

THE INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY  
**International Meeting on Global Trends and Human Rights**  
September 2001: Impacts on Human Rights Work  
Geneva, 10-12 January 2002

**HUMAN RIGHTS AFTER 11 SEPTEMBER:  
CIVIL LIBERTIES, REFUGEES, INTOLERANCE AND DISCRIMINATION**

**Richard Carver**

© 2002, International Council on Human Rights Policy  
ICHRP commissioned this document as a Working Paper.  
ICHRP has not edited it and is not responsible for its accuracy or for the views and opinions expressed.  
ICHRP welcomes the re-use, re-publication and re-distribution of this paper, appropriately cited.

*“It is now an open secret that these reporters are not only distorting the facts but are assisting terrorists who stand accused in our courts of law of abduction, torture and murder by covering up and misrepresenting the brutal deeds of the terrorists...”*

*“[W]e agree with (US) President Bush that anyone who in any way finances, harbours or defends terrorists is himself a terrorist.”*

*“We too will not make any difference between terrorists and their friends or supporters.”*  
(Zimbabwe government spokesperson)

**INTRODUCTION**

1. Most of us have a natural tendency to downplay the significance of change, assuming that global events will not have much impact on our everyday lives. Yet there is a strong case for saying that, on the contrary, the impact of 11 September has been exaggerated. The world before 11 September was characterized by, among other things, unaccountable military might wielded by the only superpower, economic globalization and growing inequality, accelerating environmental destruction, covert US training of shady military groups, growing power of extreme intolerant religious groupings, half-baked “clash of civilizations” theories and scandalous treatment of refugees. The world since 11 September has seen... well, pretty much the same.
2. There is no denying the power of the cataclysmic event. I was never very taken with Mao Zedong’s much-quoted assessment of the impact of the French Revolution (“too early to tell”). Most of us instantly understood the significance of the destruction of the Berlin Wall, for example, and I have no doubt that Parisians also had a pretty shrewd idea what it meant when the king arrived in a tumbrel. 11 September was, on the face of it, just such an event. But I would argue that it differs from these other two examples in the sense that it has reinforced existing trends and power relations rather than overturning them.

3. I was asked to address a set of questions about the impact of 11 September on civil liberties, refugees and migration and intolerance and discrimination. But these really add up to a single question. In the world after 11 September, is it business as usual for human rights groups (albeit in a significantly altered global context)? Or have the changes been qualitative ones that pose a set of new questions for human rights activists and organizations?
4. I am not going to discuss the repercussions of 11 September on the internal human rights situation in the United States. The pragmatic reason for this is that my subject matter is already the entire world and I need to cut it back somehow. More seriously, it is self-evident that the US has introduced an array of measures that are serious attacks on human rights. But unlike many of the post-11 September measures in Europe, these are not pre-planned pieces of restrictive legislation sneaked in under the guise of anti-terrorism. As far as I can judge as an outsider, these are genuine, though profoundly misguided, attempts to protect the US against further terrorist attack. They also appear to have overwhelming public support. On most counts this seems to me to be quite different from the situation elsewhere. If leaving the US out of consideration seems willfully perverse, let me argue that domestic respect for civil liberties in the US (or lack of it) has never seemed to bear any direct relationship to the US role in promoting rights (or not) in the outside world.
5. However, given that I still cannot look at every other country, I start with a brief general review of anti-terrorist measures introduced in the aftermath of 11 September. Then I look at four case studies of countries where there have been significant shifts in public policy linked to 11 September. I have chosen case studies where, for the most part, I have first hand knowledge. This means that there is not a very good geographical spread, but each of the countries chosen stands in a rather different relation to 11 September, terrorism and Al-Qaeda. Finally, I try to synthesize some of the issues.

## 11 SEPTEMBER – THE INTERNATIONAL RESPONSE

6. The response of governments worldwide has generally fallen into one of two categories. On the one hand, some governments have introduced new legislation or other measures affecting civil liberties, often with particular impact on the rights of refugees or other non-nationals. Included in this category are those countries where previously discredited measures may have been revived for the purpose of the “war against terrorism”. In other instances governments have used the new post-11 September situation and the “war against terrorism” as a justification for measures that are largely unrelated, which were already in place or which would have been pursued anyway. Here is a brief review of some of the measures taken:
7. **United States:** As the target of the 11 September attacks, the US has seen the imposition of a whole series of measures that entail unprecedented limitations on civil liberties. Actual or potential measures include:
  - arrest of hundreds of suspects under special anti-terrorist powers, which allow indefinite detention without charge of aliens. Preventive detention has hitherto been regarded as unconstitutional;
  - increase in powers of wiretapping and other interception of communications;
  - extension of the application of the death penalty;
  - introduction of military tribunals to try terrorist suspects;
  - increase in both direct government censorship and self-censorship of the media;
  - public discussion of the possible legitimacy of torture as a weapon against terrorism.
8. **European Union:** The European Union moved rapidly after 11 September to introduce a set of anti-terrorist proposals. The definition of terrorism contained in these was the subject of considerable

criticism since it seemed to encompass various sorts of civil society protest, such as trade union activity, anti-globalization protests or various forms of direct action. The EU has used 11 September as an opportunity to push forward proposals for a European arrest warrant, obviating the need for extradition between EU member states. The drawback to this is that it presupposes an equality of access to fair judicial process throughout the EU, which is clearly not the case. The EU is also discussing the introduction of two new databases under the Schengen Information System. The first of these would address public order issues with the aim of:

9. *"Barring potentially dangerous persons from participating in certain events [where the person is] notoriously known by the police forces for having committed recognised facts of public order disturbance".*
10. This clearly has nothing to do with terrorism, but would be applied in relation to events such as anti-globalization protests and football tournaments. The second database would be a register of all third-country nationals in the EU – in other words “foreigners” would be blamed for terrorism and subject to a degree of surveillance currently only in force in two EU countries.
11. **Russia:** President Vladimir Putin wasted no time in linking the “war against terrorism” to Russia’s military campaign in Chechnya: “Bin Laden’s people are connected with the events currently taking place in our Chechnya... Our American partners cannot but be concerned about this circumstance. So we have a common foe”. The Russian campaign in Chechnya has been marked by widespread and serious human rights violations.
12. **China:** The Chinese government has taken pains to link the US “war against terrorism” (which it supports) with its own campaign against the independence movement in Xinjiang Uighur Autonomous region, also known as East Turkestan. The area is predominantly Muslim and the Chinese government claims to have “conclusive evidence” of that the independence movement is linked to “international terrorist forces”. The government has arrested peaceful activists in the region and imposed tight restrictions of Muslim religious activities. Human rights organizations have expressed concern about the threat of new “anti-terrorist” legislation in the Hong Kong Special Administrative Region.
13. **Israel:** In many senses the situation in Israel and Palestine is connected with the 11 September attacks. However, after an initial and almost unprecedented attempt by the US to distance itself from repressive actions by Israel, the latter has since been allowed to proceed, almost without Western criticism, with military attacks in the Occupied Territories. These are presented as a response to Palestinian suicide attacks. The Israeli government, echoing the “If you’re not with us...” rhetoric, apparently makes no distinction between the Palestinian Authority (and the civilian population) and those carrying out the attacks.
14. **Malaysia:** The deputy prime minister used the occasion of the 11 September attacks as an opportunity to sing the praises of the country’s Internal Security Act as “an initial preventive measure before threats get beyond control”. The law allows for detention without trial and has been used to imprison pro-democracy activists and opposition supporters. In October, six men were arrested under the ISA for involvement with a group described as the Malaysian Mujahideen Group.
15. **Nepal:** After the breakdown of talks between the government and Maoist opposition, the king declared a state of emergency and enacted an ordinance on “Terrorists and Violating Work (Control & Punishment)”. This contains provisions seriously restricting the media and freedom of expression, including limitations on “insulting” the king and royal family, as well as “News encouraging the Maoists to involve in terror”. Dozens of people have been killed in armed clashes and human rights activists have been detained. The government’s measures have been welcomed by the US, the European Union and the Indian Government.

16. **South Korea:** The government has introduced an anti-terror bill criticized by human rights groups for limiting rights to freedom of expression and freedom of assembly. Public demonstrations by civic organizations are likely to fall under the over-broad definition of “terrorism”.
17. **Macedonia:** The government has sought to portray its mainly Muslim opponents as “terrorists” and has sought a change of US attitude in the wake of the 11 September attacks.
18. **Uzbekistan:** The government has linked its detention and torture of Muslim opponents to the threat posed by the Afghanistan-based Islamic Movement of Uzbekistan, described by the US as being linked to the Al-Qaeda network.
19. **Australia:** The government used the 11 September attacks as justification for its policy of detaining hundreds of asylum-seekers from Afghanistan. In late September it amended its refugee law to exclude certain Australian territory from its jurisdiction and to remove certain procedural safeguards and allow indefinite detention of asylum-seekers.

#### FOUR CASE STUDIES

##### Zimbabwe

20. The connection between Zimbabwe and the moves against Al-Qaeda is remote, to put it mildly. Yet the government, facing the prospect of electoral defeat for the first time since independence, has labelled the main opposition party as terrorist. This was presumably an attempt to influence public opinion in the United States, where the Zimbabwe Democracy and Economic Recovery Bill was put on hold as a result of the 11 September attacks. If so, the tactic was a failure. The Bill, which allows targeted personal sanctions against members of the Zimbabwe Government, was later passed and signed into law.
21. Nevertheless, the anti-terrorist rhetoric continues and is used as a justification for a raft of measures restricting freedom of expression, association and assembly. Now the language of terrorism appears more directed at regional governments, apparently with more success, since the Mugabe government has succeeded in winning the endorsement of foreign ministers of the Southern African Development Community.
22. Still, many Zimbabweans must have been deeply puzzled when the Home Affairs Minister talked about, “If it means going into a cave to fish out that fellow we are going to do it.” The opposition has its headquarters in a Harare office building, not a cave. Nor was it clear who “that fellow” was – presumably opposition leader Morgan Tsvangirai rather than Osama bin Laden. Soon afterwards, Tsvangirai was arrested for unlicensed possession of a children’s walkie-talkie radio set – hardly the stuff of international terrorism. However, this is not a joke. Dozens have died in political violence in recent months. The independent media and human rights groups have succeeded in keeping the world informed of what is happening – making it clear that they too were part of the terrorist conspiracy. Having expelled all foreign correspondents who are not Zimbabweans or permanent residents, the government then rounded on those who remained, naming six resident foreign correspondents and a human rights activist as “terrorist sympathisers”:

"This kind of media terrorism will not be allowed especially when it is used by people who claim to be human rights activists..."<sup>1</sup>

---

<sup>1</sup> *The Herald* [Harare], 23 November 2001. The human rights activist in question was me, I’m afraid. This paper had already been commissioned, giving me the strange (not to say slightly post-modern) experience of becoming one of my own case studies.

23. The use of the terrorist label against the media in Zimbabwe has a special irony because there have been two unexplained bomb attacks against the editorial offices and printing press of the country's main daily newspaper – terrorism in most people's book – and the police have failed to solve either crime.
24. It turned out that this ideological softening up – all the talk about caves and if you're not with us you're against us – was in preparation for the introduction of new anti-terrorist legislation. The Public Order and Security Bill, tabled in parliament just before the Christmas recess, includes a whole variety of ordinary forms of civil disobedience within its definition of terrorism, creates a number of new offences related to incitement, severely circumscribes rights of assembly and suspends normal legal guarantees, by allowing those arrested under the new law to be held for seven days without charge instead of the normal 48 hours.

## South Africa

25. Zimbabwe's southern neighbour has a stronger connection to issues of global and domestic terrorism. For some years Cape Town and the Western Cape province have been affected by a sporadic urban terror campaign claimed by the government to be the work of an organization called PAGAD, People Against Gangsterism and Drugs. PAGAD began as a vigilante response to gang violence in the townships of the Cape Flats. It rapidly evolved into an organization with political objectives and, says the government, terrorist ones too. PAGAD has its social base among the Muslim section of the Cape Flats community. A number of the targets of the Western Cape bombing campaign, such as the Planet Hollywood restaurant, have evident US or Western connections. However, the quality of the police investigations into the bombings has been extremely poor, making many Capetonians deeply sceptical of government claims that PAGAD was responsible. Nevertheless, the assassination in late 2000 of a magistrate presiding over the trial of alleged PAGAD bombers convinced many doubters that there was some connection between the organization and the terrorist campaign.
26. PAGAD is a home grown phenomenon, using homespun techniques – pipe-bombs assembled in the back yard. Yet someone in the Western Cape certainly has links with the Al-Qaeda network. Khalfan Khamis Mohamed, one of those convicted of the 1998 Tanzania embassy bombing was arrested in Cape Town. His rushed extradition to the US to stand trial was the subject of domestic controversy and an adverse Constitutional Court ruling. It is prohibited under the South African constitution for a person to be extradited to stand trial where they may face the death penalty.
27. The response of the South African government to the 11 September attacks was dictated by two imperatives. One was to link the attacks on the US to its own domestic terrorism problem. The other was not to alienate either local Muslims – many of them already inclined to vote for the main opposition party – or important international allies such as Iran (the country's main source of oil). Hence there was a routine, if no doubt genuine expression of sympathy with the US, followed by a statement that South African troops would not join the "war" against terrorism. The latter statement was gratuitous since no one had asked for them.
28. However, the government did seize the opportunity to resuscitate an anti-terrorist law that had been shelved because of intense public criticism, including from the statutory Human Rights Commission and Law Commission. The Bill would allow detention without trial for up to 14 days. Critics argued that the definition of terrorism was too wide and could even encompass demonstrations. While the government argued that it was hamstrung in international co-operation against terrorism because there was no such crime under South African law, a domestic think-tank argued that there already 30 pieces of legislation in existence that allowed the authorities to deal with the problem.

## United Kingdom

29. The United Kingdom, like South Africa, has experience of domestic terrorism (although unconnected to the Al-Qaeda phenomenon). However, unlike South Africa, it has a long history of specific anti-terrorist legislation, most recently the Terrorism Act 2000. This new law included a redefinition of terrorism to take account of new global terrorist phenomena, a number of new offences related to terrorist recruitment and incitement, and powers to freeze terrorist funds. Yet within days of 11 September new anti-terrorist legislation was being drafted. So was the Terrorism Act 2000 inadequate to the task of combating terrorism? If so, surely the government should have been condemned for exposing the population to the terrorist risk, having applied its mind to the matter so recently. After all, the new draft legislation covered several of the same areas as the Terrorism Act 2000 – recruitment, incitement, terrorist funds. The government did not see it that way and in the initial post-11 September dismay no one made this point.
30. By the time the Anti-Terrorism, Crime and Security Bill came before Parliament, however, it was clear that there were two main aims to the proposed new law. The first was to declare a state of emergency, allowing the government to derogate from Article 5 of the European Convention on Human Rights (only recently incorporated into British law), which provides for liberty and security of the person and freedom from arbitrary detention, and to introduce detention without trial. The other was to smuggle in a selection of restrictive measures that Parliament would have unceremoniously rejected if they had been presented at any other time. These included requiring Internet service providers and cell-phone companies to keep records of all calls. It allowed the police access to personal information held by a variety of public authorities, including medical records and bank accounts. And it allowed the government to impose European Union law as “secondary legislation” – that is to say as government statutory instruments without the approval of Parliament. This allowed the government to control the punishments for 15 specified crimes, of which terrorism is only one. This provision, Article 110 of the Bill, also covered extradition, cross-border surveillance and maintaining common databases of criminal suspects. This article would have retroactive application. The irony was that the British government had, up until that point, been one of the most insistent of European governments on the role of national legislatures in reviewing EU legislation. In the event the government was forced to back down on this provision, as well as on the requirement that communications companies keep records of customers’ calls.
31. Despite concessions forced upon the government by the House of Lords, the Act as passed still contains many over-broad provisions that have a serious impact on civil liberties. One of the least remarked aspects of the Act is its discriminatory nature. For example, the Home Secretary’s powers of indefinite detention are only to be exercised in relation to those who are subject to immigration control. He has this power over those whom he *believes* to be a risk to national security and *suspects* to be international terrorists. This departs from the standard contained in previous legislation, including the Terrorism Act 2000, that there should be reasonable suspicion as the basis for arrest on grounds of terrorism (a standard with a clear meaning in common law).
32. The context for these developments is an atmosphere of anti-refugee xenophobia fostered by intemperate statements and policy measures by successive governments. Commenting on the potential flow of refugees from the Afghan border area, Home Secretary David Blunkett said, “The main aim is to stop people coming from that region and spreading across the world. That is also necessary for reasons of terrorism.” The upsurge of racist violence in a number of British cities in recent months, while not directed against refugees or asylum-seekers, is clearly not unconnected. There has been a distinct increase in violent attacks against British Muslims since 11 September.

## India

33. India is close enough to the present crisis in the Afghanistan region to argue that it is affected by it – and far enough away to claim immunity from its effects when it chooses. The latter reaction could be seen when there were threats to cancel an international cricket tour to India in the aftermath of 11 September. The financial consequences of losing a major sporting event were such that there were copious official assurances of how safe India was.
34. However, when it came to rushing through the ill-conceived Prevention of Terrorism Ordinance (POTO), it was a different story. So urgent was the threat of terrorism – defined as acts of violence or disruption of essential services with “intent to threaten the unity and integrity of India or to strike terror in any part of the people” – that measures had to be introduced by executive ordinance rather than waiting for parliamentary debate and ratification. The Ministry of Home Affairs claimed that POTO was needed because of “an upsurge in terrorist activities, intensification of cross border terrorism, and insurgent groups in different parts of the country”. Yet the Ministry’s own statistics indicated a decrease in terrorist incidents in the state of Jammu and Kashmir last year.
35. It appears that the reason for rushing the measure through was that it could be claimed as part of the global anti-terror campaign. Government has made copious references to “similar” legislation in the US and UK.
36. POTO replaces the lapsed Terrorism and Disruptive Activities Act (TADA), which was used to effect widespread detention without charge. Indeed, by official backdating of offences, there are still prisoners held under TADA, even though it lapsed in 1995. POTO also allows for detention without charge. Its definitions of “terrorism”, “conspiracy” and “terrorist organization” are vague enough to lend themselves to abuse. In certain crucial provisions, POTO eliminates the protection of the presumption of innocence by shifting the burden of proof to the accused person. It allows the authorities to withhold the identity of witnesses, make confession to the police admissible as evidence and give the prosecutor the power to refuse bail.
37. Indian human rights groups, not surprisingly, have dismissed the government’s post-11 September rationale for POTO and compared it unfavourably with the American and British legislation. Yet this argument is slightly misplaced, since, as indicated above, the comparable post-11 September laws in those countries share many of the defects of POTO.
38. In India, events in Afghanistan are inevitably seen through the prism of the Kashmir dispute with Pakistan. The consent of the Musharraf military government to provide support for the US operation in Afghanistan was predicated upon the lifting of the arms embargo (from which India also benefited) and tacit US support over Kashmir. However, the Indian government also sees that it can use the existence of a global anti-Muslim coalition to its advantage. Hence, as in the other countries reviewed, xenophobia is part of the “anti-terrorist” armoury. The danger is that anti-Muslim sentiment is an exceptionally risky weapon in the country with the second largest Muslim population in the world. Already students have been arrested for distributing pamphlets criticizing the US air strikes. Police shot dead seven Muslim protestors in the western state of Maharashtra. They had been handing out leaflets condemning the attacks on Afghanistan and calling for a boycott of US goods.

## GENERAL DISCUSSION

### The assault on civil liberties

39. The Zimbabwe example seems almost frivolous. Nobody, least of all the long-suffering population, imagines that the present menu of repressive measures has anything to do with 11 September, Al-Qaeda, Afghanistan or whatever. The case is relevant simply to the extent that it foreshadows likely attempts by many governments over the coming months to dress their human rights violations in the garb of anti-terrorism, just as they would once have presented them as anti-communism or anti-imperialism. This does not require any significant shift in approach on the part of human rights activists – except that we need to understand that the apparent global consensus on human rights that marked the post-Cold War period may now be at an end.
40. During the Cold War, human rights activity was conducted in an environment of clear political polarization, globally and domestically. In those days human rights activists were often denounced by their governments as being agents of the officially disapproved ideology (Communism or imperialism). In the post-Cold War world, “human rights” has become assimilated into the dominant global ideology and has become the routine discourse of diplomacy. While this has opened up new terrain for human rights activists and bestowed our work with a certain extra legitimacy, this has not made governments, by and large, any more inclined to respect human rights or accept the validity of what we say. My guess is that the real significance of 11 September is to return to a new set of polarities comparable to those of the Cold War era. The likelihood is that human rights will cede at least some of its importance as a diplomatic language to some sort of “collective security” discourse that will echo the Cold War.
41. The other three examples that I have described, although less extreme, are more problematic. In each case, a government has used the 11 September events as the occasion for introducing (or reintroducing) restrictive measures that it felt unable to do in a situation of normality. (The same is true of various other examples, such as the European Union and Australia, though not, I would argue, the US.) There was a feeling that both domestic and international criticism would be muted. In fact, domestic dissatisfaction over restrictive measures has been strong in each instance. The UK government succeeded in pushing its legislation through. Yet, it failed to recreate the bipartisan consensus that has always prevailed when governments have presented legislation aimed at curbing Irish terrorism. To push the Conservative party into the civil libertarian camp was an interesting political feat that suggests that the British political establishment, the US’s most reliable coalition partner, is not united in seeing the issue of Al-Qaeda terrorism as a domestic one.
42. However, playing the anti-terrorist card is rather more effective in muting international criticism, at least at the governmental level. Amidst all the talk about US “unilateralism” or “multilateralism”, the simple reality is a return to Cold War polarization. A pro-US tyranny such as Pakistan, Syria or, above all, Israel is going to face little or no criticism for human rights violations provided that they are covered with the thinnest veneer of “anti-terrorism”. How far this becomes a general trend will probably be a direct function of the extent to which other Western powers commit themselves wholeheartedly to the “war against terrorism”, as well as how far this is seen in the same terms as the Cold War – as a conflict that is seen as having a universal reach and significance.
43. There may already be indications of a reluctance to criticize abuses by even pariah regimes. After my own labelling as a terrorist by the Zimbabwe Government, the British Foreign Secretary in a Parliamentary statement expansively denounced this interference with freedom of expression. On the strength of this I approached him about the fact that my email contact with Zimbabwe – and that of organizations I work with – has been subject to constant interference. The response has been, let us say, less enthusiastic than the public protestations might have led us to believe. The reason, I would guess, is that the UK has very similar provisions allowing interception of email to those in force in

Zimbabwe. This is a relatively trivial example, but it is not hard to see how it might be repeated in more serious cases.

44. If Western governments introduce measures such as detention without trial that are violations of human rights, they no doubt forfeit the moral authority to criticize similar actions by the governments of poor countries. But, looked at from the South, those moral claims have always looked rather threadbare. And for those of us who are human rights activists from the rich North, the post-11 September shift may actually resolve some of the awkward dilemmas that have been posed by the rhetorical support for human rights by our own governments.
45. One of the likely shifts in the focus of human rights organizations in the coming period is the return of an old friend who, according to the received wisdom, was all but extinct: the prisoner of conscience. The incidence of imprisonment of people on account of their political beliefs, ethnic origin, nationality or religious belief has risen dramatically in recent weeks, largely in countries previously regarded by many as paragons of respect for human rights. The old campaigning methods – the focus on individual cases and the humanizing of the victims of human rights violations – will come back into play. It is for human rights organizations, above everyone, to demonstrate the human consequences of restrictive anti-terrorist measures.

## Refugees

46. Remember one of the last big international stories before 11 September? It was the Norwegian freighter *Tampa*, laden with refugees, which was turned away from Australia. The Australian government's action appears to have been popular domestically – the government won an election shortly afterwards – and was also applauded in certain circles worldwide. The attitude was that these people were economic migrants, not refugees, and that they faced no danger in their home country. Their country of origin? Afghanistan.
47. Any expectations that there might be a somewhat shamefaced apology rapidly evaporated. We were told that Afghanistan was a hell on earth, whose government must be rapidly removed by force. Yet those who had fled from that government were not to be welcome guests but objects of extreme suspicion. Those who fled into Pakistan as a result of US action were, not to put too fine a point on it, Pakistan's problem. Those who had gone further afield were potential terrorists to be subjected to even greater security measures. The irony of this was that, at the same time, the US was making an alliance with Afghan factions who could, by most people's definitions, be described as terrorists. Yet those who have done nothing more blameworthy than try to escape were the ones stuck with the terrorist label.
48. It is scarcely surprising that 11 September has had baleful consequences for civil liberties and in the field of discrimination. But refugees, after all, are the victims of all this. Surely they should be the beneficiaries of the new post-11 September order. It is a situation replete with irony. The treatment of refugees and migrants is one of the clearest indications of the shallowness of the moral claims made by the US and its allies. But is it anything new?
49. The simple answer is, of course not. Indeed, in most governmental circles it would cause some surprise that we are even having this discussion within the context of the human rights consequences of 11 September. The international framework for refugee protection, which was clearly conceived as a part of the general international system of human rights, is not generally seen in those terms – least of all by sections of the UNHCR, the agency charged with responsibility for the 1951 Refugee Convention. The 1951 Convention, its 1967 Protocol and other relevant treaties, such as the 1969 OAU Convention, are about the *protection* of refugees – that is to say the guarantee of their rights. They have little or nothing to do with the provision of humanitarian assistance. Yet this has in

practice become the major role of the UNHCR, with the effect that its Protection Division has been systematically downgraded and starved of resources. Many abuses of the rights of refugees – such as confinement in camps and restriction of freedom of movement – have been perpetrated by international agencies for the simple reason that they are seen to make the delivery of aid easier.

50. In developed countries, years of anti-refugee propaganda, obscuring the underlying reasons for flight and presenting asylum-seekers as a burden on the host country, will make it easier to introduce tighter restrictions on refugees after 11 September. Talk about “illegal immigrants” and “bogus asylum-seekers” means that the public will generally perceive no link between these people coming to leech upon the public purse and the victims of terrorist regimes whom “we” are supposed to be helping. The absurdity of these terms of abuse does not seem to affect the broadness of their currency. Illegal immigrants? And what are they supposed to do – apply for a visa at the embassy in Kabul?
51. The obvious practical implication for human rights NGOs is that they need to compensate for the failure of governments and inter-governmental organizations by integrating refugee concerns into the mainstream of human rights work. Fortunately, this is a recommendation that is about ten years too late since this process has been under way for quite a while. This is evidenced, for example, by the well-informed material published by Human Rights Watch and Amnesty International on refugee issues since 11 September. But that is only an indication of the increased resources that those organizations have devoted to refugee issues in recent years.
52. Even more importantly, organizations at the national level have made a similar shift. In the early 1990s, for example, in Africa there was a massive gulf between those organizations working on refugee issues and those working on rights – reflecting the global ideological consensus that refugee work had nothing to do with rights. A decade later the picture has changed radically, with many human rights groups seeing refugees as an important part of their mandate. In a context where xenophobia is likely to increase and refugees will be among the first victims of human rights violations, this is extremely important.

### **Intolerance and discrimination**

53. Of the three areas I was asked to examine, intolerance and discrimination is the least tangible and by far the most difficult to address. Partly this is because intolerance exists to a large degree at the level of popular attitudes – a sphere where human rights activists usually only hope to wield influence in the very long term through their educational work. This can be seen most clearly in some of the repugnant xenophobic outbursts from the US since 11 September – the expression of views that seem to mirror precisely the intolerance that informed the attacks themselves.
54. However, this issue is most fruitfully addressed from the point of view of public policy. In that sense it dovetails very closely with the issues of civil liberties and attitudes towards refugees. Grassroots discrimination and intolerance is not entirely a top-down phenomenon, but there is no question that it is fuelled by knee jerk legislative measures that target asylum-seekers, refugees, other non-nationals and ethnic minorities. The coalition-building rhetoric, to the effect that the war is not on Islam but about “bad” Muslims, is not reflected in the actual measures taken, which seem to target foreigners in general. The persistent assault on refugee rights in the West – by no means a new phenomenon – is in this sense key to promoting xenophobia and religious and ethnic tension.
55. However, xenophobic or discriminatory language only promotes intolerance when it resonates, however distantly, with people’s own experience. Capetonians have been disinclined towards anti-Muslim prejudice because religious harmony was one of the means of unification of the oppressed in the face of apartheid and its colonial precursors. Likewise ordinary Zimbabweans are unlikely to

blame British colonialists for their current woes, because their experience tells them otherwise. Still less are they likely to turn on groups such as Malawian and Mozambican farm workers, with whom many will have forged bonds of trade union solidarity.

56. One important factor will be the performance of the global economy. If the effects of economic downturn are seriously felt in the West, it would hardly be surprising if popular racism and religious intolerance were to increase, fuelled by official policies that place the blame for “terrorism” on foreign immigrants. The ordinary European makes little distinction between asylum-seekers and other types of migrant, a confusion that is routinely and deliberately reinforced by much media coverage. It will be almost inevitable that some, at least, will see violence against local Muslim communities (Turks, North Africans, South Asians, East African Asians) as sanctioned by the defence of the West against terrorism.
57. None of this is fundamentally new, but it places a very urgent task before human rights organizations to campaign for the rights of refugees and other non-nationals, not least for the importance of such campaigns as a means of public education.

## CONCLUSION

58. Responses to 11 September (and the repressive opportunities that it offers) have tended to run true to form. There have hardly been any instances of liberal and tolerant regimes becoming illiberal and intolerant – though there have been some salutary examples of governments with a liberal reputation showing their true colours. In that sense, while the terrorist attacks and the response to them have undoubtedly made global respect for civil liberties considerably worse, I am not sure that they have effected qualitative changes (with the one major exception of internal developments within the US).
59. As I have suggested in this paper, one likely effect of 11 September is to shatter the post-Cold War consensus on human rights. Whether you regard this as a good or a bad thing will perhaps be determined by your view of human rights. Most people in human rights NGOs look at the enormous strides that have been made in relation to issues such as international criminal justice, tending to overlook the serious problems posed by governments presenting their actions in terms of protection of individual rights. If you regard human rights as a means to defend the interests of ordinary people against the power of governments and powerful corporations, then you may see the end of this complacent and often self-serving consensus as no bad thing.