** (49), member of UBCV, fled to Cambodia to escape religious repression and harassment by the Vietnamese police. He was granted refugee status by the United Nations High Commissioner for Refugees (UNHCR) in Cambodia on 28th June 2002. However, on the night of 25th July 2002, Mr. Thich Tri Luc disappeared after an unidentified Vietnamese man came to the house where Mr. Thich Tri Luc was staying and took him away in a car.

On 1st August 2003, his family, who was not aware of his whereabouts since then, received a summons from the Ho Chi Min City Court inviting them to attend his trial, initially planned for the same day. It appeared that Mr. Thich Tri Luc had been forcibly repatriated in Vietnam, in spite of his refugee status and held incommunicado for a year, which is contrary to the Vietnamese law (Article 67 of the Penal Procedure Code)⁶⁶. His family has only been allowed to see him once in the presence of a policeman, since they found out he had been arrested.

On 12th September 2003, the spokesman of the foreign office of the Socialist Republic of Vietnam, Le Dung, announced that Thich Tri Luc had been «arrested at a border post in the province of Tay Ninh, (...) running away abroad to contact organizations with the aim of undermining the Vietnamese government, on 26th July 2002», and that he was pursued for «fleeing abroad or defecting to stay overseas with view to opposing the people's administration» (Article 91 of the Criminal Code). As of December 2003, Mr Thich Tri Luc is detained in the Centre 237 Nguyen Van Cu, 1st district, in Ho Chi Minh City, awaiting

64 See Urgent Appeals VTN 001/0909/OBS 061, VTN 001/0105/OBS 042, Annual Report 2001 and 2002.

65 See Urgent Appeal VTN 002/0903/OBS 048 and annual report 2002.

66 See Annual Report 2001 and 2002.

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his trial, which has been adjourned *sine die*. Mr. Thich Tri Luc faces a prison sentence of 3 years to life imprisonment.

Thich Tri Luc had already been arrested in 1992 and held without trial for 10 months after condemning ill-treatment inflicted on Buddhist monks and calling for reform. He took part in the humanitarian mission of the Buddhist Church in 1994 (led by Thich Quang Do) and was sentenced to two and a half years in prison and five years administrative detention. After his release, he was under house arrest, he had no identity documents and he was subjected to constant questioning and harassment by security agents, leading him to flee Vietnam in 2002.

*Wave of arrests*⁶⁷

In early September 2003, a wave of interrogations and harassment of UBCV monks occurred, after police were informed that Venerables Thich Huyen Quang and Thich Quang Do had called a special UBCV Assembly on 16th-19th September to reorganize UBCV structures and appoint a number of monks to new functions.

On 8th October 2003, security police intercepted UBCV Patriarch **Thich Huyen Quang** (86), and his deputy **Thich Quang Do** (75), as they were leaving the Nguyen Thieu Monastery, in Binh Dinh province, to travel to Ho Chi Minh City. At 5.00 a.m., the two UBCV leaders had just set off in a mini-van along with other UBCV monks, when security police suddenly appeared along with a group of about 40 people. The police blocked the road, intercepted the monks' vehicle and banned them from leaving the Monastery. Thich Huyen Quang, who has been under house arrest since 1982, with the exception of some journeys he recently made under the surveillance of the authorities, and Thich Quang Do, who was released from administrative detention in June 2003, strongly protested and refused to move.

At 10.00 a.m., police drew up a report claiming that the vehicle was «disturbing public order». They ordered the UBCV monks to sign the report, but the monks refused. The police declared that they would tow the van back to the Nguyen Thieu Monastery. Deeply distressed, local Buddhists and monks from the Nguyen Thieu Monastery gathered

⁶⁷ See Urgent Appeal VTN 003/1003/OBS 059 and annual report 2002.

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around the van to protect them. By 2.00 p.m., 200 monks and 1,000 Buddhist followers had formed a human chain around the van and the convoy was able to continue its journey after 10 hours of immobilization by the police.

Following this incident, Thich Huyen Quang and Thich Quang Do were placed under house arrest and their monasteries were subjected to constant surveillance. Since then, they both have been held in total isolation, respectively at the Nguyen Thieu Pagoda, in Dinh Binh Province, and the Zen Thanh Minh Monastery in Ho Chi Minh City and have been denied access to medical care. Phone lines to many UBCV Pagodas have been cut and mobile phones confiscated in a widespread campaign to isolate UBCV supporters and prevent them from reorganizing the banned UBCV.

On 9th October 2003, the spokesperson of the Ministry of Foreign Affairs stated that the two monks were accused of «carrying state secrets» (Articles 263/ 264 of the Penal Code). As of December 2003, they have still not been cleared of these accusations.

Moreover, on 11th October 2003, three other Buddhist monks who were traveling with the two UBCV leaders, **Thich Tue Sy**, vice-President of Vien Hoa Dao, the UBCV's Institute for the Dissemination of the Faith, **Thich Thanh Huyen**, head of its Youth Department and the UBCV treasurer **Thich Nguyen Ly**, were sentenced to two years administrative detention by the Ho Chi Minh City People's Committee Chairman, who invoked «national security» legislation (Article 27 and Decree 31/CP)⁶⁸.

Between 14th and 19th October, several other senior UBCV monks, all new appointees to the UBCV Executive Committee, were «orally» sentenced to house arrest by security police. They include Venerable **Thich Thien Hanh**, Secretary-general of the UBCV's Institute of the Sangha in Hue; **Thich Thai Hoa**, head of the UBCV's Religious

⁶⁸ Decree 31/CP of 14th April 1997 is among «national security» legislation strongly denounced by the UN Human Rights Committee as being totally incompatible with international human rights law. In fact, this legislation allows individuals who are regarded as a danger to State security to be sentenced, without being charged and without trial, to penalties of up to two years' imprisonment.

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Instruction Department in Hue; **Thich Dong Tho**, the UBCV Patriarch's personal assistant, in Binh Dinh province; **Thich Nguyen Vuong**, personal assistant to Venerable Thich Tue Sy, at Gia Lam Pagoda in Ho Chi Minh City. Moreover, Venerable **Thich Phuoc An**, newly-appointed head of the UBCV's Cultural Department, was summoned for «working sessions» at the People's Committee in Khanh Hoa Province and ordered by Bui Huu Thanh, a Religious Security Police official, to give up this function.

On 17th October 2003, Venerable **Thich Vien Dinh**, the new Vice-President of the UBCV's Institute for the Dissemination of the Faith, who was arrested during the 9th-10th October incidents and who is as of December 2003 under effective house arrest in Ho Chi Minh City, called on the Vietnamese leadership to grant urgent medical access to Thich Huyen Quang and Thich Quang Do, who are in very poor health. This request was not given any response.

On 21st October 2003, the Head of the Binh Dinh Provincial Security Police came to the Monastery and pressured Patriarch Thich Huyen Quang to resign from his position as Fourth Supreme Patriarch of the UBCV. He threatened Thich Huyen Quang with serious reprisals if he did not break off all contact with Venerable Thich Quang Do and the UBCV.