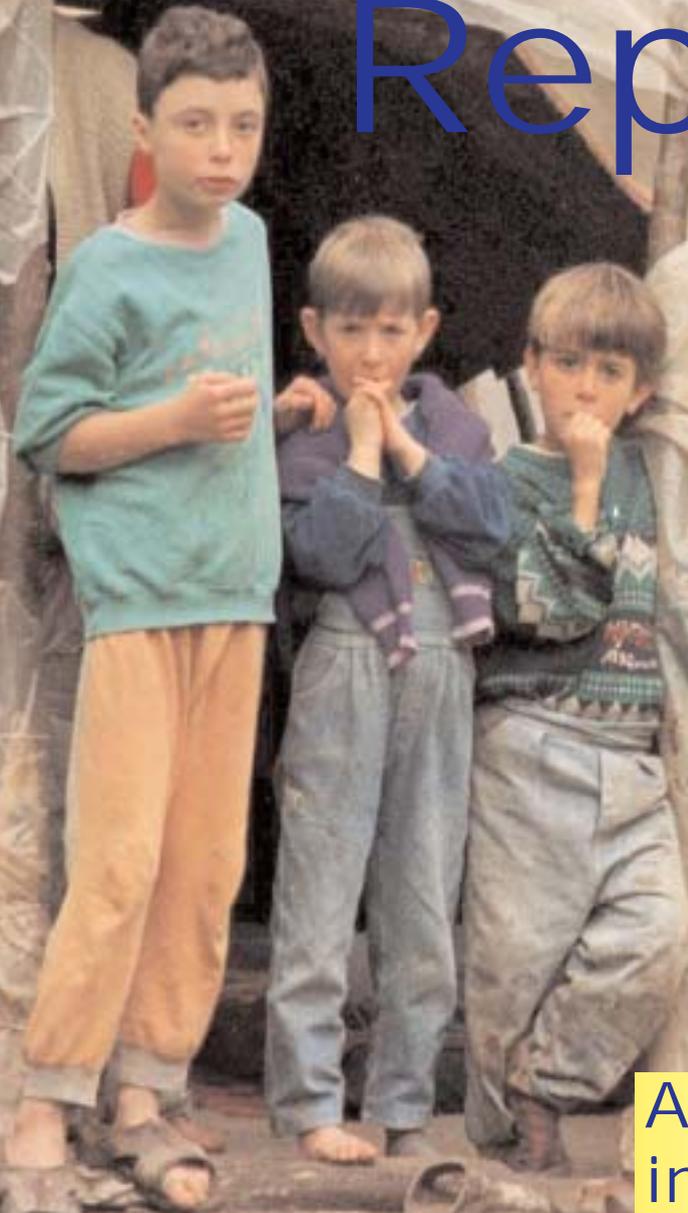




Human Rights Reporting



A handbook for journalists
in South-eastern Europe

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in South-eastern Europe

written for the IFJ by Peter McIntyre



International Federation of Journalists
with the support of the European Commission



Human Rights Reporting

A handbook for journalists in South-eastern Europe
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Cover Picture

This ethnic Albanian family installed a makeshift satellite dish onto their tent at the Kisna Reka refugee camp 25 kms from Pristina in October 1998 after Serb forces destroyed homes during offensives in Kosovo. (AP Photo/Enric Marti)

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Contents

Preface	by Oliver Money-Kyrle, IFJ Director of Projects	1
Introduction	by Mirela Shuteriqi, Albanian Media Centre	3
Chapter 1	Why are journalists concerned with human rights? Alerting people to abuse of rights, What tools do journalists need?	9
Chapter 2	What are human rights? Universal Declaration of Human Rights, Covenant on Civil and Political Rights, Covenant on Economic, Social and Cultural Rights, International Bill of Human Rights, Other important instruments.	15
Chapter 3	How human rights are supposed to be enforced International Court of Justice, European Court of Human Rights, International Criminal Court.	29
Chapter 4	What human rights instruments say about journalism Limitations on freedom of expression, Hate speech, Journalists, defamation and privacy, Protection of sources, European Court of Human Rights, Journalists in court.	37
Chapter 5	Human rights reporting Police, detention, courts, Reporting on children, Women's rights, Ethnic minorities and refugees, People with disabilities, General and specialist reporters, Working with NGOs, Human rights achievements, Reporting on wars and conflicts, Geneva Conventions.	51

Written and designed by Peter McIntyre



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Preface

The International Federation of Journalists has been working with organisations of journalists in South-eastern Europe for more than a decade to help improve conditions and professional standards.

During this period the region has witnessed terrible human rights violations, whether committed by nationalistic governments, military, paramilitary, police or mafia groups. These acts flourished in an environment where media was either too passive to report the facts, or had themselves become active instruments in the concealment of, or justification for, those abuses. The journalists and independent media that were ready to report the truth were persistently subjected to acts of intimidation and violence.

Control over the media was aided by a tradition of journalists as socio-political workers whose job was to 'educate' the public to fit in with the needs of society, which in practice meant the needs of those in power. Journalists were often part of the establishment to hold the people in check instead of holding the establishment to account.

With the fall of dictatorships and nationalist governments it would be good to report that journalism has been liberated to play its proper role as a watchdog on oppression, corruption and abuse of power. But, while there are many examples of brilliant and courageous journalism, there is also a sense of uncertainty and lack of confidence. State broadcasters are struggling in their transformation to public service journalism. Privately owned media is fighting for its commercial life, pursuing ratings and readership with sensationalism and infotainment at the expense of quality. Foreign media companies are rapidly buying up the private media raising questions over media concentration, independence and threats to plurality. Investigative journalists continue to be threatened, beaten or killed with apparent impunity.

Meanwhile the huge changes in society demand the highest standards of journalism to ensure that people know what is happening in their societies and can exert control over those whom they elect to lead them.

To do this, journalists need a way of working that does not depend on the whims of politicians or media owners. They need to work to standards that give them a degree of independence and that make their work relevant and significant. In basing their work around the human rights of ordinary people, journalists have some objective criteria by which to judge the performance of governments and those who hold power in society, including business, police, courts and all the institutions of the State. Human rights standards have been written down and debated in international arenas and signed up to by governments. Journalists should observe how they have been incorporated in a country's legal system and how they have been applied in practice.



Preface by

Oliver Money-Kyrle

Director of Projects for the
International Federation of
Journalists.

Human rights cover everything from the right to life and freedom from fear to the rights of minorities and of majorities, a woman's right not to be exposed to violence in the home, a child's rights to an education, the right of people under arrest to be properly treated, the right to a fair trial, the right of people with disabilities to respect as a person and the right of everyone to be treated with fairness and equality. Human rights cover every aspect of life from policing and social security to the right to arts and entertainment. They address the relationships between majorities and minorities and set standards to protect the weak against the strong.

Many people do not know their rights. Journalists can inform them, not through lectures, but through day-to-day coverage of the events ordinary people are interested in: employment, health, crime, punishment, education, sport, fashion. Journalists can deliver on people's right to freedom of expression by focusing their cameras and their reporting to a greater extent on ordinary people. By helping people to understand better their own lives they strengthen their ability to stand up for their rights. By increasing their mutual understanding, journalists increase opportunities for friendly coexistence and reduce the likelihood of conflicts based on misunderstanding, rumour and misinformation. Journalists who ground their work in the rights of ordinary people in their communities will find that they are more widely read, viewed or listened to. Their audience will give them respect, because they recognise and appreciate journalists whose work treats them with respect.

In this booklet we look at how human rights instruments have been developed internationally and how they should be applied within countries. We give examples from the region of human rights abuses and some examples of improvements. The final Chapter puts forward practical reporting suggestions for putting human rights at the centre of a journalist's work. We hope that organisations will use this book to stimulate discussion in the newsroom and to organise training around these issues.

At the same time it is our belief that you cannot have free and high-quality journalism if journalists are treated badly and underpaid in their own profession. To defend the rights of others, journalists must be able to defend their own rights. In many countries journalists are illegally employed, without contracts, their pay is sometimes not paid, they are subject to unfair dismissals and there is pressure in the newsroom undermining their independence. In extreme cases journalists who uncover corruption may be subject to violence or legal action under laws that seem designed to protect the powerful from being kept in check.

That is why we advocate strong associations which can work on professional issues and strong trade unions which can deliver on journalists' own social and employment rights. Journalists do not have to choose between defending their own rights and those of the public. By doing one they strengthen their ability to do the other.

Oliver Money-Kyrle

Introduction

South-eastern Europe (SEE) is often considered as a problematic part of Europe, partly because of its history. Before World War II, the States of SEE were subject to violent changes of borders, regimes and leaders. After the war, in most of these States, the communists came to power. This history is of vital importance in understanding the current human rights situation. The theory of human rights protection as known today was regarded as a capitalist creation. Traditional political and property rights were not recognised. It was emphasised that people in the socialist countries were equal and enjoyed high standards of living, even though reality was quite different. After the fall of communism, all these countries experienced a transition period which was harsher and more difficult in some countries than in others. The countries of the former Yugoslavia then experienced a long period of armed conflict.

It is my strong belief that all this cannot serve as a justification for the poor human rights situation. All these countries, more or less, enjoy reasonable political stability. They are seeking to grow from an economic point of view and to further integrate into the EU and the international community. In all these countries there exists a political commitment to the protection of human rights. They have become parties to the international and European conventions in the field of human rights protection and therefore are obliged to respect international standards.

In practice many problems still exist, and it is remarkable how many of these problems are common to all the SEE countries. All these countries suffer from a lack of adequate legislation in the field of human rights protection, as well as from poor implementation of existing legislation. Even though the main international instruments have been ratified, this has led only to the drafting of basic domestic laws, without elaborating them in further legislation. So Albania for example (about which I have most information) has ratified the main international conventions in the field of human rights protection as well as the European Convention on Human Rights. However it has not ratified all the additional protocols. With regard to implementation of the international instruments in domestic law, there exists the general framework, but it does not go beyond that. For example, with regard to women's rights, Albania has ratified the UN Anti-Discrimination Convention. Article 18 of the Albanian Constitution provides that "all are equal before the law" and prohibits unjust discrimination on a number of grounds including gender. The Constitution recognises "the right to special protection by the State" enjoyed by, *inter alia*, pregnant women and new mothers. So the general legal framework exists. Violence against women is a severe form of discrimination. Although it is not specified in the UN Convention on the Elimination of All Forms of Discrimination against



**Introduction by
Mirela Shuteriqi,**
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Institute, Tirana.

Women (CEDAW), it is elaborated in recommendations from the international committee responsible for supervising the Convention. However, Albania continues to lack a proper legal framework for dealing with domestic violence. Existing criminal and civil provisions do not offer an effective protection against this phenomenon, which usually occurs behind closed doors. Albanian legislation, for example, does not recognise the right of a woman who believes she is in danger to seek a Court order to prevent or stop the violence. Even after violence has occurred, a court will only hear the case if the victim complains. This constitutes a serious obstacle, since research shows that women prefer to remain silent, often blaming themselves. Moreover, under present legislation, if a woman acts in self-defence, in the absence of witnesses, she can be found guilty.

Similar problems arise as other international instruments are transformed into national legislation, especially since human rights are connected and a violation of one human right often leads to the violation of other rights.

Even inadequate legislation is not always fully implemented. Albanian legislation provides that all citizens have equal property rights. However, during implementation of the Land Law (and contrary to the law itself) agricultural land was often divided according to old village traditions, which gave the property only to men.

Turning more broadly to the human rights situation in the region, a number of points emerge from the 2001 report of the Helsinki Federation for OSCE countries, the report of the US State Department on human rights in Albania for 2002, and other human rights reports.

Torture and ill-treatment

In all the countries in the region cases of torture and ill-treatment by police have been reported. This, in my view, is the result of inadequate legislation dealing with police powers as well as lack of knowledge by the police of their duties and responsibilities. States have been willing to prosecute cases of torture by police only when media have publicised the case. Even in such cases, the prosecution has often been dropped for lack of evidence, so the result has been simply an administrative punishment for the perpetrator. In Albania, however, NGOs have played a positive role, organising training on human rights for police forces and following up violations. The same can be said with regard to the ombudsman, who has used his special position within the Albanian State to intervene with some success.

Conditions in prison and detention

This is an area of great concern. During the communist regimes, detainees were considered as enemies. They were completely isolated, lacking even minimum standards. This mentality still exists and their situation is further aggravated by the general poor economic situation of the countries. The general attitude is that while the whole population is suffering economically,

why should we bother about detainees? Prisons are overcrowded, and conditions are far below minimum standards. There are few initiatives to renovate existing prisons or to build new ones. Many detainees punished by a court of law continue to suffer their punishment in police stations and other pre-detention units. Many of these detainees are minors who are supposed to be entitled to special treatment. In Albania there are no special courts to deal with cases in which minors are involved and most of the Albanian judges lack training in dealing with juvenile justice.

The judicial system

This is also a common problem. Judicial systems in South-eastern Europe are unfortunately still not completely independent. When dealing with cases with political nuances, judges are often subject to political pressure. Judges are in general dissatisfied with their working conditions and salaries and often lack training, especially with regard to new legislation, human rights and general international law. This is one reason why we are so often confronted with corruption within the judiciary. Corruption of the judiciary, together with undue delays in court proceedings seriously jeopardises the right to a fair trial. The Albanian Government recently took disciplinary action before the High Council of Justice against a dozen judges and prosecutors suspected of corruption. However, it remains difficult to send such cases to court.

Freedom of expression and the media

The constitutions of most countries recognise freedom of the media, but there are many cases where media has been used for political reasons or where its freedom has been restricted. The media itself sometimes facilitates this political pressure. There are cases where the media seeks favours to evade legal restrictions, favours which one day have to be paid back. Media ownership is often completely non-transparent and there is concern about a widespread Berlusconi phenomenon, the connection between media and politicians, which constitutes a serious threat to media freedom and independence. It is editors-in-chief and owners who collaborate with political pressure. The ordinary journalist has no choice but to obey since his or her legal position is not protected by law. Many journalists work illegally without regular working contracts. Governments also find other, *prima facie* legal, ways to control and manipulate media, for example by allocating public service advertisements only to favoured media.

The rights of women and children

With regard to children, problems are related to the specific conditions of each country. For example in the former Yugoslavian republic children were involved in armed conflict and misused by all sides. In countries such as Bulgaria and Romania, the situation of children in institutions and homes

for learning-disabled (mentally handicapped) children are far below acceptable conditions. In the whole of SEE, the difficult economic situation has caused legal or illegal emigration of young people to the 'West'. Governments are not adopting a strategy to promote their return.

Another phenomenon is child labour. The minimum working age under the Albanian labour code is 16, and there are limits up to the age of 18 years. Education in Albania is obligatory until the end of the 8th grade (age 14-15). Because of the economic situation many children abandon school early and start to work. Reports estimate that 30,000 to 50,000 children under the age of 18 work part- or full-time in Albania. Many children sell cigarettes on the streets of Tirana, while the situation is even worse in rural areas. There are also cases where girls abandon school because of old traditions and attitudes. According to research by Save the Children in 2000, in some rural areas of Albania about 90% of girls do not attend secondary school.

Even worse is the number of children threatened by blood-feuds in the north of Albania as a result of the re-emergence of the old 'tradition' of taking a life for a life. Moreover, girls under the age of 18 continue to be forced into prostitution inside or outside the country. There is trafficking in human beings throughout the region, and a need for better co-operation between national police forces.

Social rights

During the economic transition, the slow economic revival across the region created social problems in many countries. Privatisation takes place within a very fragile, not to say non-existent system of social justice. Unemployment remains a serious concern, while people working in the public sector, such as police officers, teachers and professors are poorly paid. Pensions are not sufficient to provide an acceptable standard of living and the system of social security and assistance is inadequate. Working conditions in many small private companies are dangerous and States are unwilling or unable to investigate them. In Albania, the media played an important role in reporting such working conditions, hoping that fear of shame would lead to change. However, no cases have reached court and courts are not comfortable with enforcing social rights.

Hospitals have improved, often as a result of foreign donors, but continue to suffer from shortages of equipment and medicines. There is a serious problem with regard to patients' rights, due to lack of space, poor quality and quantity of food, sub-standard sanitary conditions and non-functioning heating systems. Doctors and medical staff do not provide patients with proper information and many take bribes for the services they provide.

National minorities and religious tolerance

As a result of population movements and border changes, the Balkan States include large ethnic minorities from neighbouring States. Under interna-

tional and national laws minorities enjoy special protection and rights. They have to be recognised as a minority, and have the right to use their own language in everyday life, in local administration and in education. They should be represented in central government and allowed to use their own cultural and religious customs. States have an obligation to enhance the participation of minorities in the political, economic, social and cultural life of each country. Minorities could become a bridge for co-operation and friendship between countries. Instead, minorities have been used to promote territorial claims and for other political aims by governments or political factions.

There have been positive developments. Most countries have ratified and implemented in national legislation international instruments to protect minorities. Some governments have introduced plans to integrate minorities. On a modest scale, minorities have begun to organise themselves politically. Through such organisations, they should be better able to claim their rights and to resist political interventions from outsiders. However, stereotypes and prejudices are still commonplace and this leads to indirect and covert discrimination in everyday life. This is the situation for the Roma minority in many countries of SEE. There is a need for better education about minority and religious tolerance to prevent the 'ethnic cleansing' of the '90s being repeated elsewhere in the region.

The countries of the former Yugoslavia have additional obligations in the field of human rights. All the former Yugoslavian Republics should co-operate with the International Criminal Tribunal for the Former Yugoslavia and should take more seriously their own obligations under international and national law to prosecute war criminals. Bringing justice to the victims of the past is the only way to secure peace for the present. However, the victims of the past should not allow themselves to become the persecutors of the present. All displaced persons should return to their homes, without discrimination on the basis of religion or ethnicity.

What I would like from journalists

Since human rights are rights for all of us, I expect journalists to play a very active role in their protection. I would like to see :

- more analysis rather than simple reports on facts,
- journalists to investigate the causes of problems and possible solutions.

In many cases, the media is content to ask what the government is doing about a problem. In my view this is not enough. The journalist should investigate whether there is a comprehensive legal framework that meets international and European standards. Journalists should know the law and report on gaps in legislation. Journalists should also represent the standpoints of all parties in their reports and should co-operate more closely with human rights NGOs. As a lawyer, I never tire of saying that human rights should be protected by law, and as this is the law, we all have to respect it.

Mirela Shuteriqi



Human rights training in Skopje, Macedonia June 2003.

Above reporters quiz Goran Moniroski, Information Officer for UNHCR, Macedonia, about the refugee situation in the country. Left to right Lorik Pusina from *Koha Ditore*, Kosovo, Klarita Ruci, *Radio Tirana*, Albania, Eduard Adam, from *Jiarul de Bacău*, Romania, Andreja Kasaniae, from *Vecernji List*, Croatia and Goran Moniroski.

Right:: Borian Jovanovski, former spokesman for the Macedonian President interviewed by Dubravka (Duca) Markovic, from *RTS Serbia*, during the course.

Photos: Peter McIntyre Skopje June 2003.



Chapter 1

Why are journalists concerned with human rights?

This may seem a trivial question, because journalists are often in the front line of the defence of human rights. We think of the journalist who writes about war crimes, the publisher who risks jail by exposing arbitrary arrests, the reporter who documents the use of child labour as practising the highest form of our profession. Journalists are capable of showing how human rights are universal, shared by friends and enemies alike, and can distinguish between fundamental rights and the rhetoric of shallow and nationalistic politicians. Even in closed societies, a few journalists always try to shine a light on injustice and repression. Journalists who expose human rights abuses alert the public and create pressure for change.

What we might call 'heroic' journalism constitutes a tiny part of the whole. Most journalists, most of the time, are not challenging overbearing government or exposing gross human rights abuses. Their day-to-day reporting beats seem more mundane as they report on politics, crime, social issues, business, sport, or entertainment. However, the promotion and defence of human rights is important at this level. Human rights reporting is not only about exposing large-scale abuse, it is about how people are treated in everyday life. Indeed, in order for some journalists to be heroic on a grand scale, all journalists need to apply a human rights agenda in their work. It is unlikely that heroes will emerge from a community that does not concern itself with human rights on the day-to-day level.

Journalists have a triple interest in human rights.

1. The role of the journalist is to report honestly on society. The media is sometimes described as a 'watchdog', whose job is to give the alarm when people's rights are under threat or abused. The media hold people in power to account and tell the public how that power is used or abused. Human rights standards represent the broad criteria by which those people in power should be judged. They are an attempt to set objective minimum standards as to how States should treat citizens and, by implication, how citizens treat each other. In focusing on the human rights standards, journalists bring society into focus. This is not because there is something noble about a human rights perspective. It is professionally more complete. Human rights reporting is the reporter's equivalent of having more

- than one camera angle. It enables the reporter to examine a situation from different points of view, from the perspectives of all those affected. It therefore gives a more complete and more accurate, picture.
2. Journalists cannot work if people are not free to express themselves and publishers are not free to publish. Human rights instruments give individuals the rights to freedom of thought and belief, and to freedom of expression. One of the main functions of journalism is to help people to achieve these rights. The rights of media and citizens are mutually supportive. People can only demonstrate their right to freedom of expression when publishers, editors and journalists deliver a broad and pluralistic media. And publishers, editors and journalists only have a right to press and media freedom in so far as they are willing to use this right to deliver on people's right to freedom of expression. Media freedom is the first right to be constricted when States start to abuse the human rights of their citizens. Journalists resist such restrictions or become professionally flabby, passively publishing only what the authorities allow them to publish. Journalists who work in this manner become complicit in their own imprisonment.
 3. Like other people, journalists have a personal interest in the rights that allow them to live in freedom, and to be free from fear or oppression. Journalists have families and belong to communities, and so have a direct personal interest in safety, freedom from fear and freedom from repression. The more that journalists are grounded in communities, the more they will be aware of human rights restrictions. Good journalists are curious about society and can deduce from what they learn that most communities want the same things: to be valued as individuals and groups, and be able to grow and develop in safety, without fear and with equality of opportunity. One important reason for news organisations to achieve diversity in staffing is that journalists from different backgrounds understand more acutely the sensibilities of different communities. A newsroom whose composition mirrors the social diversity of a nation is better able to monitor human rights abuses in that society.

Alerting people to abuse of rights

To be an effective scrutineer the media must have access to information, the resources to investigate and the ability to question people with power. This means not only a legal and *de facto* right to question, but also the professional commitment and training so to do. It is not enough to attend press conferences and write down what you are told. Journalists question what they are told, and why they are being told it. Obviously a journalist requires skills, for example to understand figures and to read a balance sheet, but questioning authority is mainly about developing an independent state of mind, and refusing to be overawed by the trappings of power. The independence of individual journalists also depends on the kind of support they receive from

their news organisations, as it is difficult for an individual to be independent if the media owner, or worse still the editor, is compromised. Independence of the media is a factor not only of the legal framework in a country, but also of the business, social and political links between the media and other forces within society. The relationship between media owners, governments, political parties and other powerful forces within society can affect this. At its worst the 'Burlusconi effect' puts politicians in control of media through a combination of regulation and ownership, to the extent that its independence is completely compromised.

The ability of the media to inform people about their rights and about abuses depends on its ability to reach the public. At extremes, the media cannot deliver if presses are closed, magazines are confiscated or programmes are jammed. This is not only a factor of circulation and audience figures but also whether coverage is comprehensive. Newspapers and magazines targeted only on influential metropolitan audiences, radio stations that broadcast in an 'official' language different from the one people speak at home and TV channels which devote hours of time to officially sanctioned news, lose potential audiences. Public service broadcasters and serious newspapers should be aware of the need to address the whole of their audience, and not be content with a niche audience of those who enjoy studio discussions and political debate. Commercial media, especially powerful commercial TV, should be obliged to deliver a well-resourced, independent and vigorous news service at prime time. Programmes need to reach young people as well as older people, women as well as men, minorities as well as majorities. There is, of course, nothing wrong with media as entertainment – indeed it is important to get away from the idea that effective journalism has to be dull, studio bound and always serious. But the entertainment value of media should partner, rather than substitute for, journalism that polices human rights. Put it this way: an entertainment can be a good way of relaxing and probably a sign that no catastrophe is happening backstage, or it can be a way of distracting people from what is happening in the lives of their fellow citizens. When there isn't any news, does that mean nothing is happening, or does it mean that no one is reporting it?

What tools do journalists need?

Some journalists at least need a working knowledge of the main articles of human rights and to know where to go to research specific rights or regulations. They need to know how these rights have been enacted (or not) in the countries where they work. They need to know how these human rights can be enforced and how abuses can be challenged.

Journalists also need protection. This protection can come in many forms. It can take the form of legislation to enshrine press freedom. It sometimes comes because courts – including international courts – see media freedom as vital to democracy and to providing a forum in which people can review

the actions of Governments. Perhaps the most important form of protection is solidarity – the mutual support that journalists can give to each other, by protesting at each media freedom breach and by creating strong and united professional associations and unions. For this to work, journalists must be willing to defend not only their own media, but also media and journalists with different politics, ethnic focus or style to their own. Increasingly, solidarity and protests have an international dimension, so that journalists can appeal to colleagues outside their country, if they are not adequately supported at home.

Human rights touch every area of life

Journalists have a unique place in the defence of human rights. Journalism is also interested in every avenue of human life. We take for granted that newspapers, TV and radio stations are concerned with matters of state – what the executive is doing, what laws are passed in Parliament, the main social issues. But journalism is also about the everyday interests of men, women and children. Publications and programmes specialise in agriculture, sport, women's issues, science, embroidery, children, finance, art and every area of technical expertise. Human rights reporting can become part of the basic training of journalists in all areas of interest, not so they can 'do good' but so that they can become more effective reporters.

Policy makers

Policy makers – editor in chief, station manager, editorial director, head of news etc. – have a vital role in sensitising their organisations and staff to their human rights role. They set the agenda for a broadcasting organisation, publication or agency. They are the first line of defence when an editorial line or a story provokes a reaction. They must assess the risks of being taken to court, censored or shut down. They must judge whether a story will be run even though the advertising manager is warning that revenue will be lost. If the people who fill these positions have a clear attitude towards human rights and towards press freedom they will attract the best and most committed journalists to work for them, and their newspaper, broadcasting station or agency will be effective in the campaign for human rights. If they are cautious and half-hearted, their output will be bland and spineless. The editor-in-chief/station manager needs a working knowledge of the key human rights instruments and how these rights relate to the freedom to publish. He or she needs rapid access to a lawyer with specialist knowledge.

Senior journalists

Below the layer of policy makers comes an influential layer of senior journalists who include producers, news editors and chief subeditors. If the reporter is the eyes and ears of the news gathering process, the newsroom makes sense of that intelligence and decides how it will be used. They are often

responsible for recruiting editorial staff and for their training. They allocate staff for particular stories and allocate the time to follow up a story. These senior newsroom journalists shape the day-to-day content of programmes and publications and create a culture in which the journalists work. They play an important advisory role to ensure that specialist reporters, who develop close links with official sources, retain a correct degree of independence and do not become too close to the agency on which they are reporting.

Specialist reporters

For specialists on a number of reporting beats an awareness of human rights is essential. For example:

- Political and parliamentary reporters need to know in detail about the powers of the executive and the legislature, and to be vigilant if these powers are overstepped. They should be specialists in knowing what official information they are entitled to receive and be continually policing these rights.
- A police reporter needs to know his/her rights in relation to seeking information, official documents, protection of sources etc. In their 'watchdog' role they need to know the rights of people who are being questioned, who have been arrested and who are in custody. A crime reporter may tackle an outbreak of violent crime by considering the human rights of the victims and what is done to uphold them. He or she will also be aware of the rights of those who have been arrested or convicted of offences.
- The job of the court reporter is not just to present sensational crime stories from a prosecution perspective, but also to monitor whether individuals have fair hearings, including the right to adequate defence and the right to be tried within a reasonable time. Court reporters are also responsible for alerting newsrooms when courts sit in secret or when they issue orders to withhold from publication verdicts, sentences, evidence, or witnesses' names. They should be closely involved with senior editorial staff in discussions about challenging such decisions. A court reporter needs to know how the independence of the courts is guaranteed.

Other journalists may not consider that they have such 'political' areas of work, but they too should be concerned with human rights. Indeed, they can have a greater influence on the public, because they are addressing audiences who may not already be sensitised about human rights issues. For example:

- A fashion journalist can be concerned with the conditions in which clothes are produced and multinational employment practices.
- Children's media can address the need for young people to have a forum where they can express their opinions.
- Sports journalists can report on the pressures on young sportspeople, the fairness of contracts and issues such as the abuse of drugs. ■



Above: Journalists on the human rights course in Tirana question Edlira Papavangjeli, Co-ordinator of the Albanian Helsinki Committee (centre) about her work. Left to right: Kristina Baxanova from Bulgarian television, Karolina Risto from the daily *Gazeta Shqiptare*, Tirana, Blerim Kola, a journalism student working for *Albania* newspaper, Tirana, Edlira Papavangjeli (Albanian Helsinki Committee), Zeljka Jevtic from *Radio Belgrade*, Maja Andreevska-Blazevska from the *Macedonian Information Agency* and Calin Cosmaciuc from *Mediafax*, Romania.



Florian Seriani (centre) spokesman and adviser to the Minister of Public Order in Albania, answers questions about relationships between media and the police, with (left) Ben Andoni from *Korrieri* daily newspaper Tirana, and Mirela Shuteriqi from the Albanian Media Institute.
Photos: Peter McIntyre May 2003

Chapter 2

What are human rights?

“Human rights are the foundation of human existence and coexistence. Human rights are universal, indivisible and interdependent. Human rights are what make us human. They are the principles by which we create the sacred home for human dignity. ...

“Human rights are the expression of those traditions of tolerance in all religions and cultures that are the basis of peace and progress. Human rights are foreign to no culture and native to all nations. Tolerance and mercy have always and in all cultures been ideals of government rule and human behaviour. Today, we call these ideals human rights.

“It is the universality of human rights that gives them their strength. It endows them with the power to cross any border, climb any wall, defy any force.”

*Kofi Annan, United Nations Secretary-General,
Human Rights Day 1997*

Human history has been driven by the desire of nations, ethnic groups, social classes and other groups to achieve justice, fair treatment and freedom from oppression. This desire for equality and justice has fuelled social revolutions, independence movements, the abolition of slavery, and movements to establish equal rights for women. These social movements have been driven by the idea that people have rights and are entitled to assert and defend them until they are achieved. Some of these movements have been more fundamental than others, but many focused mainly on the needs of one class or section of society.

All societies have power structures, and give some people more power and authority than others. In autocracies, or where political power is inherited, there is a fault line between those who have rights and those who do not. States born out of movements for social justice promise freedom from oppression, equality of treatment and the basic essentials of life but do not always prove effective at delivering them. In democracies, power is in theory delegated and controlled by the people. But the rich have more power than the poor and people often have little control over those who have political

Universal Declaration of Human Rights — Summary

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 1

The rights belong to everyone — irrespective of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 2

The UDHR seeks to guarantee the right to:

◆ life, liberty and security

Article 3

◆ freedom from slavery or servitude

Article 4

◆ freedom from torture, cruel, inhuman or degrading treatment or punishment

Article 5

◆ equality before the law and remedy when rights are abused

Articles 6, 7 and 8

◆ freedom from arbitrary arrest, detention or exile

Article 9

◆ a fair trial

Article 10

◆ be presumed innocent until proved guilty

Article 11

◆ privacy and protection against unfair attacks on reputation

Article 12

◆ freedom of movement

Article 13

power. Sometimes groups are excluded from political and social rights because they are not citizens, or because they belong to the wrong ethnic group or because they have disabilities.

The idea that everyone has rights is a revolutionary one, since it involves a jump from demanding justice for one group, to asserting that all individuals and groups of people have an equal claim to human rights.

Human rights are the basic and fundamental rights which seek to ensure minimum standards of acceptable behaviour between the state and individuals, and by implication between individuals and groups.

They set a framework for the rights and freedoms of individuals, and the rights of communities, societies and States. Human rights protect individuals, allow communities to live in peace and to take some control over their own destiny. They protect individuals from unfair treatment and they put all people in an equal position before the law. Sometimes, the rights of individuals and communities conflict, while Governments often excuse human rights abuses by saying that they are defending the rights of society. There are also conflicts when the human rights of different individuals clash. This is why a human rights approach can be so useful for journalists because it allows media to present complexities from more than one viewpoint.

Human rights are universal legal guarantees that protect individuals and groups against government actions which interfere with fundamental freedoms and human dignity. They are internationally recognised and accepted, and the most basic rights apply as part of customary international law.

According to the preamble of the Universal Declaration of Human Rights, upholding these rights is *"the foundation of freedom, justice and peace in the world"*. Kivutha Kibwana, Law Professor at Nairobi University, put it like this when addressing an audience of journalists:

“Human rights are values, standards of claims which define, enhance and protect human dignity. Human rights are therefore standards which define and concretise citizenship and personhood; a human being devoid of human rights is a shell, a zombie. Human rights are then those rights that are fundamental in terms of defining and reaffirming citizenship and humanness.”

Reporting Human Rights in Africa, IFJ seminar, March 1995

And Mary Robinson, former United Nations High Commissioner for Human Rights, reminds us that:

“Human rights are inscribed in the hearts of people; they were there long before lawmakers drafted their first proclamation.”

The Universal Declaration of Human Rights

The development of human rights instruments in the 20th century was the first attempt to define these rights not for one group or nation, but for the whole of humanity, and to set up a machinery designed to protect them. It can be argued, with justice, that it was far easier to draw up and agree

Continued on facing page

human rights instruments than to implement and enforce them, but the process has achieved a broad consensus that these rights are universal.

The Universal Declaration of Human Rights was adopted by the United Nations in 1948, setting down what were regarded as the essential rights and freedoms in just 30 articles. They cover a wide spectrum of human existence, from the right to 'life, liberty and security of person' to the right to a job and a reasonable standard of living.

The UDHR identifies rights for individuals, but rights are also generalised for groups, such as the rights of women, the rights of ethnic minorities and the rights of children and young people.

Given that is now 55 years old, the surprise is not what the UDHR leaves out, but at how inclusive and relevant it still seems today. It is an eloquent rebuttal of arbitrary power, abuse of power, mass killings, torture and enslavement. We may have become cynical about the lack of commitment to human rights by the world's powers and by the inability of the United Nations to work effectively, but it is hard to be cynical about this declaration. It has the freshness of sincerity, and the journalistic virtues of direct language, brevity and ease of understanding. Has it succeeded? No. But it sets the standard for human behaviour, and should have a place on every news-room wall.

Freedom of speech and belief are the first rights mentioned in the preamble, along with freedom from fear and want. If the rights to life and liberty are the cornerstones of the human rights charters, then freedom of speech is seen as the essential tool in achieving them.

The preamble affirms that:

“the inherent dignity and (of) the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”

Disregard and contempt for human rights “have resulted in barbarous acts which have outraged the conscience of mankind”, while “the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people”.

Article 29 says that rights and freedoms can only be limited by law:

“for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society”.

States cannot uphold one right by infringing another. Article 30 of the Declaration states:

“Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.”

The UDHR is not a treaty, but it forms part of customary international law

Universal Declaration of Human Rights — Summary

Continued from facing page

The UDHR seeks to guarantee the right to:

- ◆ seek asylum from persecution **Article 14**
- ◆ a nationality **Article 15**
- ◆ marry with "free and full consent" **Article 16**
- ◆ own property **Article 17**
- ◆ freedom of thought, conscience and religion **Article 18**
- ◆ freedom of opinion and expression **Article 19**
- ◆ peaceful assembly and association **Article 20**
- ◆ take part in government and "periodic and genuine elections" **Article 21**
- ◆ social security, economic and social rights **Article 22**
- ◆ work, equal pay, fair pay, the right to join a trade union, a limitation on hours of work and paid holidays **Articles 22 & 23**
- ◆ a standard of living adequate for health and well-being, security in times of unemployment, sickness, disability or old age. Special care and assistance for mothers and children **Article 25**
- ◆ free primary education **Article 26**
- ◆ share in arts, culture and scientific benefits including protection of intellectual rights **Article 27**
- ◆ social and international order **Article 29**

The UDHR can be downloaded in full in 300 languages from <http://www.unhchr.ch>

By July 2003, the ICESCR had been ratified by 147 States and the ICCPR by 149 of the 189 members of the UN.

The full texts of these Covenants can be found on the website of the Office of the High Commissioner for Human Rights — <http://www.unhchr.ch> and click on Treaties.

and therefore binds all nations. Indeed, it can be said that there is an obligation on States to observe human rights in the UN Charter. In June 1971 the International Court of Justice ruled that South Africa's occupation of South West Africa (now Namibia) was illegal. It based this mainly on arguments about the Charter given to South Africa by the League of Nations after the First World War. But it also based its ruling on core values quoting: "...two principles of paramount importance: the principle of non-annexation and the principle that the well-being and development of the peoples concerned formed a sacred trust of civilisation." This is sometimes quoted as the first example of the court basing a decision on some core human rights, although South Africa continued to plunder Namibia's mineral deposits until December 1988.

The UN has developed a series of organs directly from its Charter. The most significant of these for human rights is the Commission on Human Rights which today monitors and reports on human rights situations in particular countries or territories, or considers human rights themes worldwide.

Copies of the UDHR in over 300 languages can be downloaded from the website of the Geneva-based Office of the High Commissioner for Human Rights at <http://www.unhchr.ch>

Covenants on Civil and Political Rights (ICCPR) & Economic, Social and Cultural Rights (ICESCR)

It was intended that the UDHR would become the basis for a universal treaty which States would sign and which would then become legally binding within each country. However, a single treaty could not be agreed, and it took almost two decades to approve the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) and a further decade before they came into force. The General Assembly of the United Nations adopted both covenants on 16 December 1966. The ICESCR entered into force on 3 January 1976 and the ICCPR almost three months later on 23 March 1976. The delay in adopting these Covenants, and the fact that they divide rights in this way, reflected ideological differences between East and West during the Cold War.

It is not easy to decide whether a right is civic and political or economic and social (for example the right to own and pass on property is prominent in both Covenants). In general, the International Covenant on Civil and Political Rights reflected the 'individual freedom' approach of the Western capitalist countries, while the International Covenant on Economic, Social and Cultural Rights reflected the concerns with social security, employment and collective rights of the Soviet Union and its allies. However, the two Covenants are closely related and interconnected and there is a deliberate overlap. It is impossible to achieve "freedom from fear and want" without the

Summary of the ICESCR

Article 1 enhances the right to self-determination, to economic, social and cultural development, and to use natural resources.

Article 6 recognises the right to work at a freely chosen job.

Article 7 covers just and favourable working conditions, fair wages, and equal pay for women.

Working conditions must be safe and include holidays with pay.

Continued on facing page

rights in both Covenants. The General Assembly of the United Nations declared in 1950 that: "the enjoyment of civic and political freedoms and of economic, social and cultural rights are interconnected and interdependent".

The Covenants add detail to the UDHR, but no new principles. They both emphasise the equality of men and women, and both include the right for all peoples to self-determination.

International Covenant on Economic, Social and Cultural Rights (ICESCR)

This legally binding treaty contains 31 articles, of which the first 15 set out rights and freedoms, and the final 16 provide detail of reporting procedures and the supervisory role of the Committee on Economic, Social and Cultural Rights (CESCR). Our summary in the side panel covers the rights and freedoms in Articles 1-15.

Unlike the rights contained in the International Covenant on Civil and Political Rights, economic, social and cultural rights do not all have to be achieved immediately. Under the ICESCR, each State Party undertakes to take steps "to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights". However, the principles and basic rights are non-negotiable.

The Covenant covers equal rights for men and women; the rights to work in just and favourable conditions, to social protection, to an adequate standard of living, to the highest attainable standards of physical and mental health and to education.

It provides for rights of self-determination; to form and join trade unions; to social security and social insurance; protection and assistance to the family; an adequate standard of living; freedom from hunger, to take part in cultural life; and to enjoy the benefits of scientific progress.

Article 2 spells out how States are obliged to seek to fulfil this Covenant. Although some rights are conditional on 'available resources' the principles are non-negotiable. States undertake to progressively achieve Covenant rights, by all appropriate means and to the maximum of their available resources. This can take a long time, as illustrated by the fact that "the progressive introduction of free education" is still being pursued in some countries. Kenya implemented the right of every child to a free primary school place in 2003.

When they are implemented, Covenant rights must be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. However, developing countries may determine to what extent they guarantee economic rights to non-nationals.

The Committee on Economic, Social and Cultural Rights (CESCR) has a supervisory role. CESCR distinguishes between 'obligations of conduct' — what States must do — and 'obligations of result' — things the State must

Summary of the ICESCR

Continued from facing page

Article 8 guarantees the right to join a trade union and to strike in conformity with the laws. This may be restricted in the interests of national security or public order or to protect the rights and freedoms of others.

Article 9 recognises the right to social security, and **Article 10** says that the State should assist families, protect mothers, and protect children from exploitation.

Article 11 recognises the right to an adequate standard of living. "It is a fundamental right of everyone to be free from hunger."

Article 12 recognises the right to the highest attainable standard of health. States must aim to reduce infant mortality, promote child development, improve environmental and industrial hygiene, control epidemics, and ensure access to medical care.

Article 13 recognises the right to education, which must aim to develop the personality and a sense of dignity, and promote understanding, tolerance and friendship among nations and racial, ethnic or religious groups.

Articles 13 and 14 lay down measures to achieve primary education for all, and "the progressive introduction of free education".

Article 15 recognises the right to enjoy cultural life and the benefits of scientific progress. It protects intellectual property rights and scientific and creative freedoms.

Summary of the ICCPR

Under **Article 2** States undertake to ensure that all individuals enjoy the Covenant rights without discrimination. **Article 3** upholds the equal rights of men and women. Rights covered by the ICCPR include the rights:

- ◆ of peoples to self-determination (**Article 1**) and of minorities to enjoy their own culture, religion and language (**Article 27**)
- ◆ to life (**Article 6**), freedom from torture (**Article 7**), freedom from slavery (**Article 8**), and to liberty and security of person (**Article 9**)
- ◆ to freedom of thought, conscience and religion (**Article 18**), freedom of opinion and expression (**Article 19**), except that propaganda for war or racial or religious discrimination shall be prohibited (**Article 20**);
- ◆ to a fair trial and not to be tried twice for the same offence (**Article 14**), to be recognised as a person before the law (**Article 16**), to be treated equally before the law (**Article 26**), and with humanity and respect when detained (**Article 10**)
- ◆ not to be jailed for non-payment of debts (**Article 11**), and not to be subject to retroactive legislation (**Article 15**);
- ◆ to freedom of movement (**Article 12**), and not to be arbitrarily expelled (**Article 13**);
- ◆ to privacy (**Article 17**), family life and freedom to marry (**Article 23**), and the rights of the child (**Article 24**)

Continued on facing page

achieve. States decide which measures are appropriate, but CESCR decides whether all appropriate measures have been taken. States submit reports to the Secretary General of the United Nations (but in practice to the CESCR) on the measures they have adopted and the progress made.

No particular system of government or economy is precluded from being able to fulfil obligations, but the systems must:

- be democratic
- respect human rights
- recognise and reflect the interdependence and indivisibility of the two sets of human rights, civil and political and economic, social and cultural.

There is an obligation to ensure the satisfaction of minimum essential rights. States fail in their obligations if a significant number of individuals:

- do not have enough essential foods
- do not have essential primary health care
- do not have basic shelter and housing
- do not have basic forms of education.

Although some rights may be delayed in poor countries, this cannot be used as an excuse if funds can be found from somewhere. If necessary, States must co-operate with the international community to receive aid.

The International Covenant on Civil and Political Rights (ICCPR)

This treaty enshrines the right to life and outlaws torture, enslavement, forced labour or arbitrary detention. It forbids restriction on freedoms of movement, expression and association. The first 27 of 53 articles set out rights and freedoms while the final 26 cover application and supervision, including the creation of the Human Rights Committee, and a procedure under which one State may complain against another (never used).

Certain rights can never be suspended or limited, even in emergencies. These are the right to life, freedom from torture, freedom from enslavement or servitude, protection from imprisonment for debt, freedom from retroactive penal laws, the right to be recognised as a person before the law and freedom of thought, conscience and religion. If other rights are suspended this can only be to the extent strictly required by an emergency, and can never involve discrimination on the grounds of race, colour, sex, language, religion or social origin.

The Human Rights Committee

The Covenant created the Human Rights Committee as a supervisory body mandated to consider and comment on reports from States on measures they have adopted to give effect to Covenant rights, and the progress they have made. In theory the HRC can consider complaints from one State that another State is not fulfilling its obligations or complaints from individuals where a State has signed the First Optional Protocol. In practice, these are never

Human Rights Committee helpless in face of widespread human rights abuses

At the height of the conflict in the former Yugoslavia the Human Rights Committee could do little more than protest at human rights abuses.

Bosnia-Herzegovina told the Committee in October 1992 that its territory was subject to military action "entailing massive human rights violations resulting in loss of life, torture, disappearances, summary executions, rapes and general ill-treatment of persons." In December 2002, the Committee "expressed its concern at the large number of killings, arbitrary arrests, detentions, the operation of prisons by private persons and the general mistreatment of persons." It called on the Republic to take measures to ensure that ethnic cleansing did not take place "whether as a matter of revenge or otherwise", and to ensure that prisoners were properly treated and that disappeared people were traced.

It also heard a report from Croatia and expressed concern over harassment of Serbs, purges of public services and the media and widespread arrests and disappearances. It said that police had become identified with ultra right nationalism, and that soldiers were often seen wearing fascist emblems.

It held the Federal Republic of Yugoslavia (Serbia and Montenegro) responsible for mass arrests, summary and arbitrary executions, enforced or involuntary disappearances, torture, rapes and looting in Croatia and Bosnia-Herzegovina, as well as for 20 camps holding thousands of civilians and the violence against Dubrovnik, Vukovar and Sarajevo. It urged Yugoslavia "to put an end to this intolerable situation for the observance of human rights" and to the repression of the Albanian population in Kosovo.

When countries are trying to meet international standards HRC reports can be influential. In 2001 the CHR commended Croatia for its Constitution "that embodies internationally-recognized human rights", for democratic elections and its commitment to co-operate with the International Criminal Tribunal. However the HRC noted that judges were not sufficiently trained in international human rights law. It criticised powers to suspend rights during a state of emergency, and expressed concern that some people guilty of war crimes would be included in an amnesty. It called for stronger action to prevent trafficking in women and to prevent discrimination against minorities.

The CHR expressed concern at provisions in the Criminal Code dealing with defamation, slander and insult "particularly with respect to speech and expression directed against the authorities." Given that these provisions had in the past been used to stifle political discourse, the HRC called for a review of the law, to set out "clearly and precisely" restrictions on the freedom of expression and ensure that they did not breach Article 19 of the Covenant.

Summary of the ICCPR

Continued from facing page

The ICCPR includes the rights:

- ◆ to peaceful assembly (**Article 21**), freedom of association (**Article 22**), to take part in public life and to vote (**Article 25**).
- ◆ **Article 4** sets out how a State may temporarily suspend certain rights under certain conditions (derogations), while **Article 5** says that States and groups cannot use one Article to justify breaching another.

Hungary warned over Roma rights

In April 2002, the HRC commended Hungary for "substantial progress" in strengthening democratic institutions.

But it expressed deep concern over the situation of Roma people who faced discrimination in employment, housing, education, social security and public life. "The excessively high number of Roma in prisons, reports of their ill-treatment in police custody and the continuing existence of separate schools are also ongoing sources of concern to the Committee."

The Committee expressed concern at pre-trial detention at police stations, ill-treatment by police officers, a low participation of women in political life and violence against women.

used. The Committee submits an annual report to the UN General Assembly via the Economic and Social Council. It also makes interpretations (General Comments) which become part of human rights rules. For example:

- The HRC stipulated that it is not enough for States to pass legislation which accords with Article 2 (equality) and Article 3 (gender equality). They must take action to ensure that the principles are put into effect.
- The Human Rights Committee interpreted Article 6 to mean that the death penalty should be a quite exceptional measure.
- The Human Rights Committee ruled that 'following orders' is no defence if accused of violating Article 7 forbidding torture and cruel, inhuman or degrading treatment.

There are two Optional Protocols to the ICCPR. The first allows the Human Rights Committee to hear complaints from individuals (104 States have signed). The second prohibits the death penalty. To date (July 2003) only 49 States have signed this.

Both the CESR and the HRC comment on country reports and make recommendations to States. They also receive 'shadow' reports from NGOs in each country and this is an opportunity for journalists to highlight shortcomings and carry out their own investigations. HRC country reports can be influential when a country is trying to meet international standards or is concerned about its own reputation and standing.

International Bill of Human Rights

The Universal Declaration of Human Rights and the two International Covenants are known collectively as the International Bill of Human Rights. These are rights from which no nation is exempt, and form the basis of customary international law. Although States sign up to the Covenants, the Bill of Rights applies whether or not it is recognised. The rights apply to all, and they must be observed by all.

Other important human rights instruments

The second half of the 20th century saw the development of a large number of human rights instruments. It could be argued that reaching agreement on the wording of human rights instruments became a substitute for achieving rights. However, these agreements or treaties are important, in part because they also set up a mechanism for monitoring human rights and, in theory, at any rate, for calling nations to account. Some of the most important are:

International Convention on the Elimination of All Forms of Racial Discrimination

This Convention, which came into force in March 1966, commits States to change laws and policies which create or perpetuate racial discrimination. The Convention obliges State Parties to criminalise and punish the dissemi-

Slovakia held in breach of Convention

In August 2000 CERD ruled that the Slovak Republic had breached the International Convention on the Elimination of All Forms of Racial Discrimination because two villages had attempted to ban Roma families from living there.

In June 1997 Rokytovec passed a resolution banning Roma families from settling in the village and threatened them with expulsion should they try to do so. In July 1997 Nagov adopted a resolution forbidding Roma from entering the village or settling in shelters there. The resolutions were passed against a background of harassment of Roma families including the burning of some homes in the area. The villages revoked the resolutions in April 1999 at meetings also attended by the District Prosecutor of Humenné.

CERD found that Slovakia had been in breach of the Convention until the point where the village resolutions were overturned. In August 2000, the Committee recommended that Slovakia take measures "to ensure that practices restricting the freedom of movement and residence of Romas under its jurisdiction are fully and promptly eliminated."

Ref: Anna Koptova v. Slovak Republic

Check individual cases at the University of Minnesota Human Rights Library at <http://www1.umn.edu/humanrts/> and search for cases by name or country.

nation of ideas based on racial superiority or hatred, incitement to racial discrimination, and acts of violence against any race or group of persons of another colour or ethnic origin.

The Convention prohibits indirect as well as direct discrimination in areas such as the right to work, the right to join trade unions, the right to housing and the right of access to a public place. However, States can discriminate against non-citizens. The Convention permits special protection (i.e. 'affirmative action' or 'positive discrimination') to enable deprived racial or ethnic groups to redress imbalances.

The Committee on the Elimination of Racial Discrimination (CERD) was the first body created by the United Nations to monitor a human rights treaty. States submit periodic reports to the Committee, which can also hear complaints from individuals if the State 'opts in' to this provision. As at July 2003, only 40 of the 173 States which ratified the convention had agreed to respond to individual complaints. These 40 countries include Bulgaria, Cyprus, Czech Republic, Hungary, Macedonia, Poland, Romania, Serbia & Montenegro and Slovakia.

In general CERD complains that States are often late in submitting their

Call for Slovenia to act on violence against women

In July 2003 the Committee on the Elimination of Discrimination Against Women noted advances in women's rights in Slovenia but called for legislation to address violence against women. It expressed concern over discrimination suffered by minorities, in particular Roma women, the breakdown of marriage, the number of children born outside marriage and the maternal mortality rate. The Committee asked Slovenia to involve women's rights NGOs in preparing its next report.

country reports, and that too many reports simply point to the passing of legislation, without examining practice within the country. Journalists, when reporting such country reports, should look not just at the passing of laws, but also at the practice in the country. NGOs will be helpful in pointing out discrepancies between the legal position and practice within a country.

Convention on the Elimination of All Forms of Discrimination against Women

The Convention on the Elimination of All Forms of Discrimination against Women (adopted in December 1979) is sometimes described as the international bill of rights for women. It provides for equality between women and men in the enjoyment of civil, political, economic, social and cultural rights. Discrimination is to be eliminated through legal, policy and programmatic measures. Temporary special measures to accelerate women's equality are encouraged.

States are required to ensure equality in political and public life and eliminate discrimination in marriage and family life. They must take account of the particular problems of women in rural areas, and their special roles in the economic survival of the family.

The Convention obliges States to modify social and cultural patterns of conduct to eliminate prejudices and customs and all practices based on the idea of the inferiority or superiority of either sex or on stereotyped roles for men and women.

The Committee on the Elimination of Discrimination against Women monitors the Convention. In all 173 States have ratified the Convention including 56 who have signed up to the Optional Protocol for allowing individual complaints. However a large number of countries entered reservations when ratifying the Convention, particularly those applying to discrimination in the 'private' sphere of work, home and family.

The issue of gender-based violence is not specifically addressed in the Convention. In 1992, the Committee on the Elimination of Discrimination against Women extended the general prohibition on gender-based discrimination to include gender-based violence, which it defined as:

“violence that is directed at a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.”

The Committee affirmed that violence against a woman constitutes a violation of her human rights, whether the perpetrator is a public official or a private person. In 1993, the UN General Assembly adopted the Declaration on the Elimination of Violence against Women (resolution 48/104). The Declaration sets out the steps which States and the international community should take to ensure the elimination of all forms of violence against women in public or in private life.

Information about women's rights, the work of the Committee and discussions of country reports can be found on the web site the WomenWatch web site at <http://www.un.org/womenwatch/daw/cedaw/>

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The Convention came into force in December 1984 to strengthen prohibitions on torture and other cruel, inhuman or degrading treatment or punishment. The prohibition against torture is absolute and cannot be justified by exceptional circumstances, states of emergency or wars. Obeying orders cannot be used as a justification. The Convention is therefore effectively binding on any soldier, police officer or State official.

"Torture" is defined as:

"... any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

States must take effective measures to prevent torture. They must train police and the army, review interrogation rules and guarantee prompt and impartial investigation into allegations of torture and protect witnesses.

States have an obligation not to expel, return or extradite a person to a State where he or she would be in danger of being tortured.

The Convention provides for international supervision by the Committee against Torture (CAT), which can consider complaints from a State or (under Article 22) from individuals. As at July 2003, only 55 States had agreed to answer complaints from individuals, and the system of State-to-State complaints was only accepted by 56 States. The Committee can investigate, in cooperation with the State concerned, "reliable information" that torture is being systematically practised in a territory. Again, a number of States that ratified the Convention have not agreed to this system of joint investigation.

Individual complaints to CAT include many about deportation of asylum seekers to countries where they may be tortured. The Committee has said:

"the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable. The author must establish that he/she would be in danger of being tortured and that the grounds for so believing are substantial in the way described, and that such danger is personal and present."

Information about CAT can be found on the UNHCHR website <http://www.unhchr.ch/html/menu2/8/stat3.htm>

Rulings can be found on the University of Minnesota Human Rights Library website <http://www1.umn.edu/humanrts/index.html>

The failure of so many countries to accept CAT hearings from individuals, and the tendency for this provision to be used frequently to try to prevent deportations, gives the statistics a lopsided appearance. Countries against which the greatest number of individual cases have been lodged are Sweden, Switzerland, Canada, France and Australia – not countries that appear near the top of most lists of countries accused of torture.

Most countries in South-eastern Europe have agreed to respond to individual complaints and to complaints laid by other States. They include: Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, the Czech Republic, Greece, Hungary, Serbia and Montenegro, Slovakia and Slovenia.

In deportation cases, the complaint is usually against the country that does not practice torture, alleging that it is about to deport someone to a country

Police failed to restrain mob from burning homes

A State can be held to account under the Convention Against Torture if its forces fail to prevent torture or bad treatment by civilians.

In November 2002, the Committee Against Torture found against Yugoslavia (now Serbia and Montenegro), seven years after an angry mob attacked Roma people in Danilovgrad, Montenegro.

In April 1995, two young Roma men were reported to have raped a young ethnic Montenegrin girl. Police searched houses in the Bozova Glavica Roma settlement and brought into custody more than 60 young Roma men. Later two confessed to the rape. Meanwhile, 200 relatives and neighbours of the raped girl assembled in front of the police station and demanded that all Roma should be expelled from Danilovgrad, and threatened to 'exterminate' Roma and burn down their houses.

The next day police released those they had rounded up and told Roma residents at the Bozova Glavica Roma settlement to leave immediately. That afternoon 400 people descended on the settlement, broke windows and cars and set houses and farm buildings on fire. Cattle were killed and property was looted. Police stood by and watched. Days later the authorities bulldozed away all trace of the Roma settlement.

In November 2002, the Committee found that Yugoslavia had violated Article 16 which says that States will prevent "acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture ... when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." It urged Yugoslavia to conduct a proper investigation, prosecute and punish those responsible and provide the Roma with compensation.

Committee Against Torture — Hajrizi Dzemailj et al. v. Yugoslavia

that does practice torture. This allows CAT to publicise allegations about the country to which someone is being deported. In *Ms PE v France* a German woman complained against France which planned to deport her to Spain where she was suspected of working with a Basque separatist organisation. Ms PE claimed that the information that led a French court to agree to her extradition had been obtained under torture. CAT found against her and allowed the deportation. However, CAT published evidence in which the informant alleged beatings, electric shock, assaults on his testicles and mock executions. He also alleged that the Civil Guards had threatened his sister and threatened to rape his partner. It publicised previous criticism of the Spanish Government. CAT called on Spain to end the practice of extended detention periods where a suspect had no access to a lawyer. A Special Rapporteur of the United Nations Commission on Human Rights was due to make a fact-finding mission to Spain in October 2003 at the invitation of the Spanish Government.

Countries make regular reports to the Committee about their actions to prevent torture. Amongst countries reporting to the Committee in 2003 were Albania, Macedonia, USA and Georgia. Such reports, because they are drawn up by each State, tend to be assertions of good intention. In January 1998 the former Yugoslavia, then under President Milosevic, was able to give itself a clean bill of health in its report, noting in Clause 58 for example:

“the competent authorities conduct frequent checks and analyse the behaviour of the members of the police and the army, medical personnel, as well as the persons discharging public functions or those who are in contact with detainees or prisoners.”

Convention on the Rights of the Child

The Convention on the Rights of the Child was adopted in 1989 and came into force in September 1990. It has become the best-supported Convention in UN history – at least in name. By July 2003 it had been ratified by 192 States. Only two States have not signed (USA and Somalia). However, since children's rights are still widely abused in many countries this enthusiasm for the Convention by no means reflects the real world situation.

The Convention recognises the vulnerability of children (young people up to the age of 18) and says that they should grow up in a family environment, in a spirit of peace, dignity, tolerance, freedom, equality and solidarity.

It set up a Committee on the Rights of the Child to which States must report every five years. States agree to make the provisions of the CRC widely known to adults and to children, and to publicise their own reports to the Committee widely within their own countries. UNICEF is given special status to carry out work at the request of the Committee and to provide technical assistance to countries. The full text of the Convention can be found on the UNICEF website. <http://www.unicef.org>

Convention on the Rights of the Child — highlights

Article 2 Rights must be respected without discrimination.

Article 3 When taking decisions, the best interests of the child comes first.

Article 5 States respect the rights of parents, families and guardians to provide appropriate guidance.

Article 6 Every child has a right to life and **(Article 8)** an identity.

Article 7 A child has a right to a name and nationality and, as far as possible, the right to be cared for by his or her parents.

Article 9 A child will not normally be separated from his or her parents against their will.

Article 11 States will prevent the illicit transfer of children abroad.

Article 12 Children have a right to hold and express views.

Article 13 Children have a right to freedom of expression and the right to access the media.

Article 14 States respect the right of the child to freedom of thought, conscience and religion.

Article 15 Children have the right to freedom of association and peaceful assembly.

Article 16 Children have a right to privacy, and protection against unlawful attacks on their honour or reputation.

Article 17 States will ensure children's access to a diversity of mass media.

Article 18 Both parents have a responsibility to bring up a child.

Continued on next page

CRC — Highlights

Continued from previous page

Article 19 States must protect children from violence, injury or abuse, neglect or exploitation.

Article 21 Adoption should be in the best interests of the child.

Article 22 Refugee children should receive protection and aid.

Article 23 Children with disabilities should live a full life.

Article 24 Children have a right to health.

Article 25 Children in care must have periodic reviews of care.

Articles 26 & 27 Children have a right to social security and an adequate standard of living.

Article 28 Children have the right to education, free at primary level.

Article 30 Children from minorities have a right to their culture, religion and language.

Article 31 Children have a right to leisure, play and recreation and to cultural and artistic life.

Articles 32 & 33 A child must be protected from hazardous or harmful work, and from drugs.

Article 34 States must protect children from all forms of sexual exploitation and abuse, and **(Article 35)** from abduction, sale or trafficking, and **(Article 36)** from all other exploitation.

Article 37 protects children from torture or cruel punishment. Children must never be sentenced to death.

Articles 38 & 39 seek to protect children in armed conflicts.

Article 40 Children need special treatment if they break the law.

Optional Protocols

Two Optional Protocols to the Convention on the Rights of the Child have been widely adopted. The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict came into force in February 2002. This made it:

- Illegal for children to be coerced into military service before the age of 18.
- A war crime to conscript or enlist children under the age of 15 or to use them to participate in hostilities.

The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography came into force in January 2002. It tackles sex tourism, forced labour and offences over the Internet. Its text expresses concern at:

"the significant and increasing international traffic in children for the purpose of the sale of children, child prostitution and child pornography."

Of particular interest to journalists:

- Article 8 protects the privacy and identity of child victims.
- Article 9 says that States must promote awareness "through information by all appropriate means" about harmful effects and preventive measures.

International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

This Convention was adopted in December 1990 to create international standards for the protection of the human rights of migrant workers and their families. Migrants are often restricted in the kind of work in which they can engage. Many fall victim to human traffickers who recruit them under false pretences and some are held under slave-like conditions.

The Convention provides for the establishment of a monitoring mechanism in the form of an international body of independent experts.

Treaties are not enough

These are just some of the conventions and treaties which impact on human rights. There are 23 Treaties which relate to the advancement of the rights of women and children, including a convention on consent to marriage, a protocol against the smuggling of migrants by land, sea and air, and a convention on the nationality of married women. If treaties secured rights we would all live in peace, security and happiness. But Governments do not have the will, means or ability to deliver these rights. The Committee system of enforcement, together with Special Rapporteurs who can be sent to investigate the situations in member States, can highlight abuses. But the system is very slow and only works with the consent of the State concerned. Moreover the Conventions seem to get longer, without necessarily becoming more effective. None of the formal measures will substitute for having a vigorous and active media to police rights and to hold governments to account. ■

Chapter 3

How human rights are supposed to be enforced

When States accept a human rights instrument, they usually sign a convention and must then take steps to ratify it through their domestic procedures. Signature means that they accept the instrument and intend to become bound by it. They become legally bound when the convention or other instrument enters into force, following ratification. Internal legislation is then required to implement the new obligations. However, in the constitutions of some countries international human rights conventions take precedence over domestic law, so that judges who are well informed and trained in human rights legislation can override domestic laws in conflict with the country's international obligations.

When they do sign up to a Convention States may enter a reservation (which may interpret or limit a clause), derogate from some clauses (i.e. they allow themselves to break them) or, in special circumstances, they may suspend a convention for a period of time.

However, this is not just a matter of signed treaties. As we saw in the last chapter, the core human rights conventions – known collectively as the International Bill of Human Rights – are now held to be part of customary international law. States cannot escape from the most fundamental rights, which apply at all times and in whatever circumstances, and cannot excuse torture or crimes against humanity.

The main responsibility for upholding human rights in a country lies with the State. It must take legislative and executive action to carry out what it has promised to do, and to ensure that citizens understand and follow human rights rules.

Where internal legislation has incorporated a human rights treaty into national law, or where a general human rights law has been passed, then the primary responsibility for enforcing human rights lies with the courts. Where human rights standards have been accepted into law these should take precedence if laws appear to be in conflict.

However, domestic judges often have little or no training in human rights law and legislation to follow up human rights agreements may be patchy. Enforcement by domestic courts within many countries is therefore problematic, especially if the citizens of that country are poorly informed about the law and their rights.

Where internal legal systems have been exhausted, it is open for a case to be taken to an international court, if the State recognises the jurisdiction of the court. If the Court rules that a State has broken its human rights obligations it will be expected to alter its domestic legislation to comply, or overrule the domestic laws which contradict international obligations.

International Court of Justice

The International Court of Justice at The Hague is the judicial organ of the United Nations, established by its Charter and made up of 15 independent judges elected by the General Assembly and the Security Council. It is not a human rights court, although its rulings can be based on the UN Charter and therefore impact on human rights. Only States can be parties in cases before the Court. Neither individuals nor non-governmental organisations can take cases to the Court, whose main function is to settle border disputes and other disagreements between States about their international obligations.

From time to time, the Court has taken decisions, in either an adjudicator or in an advisory capacity, on questions regarding the existence or protection of human rights. The Court's deliberations on these issues are of considerable importance, since they play a significant role in defining international obligations. However, not only is the court inaccessible to ordinary citizens, but even when a State lays a complaint before it, the procedure can seem painfully slow.

Nuclear war? — It's none of your business

In August 1993 the World Health Organization asked the ICJ for an advisory ruling on whether the threat or use of nuclear weapons would be legal, given the impact on the health of civilian populations. The WHO asked: "In view of the health and environmental effects, would the use of nuclear weapons by a State in war or other armed conflict be a breach of its obligations under international law including the WHO Constitution?"

In July 1996, the ICJ decided (on the casting vote of the President) "that the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law." However, the court went on to say that "the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake."

The court also ruled by 11 votes to 3 that in fact it was not able to give an advisory opinion because the WHO was not entitled to ask the question. It ruled that the ability of the WHO to deal with the after-effects of a nuclear strike was not dependent on the legality of their use.

The slow wheels of justice

1. Bosnia-Herzegovina

In March 1993, Bosnia and Herzegovina lodged a case alleging genocide against Yugoslavia. The allegation was that Yugoslavia, through agents and surrogates, "has killed, murdered, wounded, raped, robbed, tortured, kidnapped, illegally detained, and exterminated the citizens of Bosnia and Herzegovina". (Yugoslavia counter-claimed but withdrew this in 2001.) The case is still 'progressing' a decade after it was brought although Yugoslavia now no longer exists. This case appears to have completed its technical stages, and the substantive issues may go before the court in 2004.

2. Croatia

In July 1999 Croatia instituted proceedings against the Federal Republic of Yugoslavia alleging violations of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, between 1991 and 1995. Croatia alleged that ethnic cleansing in Croatian territory had left 20,000 people dead, 55,000 injured and 3,000 people unaccounted for. This case is still pending, with the parties exchanging objections, observations and submissions. There is likely to be an oral hearing on those objections and submissions before the case can go ahead. As of September 2003, the case was a long way from hearing the substantive issues, and may not do so before 2005.

3. Federal Republic of Yugoslavia

In April 1999 the Federal Republic of Yugoslavia instituted proceedings before the Court against Belgium, Canada, France, Germany, Italy, the Netherlands, Portugal, Spain, the United Kingdom and the United States of America, over the NATO bombing of Serbia. Yugoslavia maintained that the States "violated [their] international obligation[s] not to use force against another State". It alleged that the NATO countries had failed to protect the civilian population, and abused "fundamental rights and freedoms" in a way "calculated to cause the physical destruction of a national group".

Yugoslavia asked the Court to rule that the ten States be obliged to stop the bombing immediately and to pay compensation.

The court held a three-day hearing from 10 to 12 May 1999, less than a fortnight after the applications were made. It quickly ruled that it lacked jurisdiction in the cases of Spain and the United States of America because those countries had entered reservations about the jurisdiction of the court. In the other eight cases it said it lacked *prima facie* jurisdiction — and could not issue provisional measures.

However, The Court said that the claim raised "very serious issues of law". In March 2002 it extended various deadlines for a further year. The remaining eight States have lodged objections and these must be resolved before the case can be heard (providing they do not bring the case to an end). Again there seems (as at September 2003) little prospect of substantial progress on this case for many months, and maybe even years.

Ocalan trial 'not independent and impartial'

In March 13 2003, The European Court ruled that Turkey had not given a fair trial to Abdullah Ocalan, the Kurdish rebel leader who is now serving a life sentence on an island prison. Ocalan was the leader of the Kurdistan Workers Party, PKK, which fought during the 1990s for a separate Kurdish state.

He was convicted in 1999 of treason and sentenced to death. The sentence was later commuted to life imprisonment. Turkey abolished the death penalty in 2002 as part of a process of meeting European Union standards.

The European Court ruled by a majority of six to one that the trial of Ocalan had not been fair because his access to lawyers was restricted and because a military judge took part in the proceedings. The court ruled that the court was not "an independent and impartial tribunal."

The court rejected a claim that Ocalan, who is in solitary confinement on the island of Imrali, was subject to "inhuman and degrading" conditions.

European Court of Human Rights

There are two regional human rights courts, the Inter-American Court of Human Rights, which is outside the scope of this book, and the European Court of Human Rights, which was set up in 1959 in Strasbourg to deal with violations of the 1950 European Convention on Human Rights (the Convention for the Protection of Human Rights and Fundamental Freedoms). In 1998 a full-time Court was established. The court now accepts cases from individuals, once every legal avenue inside the country has been exhausted.

The court receives 700 letters and 200 telephone calls a day about new cases, and receives 20,000 preliminary inquiries each year. It has a reputation for vigorous judgements and relative speed. In 2002 it dealt with 844 cases.

Some rulings (see, for example, the boxes on the Ocalan trial in Turkey and on the ruling against the UK) challenge injustices by States on matters of political as well as humanitarian importance.

Other cases may not have such a high political profile, but nevertheless raise fundamental political and ethical questions about how a State treats subjects, particularly when they have been arrested. The Court also deals with cases which may appear to be relatively trivial, although very important to the individuals involved. Many of these cases relate to unacceptable delays

UK failed to investigate collusion in murder

In July 2003 the Court found that the United Kingdom had failed to uphold Article 2 of the Convention ("Everyone's right to life shall be protected by law"), by failing properly to investigate allegations of collusion by security forces in the murder of Belfast solicitor Patrick Finucane.

Finucane was shot and killed in 1989 in front of his wife and children by two masked men who broke into their home. He had received a number of death threats, including some said to have emanated from within the Northern Ireland police force, the Royal Ulster Constabulary. A Loyalist group, the Ulster Freedom Fighters (UFF), claimed responsibility but one of the weapons had been stolen from the army's Ulster Defence Regiment. A member of the illegal Ulster Defence Association was arrested for the murder but acquitted.

In April 2003 an investigation by senior police officer Sir John Stephens from the (London) Metropolitan Police concluded that there was collusion by security forces in this killing and another murder.

The European Court said that an inquest into the death of Patrick Finucane "failed to address serious and legitimate concerns of the family and the public." The Court said: "There were indications that informers working for Special Branch or the security forces knew about, or assisted in, the attack on Patrick Finucane."

in court proceedings, under Article 6.1 of the Convention which says that, in the determination of civil rights and obligations,

“everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal...”

Although these cases may appear not to be 'serious' breaches of human rights, they reflect an unacceptable relationship between a State and citizens. The Convention says that delays in hearings, even when the case at issue is not fundamental, can be construed as human rights abuses. No doubt, the fact that a case is taken to Europe may spur a court that has been delaying a case into action. Those cases that reach the European Court are likely to have a profound impact on how courts are run in a country, because of the embarrassment to the States concerned. Journalists who are monitoring courts in their countries should be keeping an eye on how long cases are taking to resolve, and seeking information from the Ministry of Justice as to the average time that different kinds of cases take, and identifying individual cases that have taken an excessively long time.

In many cases that are taken to the European Court a 'friendly settlement' is reached between the State and the plaintiff after the Court agrees to hear a case but before it goes to trial.

The number of cases lodged at the European Court would at first sight seem to indicate that human rights are most widely abused in Italy, France, Turkey and the UK, because these countries had the highest number of recorded judgements against them in 2002. Indeed Italy, with 325 violations had more adverse judgements than the rest of Europe put together. Many of these cases are about the length of civil, administrative or criminal proceedings in Italy.

Obviously population size has something to do with the total number of cases that go forward. However, to some extent judgements are also an indication of people's awareness of their rights and of their awareness that they can get redress through the European Court. In countries where there is a well-developed legal system and lawyers know that they can seek to defend human rights in the European Court, people are more likely to take cases.

A total of 93,949 applications were lodged with the Court in the years 2000, 2001 and 2002. The largest number of applications over this period were lodged against Russia (12,686), Italy (12,419), Poland (10,758), France (8,553), Turkey (6,652), Ukraine (6,173), Romania (5,880), Germany (4,966) and the United Kingdom (4,552).

Countries from South-eastern Europe facing cases from this three-year period include: Bulgaria (1,588 cases), the Czech Republic (1,472), Slovakia (1,442), Croatia (1,099), Hungary (1,012), Greece (890), and Slovenia (702). Only 53 cases came from Albania, 52 from Bosnia and Herzegovina, 119 from Cyprus and 181 from Macedonia. This may indicate that there are few human rights abuses in those countries, but it is more likely to indicate that journal-

When court delays lead to injustice

Poland — 20 years to divide up a house

In July 2003 the European Court found that the Polish Government had breached article 6.1 of the Convention. A 62-year-old Polish man (RW) and his wife divorced in 1982 and his ex-wife applied to a court to have 147 items of property and a shared flat in a housing co-operative building divided between them. It took the courts 20 years to decide the case, during which time they twice lost the case files. The Court awarded RW 8,000 Euro in damages.

Croatia — car requisitioned 11 years ago

In July 2003, the Court ordered the Croatian Government to pay 4,500 Euro damages to a company whose vehicle had been impounded by the Croatian Military Police in Banja Luka (now part of Republica Srpska in Bosnia and Herzegovina) and given to the Croatian Defence Council. The vehicle was requisitioned in August 1992, but 11 years later the Croatian Government had not yet resolved whether and how compensation was to be made for acts by members of the Croatian army or police during the war. The court found there was a breach of Article 6.1.

Compensation for lost homes

Six Slovaks lost their homes in Ústí nad Labem when the former Czechoslovak Republic divided into two separate States in 1993. Their homes were in the territory which became part of the Czech Republic. Czech Police ordered them to go to Slovakia, and emptied out their flats. When they found that Slovakia would not offer them housing or benefits, they returned to the Czech Republic and demanded their homes back. They claimed that they had been subjected to inhuman or degrading treatment, had not been treated with respect for private and family life and that court hearings and remedies had been unacceptably delayed. The Czech Republic offered to pay 30,000 Euro to the six, who are now all citizens of the Czech Republic. The case was then dropped.

ists have work to do in terms of explaining what human rights people have and in publicising cases that succeed at the European court.

The number of cases that go to court would be reduced if more European countries incorporated human rights legislation into their national laws and trained their courts to handle cases internally. The training of judges on human rights legislation is an important area for journalists to investigate.

The European Court has made a number of important rulings in recent years on press freedom and in particular on the ability of journalists to protect sources. We will look at the most significant cases in Chapter 4.

The International Criminal Court

There have been calls for an international body to deal with crimes against humanity since the First World War. Lawyers studied the feasibility of an International Criminal Court (ICC) following the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, but progress was blocked, because some States refused to agree to international courts having any jurisdiction over their citizens. This seems to be a continuing concern of powerful States and is true today, most notably in attempts by the United States of America to weaken the International Criminal Court.

The establishment of International Criminal Tribunals for the Former Yugoslavia (in 1993) and Rwanda (1994) revived the idea. It was finally agreed at a five-week conference in Rome in June and July 1998, when almost 150 nations voted in favour of a permanent International Criminal Court. This has the power to investigate and bring to justice individuals who commit the most serious crimes of concern to the international community, such as genocide, war crimes and crimes against humanity.

However, the USA, China and some other powerful countries voted against and the USA has since refused to bind itself to the court, claiming it infringes its right to sovereignty. The USA has concluded bilateral agreements with many States, including Albania, Bosnia-Herzegovina, Macedonia and Romania, granting immunity to US citizens from applications to the international court. These agreements were concluded through a mixture of economic incentives and horse-trading. This has cast doubt over the ability of the court to deal fairly with the most serious allegations when citizens from smaller and weaker countries will have to face the court, while those who act on behalf of the most powerful nation on earth may not. The USA says that it will try cases involving its own citizens itself, but if complaints are made, for example, about the actions of US forces in Iraq, it is difficult to see that the world would accept that as fair justice.

However, the court took jurisdiction in July 2002 and its first prosecutor, Luis Moreno Ocampo, was appointed. He is widely regarded as energetic, independent, fair and impartial. The court will hear its first cases in 2004.

The Court is a permanent institution based at The Hague in Holland with 18 judges elected by an Assembly of State Nations made up of States which

sign up to the Statute. The prosecutor can initiate actions himself, as well as acting at the request of States or the Security Council.

The court is designed to be complementary to national judicial systems and will not act where someone is already subject to a proper trial in an independent State. It would prefer trials to be carried out within States but will act where this is not happening.

The court has the power to investigate and punish the most serious crimes of concern to the international community: genocide, crimes against humanity, war crimes and aggression.

Crimes against humanity include torture, rape, sexual slavery, enforced prostitution, enforced disappearances, apartheid and forcible transfer of populations as well as murder, extermination, enslavement and imprisonment, when any of these offences are part of a widespread or systematic attack on a civilian population. The court has not yet defined 'aggression'. When it has done so it will be able to make judgements in some cases of armed conflict between States.

Problems in court for journalists

The special International Criminal Tribunals have been at work for the best part of a decade. They play a triple role in bringing the guilty to justice, allowing people whose rights have been abused to give evidence and allowing the public to hear the truth about what happened. Coverage in countries of the former Yugoslavia shows there is widespread interest in the hearings.

However, if international courts are to become focal points for judging human rights abuses, then media from affected countries need unfettered access to report the proceedings of these courts. This is already a problem and could become worse when the International Criminal Court starts to hear cases.

During 2002 and 2003 journalists from Serbia and Montenegro and from Bosnia-Herzegovina were severely hampered in reporting the International Criminal Tribunal for the Former Yugoslavia (ICTY) because of Dutch visa restrictions. Most were working on 90-day tourist visas. When these expired during long cases, they were told to leave the country and reapply – sometimes waiting months to regain access. By contrast, journalists from the USA, EU and Croatia (which was exempt from the visa restrictions) were able to come and go freely.

The Justice Ministry, in charge of immigration, has been aware of the problem since 2002 when Thomas Verfass, President of the Association of Journalists at the International Criminal Court (AJICC), started to take up cases and Dutch MP Bert Bakker called on Ministers to act. Aidan White, General Secretary of the International Federation of Journalists, has called on Justice Minister Piet Hein Donner to remove the barriers.

“The hurdles placed in their way are excessive, out of step with the rest of Europe and constitute a challenge to the journalists' right to report.

Visa rules disrupt journalists

In September 2002 the prosecution opened its case against former President Milosevic relating to the wars in Croatia and Bosnia-Herzegovina. But no reporters from Bosnia-Herzegovina were present. Emir Suljagic, from *Dani*, the only permanent correspondent from Bosnia, applied to renew his tourist visa but had to wait three months in Sarajevo for a temporary residence (MVV) permit instead. Other Bosnian journalists received visas after the opening statements were over. Sead Numanovic from the daily *Dnevi Azaz*, applied for a visa to cover the testimony of High Representative Lord (Paddy) Ashdown. The Tribunal changed the date of Ashdown's appearance but the journalist was told he was too late to change his application.

In 2003, Serbian journalists were affected. Radosa Milutinovica, from *Beta News Agency*, waited three months for a new visa. Zlato Cobovic (*FoNet*) was told to apply for an MVV that would have left the agency without coverage for three months. He wrote: "It is impossible to believe that I am treated almost as a criminal element in this manner especially since I have proven myself reporting from the Tribunal from the beginning of Milosevic's trial."

We end up with a form of censorship over a criminal process that should be open to the whole world, particularly to those people who have been the victims of injustice."

The problem is not just one of delay. but also of cost, because MVV temporary residence permits are expensive, and way beyond the means of media that are struggling to survive. Journalists from the region have needed the support of NGOs to meet the bills for the costs of covering the Tribunal.

Miro Klarin, Editor-in-chief of the Sense News Agency, says that journalists need uninterrupted access to the Tribunal to develop expertise. There is concern that the delays and high costs will have an even worse effect on journalists from Africa, when the International Criminal Court opens cases at The Hague next year.

Thomas Verfuss told AJICC members:

"The Netherlands just doesn't seem to be aware of its responsibilities. The country volunteered to host war crimes tribunals like the ICTY and the ICC with the foreseeable consequence that journalists from war torn – and thus poor – countries will come to this rich country to cover trials about crimes committed in their countries."

The Tribunal itself has tried to intercede with the Ministry and expressed concern at the delays. A spokesman said:

"The Tribunal is concerned that journalists from the former Yugoslavia are able to cover trials that have a bearing on their readers or viewers. It is important that the media in the former Yugoslavia can report on the tribunal on a day to day basis."

However, by September 2003, the Dutch Justice Ministry still did not accept that there was a serious problem. A spokesman said that journalists should plan ahead and apply for a tourist visa or MVV, which would normally be granted in 8-9 weeks.

"We always handle requests as quickly as possible. If you want to work in the Netherlands you have to abide by the rules. It is the same for journalists as for other people. It should not be a problem if you ask for the right visa at the right time."

Chapter 4

What human rights instruments say about journalism

The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights both lay out the right to freedom of expression in Article 19. The UDHR says it most simply: **“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media, and regardless of frontiers.”**

Article 19

Neither these clauses, nor the European Convention on Human Rights (Clause 10) give any special rights to journalists or journalism, except by implication. The right is not to publish, but to freedom of expression. The rights belong not especially to journalists but to all members of the public. Journalists have the same right to freedom of expression as held by other people. However, we have a special role to deliver rights for other people. Journalists are facilitators in helping people to achieve their right to free expression.

Limitations on freedom of expression

Article 29 (2) of the Universal Declaration of Human Rights says:

“In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”

Article 19 of the ICCPR says in its final part (summarised):

The exercise of freedom of expression carries special duties and responsibilities. It may therefore be subject to certain restrictions but only where provided for by law

AND

where necessary for: the respect of the rights or reputations of others; the protection of national security or of public order, or of public health or morals.

The International Covenant on Civil and Political Rights

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals. *Article 19*

The European Convention on Human Rights

“Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.” *Article 10*

The European Convention on Human Rights says that States may take steps to license television and cinema. It adds:

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society.

Article 10

So how far does this allow States to restrict the right to freedom of expression?

The Human Rights Committee, which oversees and monitors the ICCPR, said (General Comment No 10) that the right to hold opinions cannot be restricted. Only the right to freedom of expression can, under limited circumstances, be restricted. It also said that no restrictions may be imposed which may jeopardise the right itself.

Many national Supreme or Constitutional courts have stated that freedom of expression and opinion are fundamental rights and essential to democracy or the guaranteeing of other fundamental rights. The First Amendment to the Constitution of the United States of America says:

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

In April/May 1991 the UN and UNESCO held a seminar in Windhoek, Namibia on promoting an independent and pluralistic African press. The Windhoek Declaration said:

“Consistent with Article 19 of the Universal Declaration of Human Rights the establishment, maintenance and fostering of an independent, pluralistic and free press is essential to the development and maintenance of democracy in a nation, and for economic development.”

However, such a declaration has never been incorporated into a human rights instrument.

The Human Rights Committee has explained under what circumstances limitations should apply to the freedom of expression. In summary, limitations are permitted in order to:

- protect people against inaccurate and offensive statements,
- protect people's privacy in certain cases
- allow the State to protect its security
- prevent hate journalism especially that which promotes racism, or hatred against other nationalities or religions, and
- prevent propaganda for war.

The last three of these could be said broadly to be ‘to protect the public interest’ although this is a phrase that is often abused. Journalists operate within a national legal framework that interprets these principles. Decisions

by national courts are liable to challenge at International Courts.

The European Convention on Human Rights lists in Article 10 (2) legitimate restrictions on freedom of expression as:

- 1 those that are in the public interest (national security, territorial integrity, public safety, prevention of disorder or crime, protection of health and morals)
- 2 competing individual rights (protection of reputation or disclosure of information received in confidence),
- 3 the authority and impartiality of judges.

There is a four-part test for deciding whether a restriction on freedom of expression is legitimate:

- 1 Is the restriction provided by law?
- 2 Is the restriction as stated in the law sufficiently clear?
- 3 Does the restriction serve one of the limited purposes mentioned in the text (e.g. protection of public order)?
- 4 Is the restriction necessary in a democratic society?

The ECHR applies the principle of proportionality. In other words, restrictions must:

- be sufficiently precisely prescribed by law for citizens to act on;
- be genuinely aimed at achieving one of the grounds mentioned above;
- be necessary in a democratic society;
- reflect a pressing social need;
- be proportionate to the legitimate aim pursued;
- be justified by the public interest;
- not be too broad.

The Court applies a ‘margin of appreciation’ allowing States to adopt principles according to their own national conditions and culture. However, the Court has made it clear that restrictions cannot be used to ban material simply because it offends or shocks the State or some citizens. The Court ruled:

“The Court's supervisory functions oblige it to pay the utmost attention to the principles characterising a ‘democratic society’. Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man. Subject to paragraph 2 of Article 10 (art. 10-2), it is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no ‘democratic society’. This means, amongst other things, that every ‘formality’, ‘condition’, ‘restriction’ or ‘penalty’ imposed in this sphere must be proportionate to the legitimate aim pursued.”

Paragraph 49 December 7 1976. Judgement in Handyside v UK

There are some ironies about the European Court "offend, shock or disturb" declaration. First, this defence of freedom of expression came in a judgement *in favour of* the Government and *against* the right to publish. The Court ruled that the UK Government had not breached the Convention by seizing copies of *The Little Red Schoolbook* and prosecuting the publisher (Richard Handyside) for obscenity. The Court said that the UK had been trying to uphold public morals within the UK laws, and had not broken the Convention. The second irony was that the prosecution came about largely because of a press campaign demanding that the book be banned. Sections of the British media were outraged because the book was aimed at children aged 12 and upward, took a permissive attitude to cannabis, homosexuality, and pornography, and failed to promote marriage. The third irony is that the ruling made the book even more famous and ensured that the copies that had escaped seizure were avidly read. A second edition with amendments was published without prosecution and sold out. However, the judgement is mainly remembered today, not for the outcome, but for the ringing endorsement of freedom of expression.

Hate speech

- 1. Any propaganda for war shall be prohibited by law.**
- 2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.**

Article 20 International Covenant on Civil and Political Rights

Hate speech is usually regarded as material that demonises a nation, ethnic group or other social groups in such a way that it is likely to lead to violence and put lives at risk. Racist material is outlawed in many countries and there have been many discussions about making hate speech a criminal offence.

The conflict in the former Yugoslavia saw the media used as weapons to justify ethnic cleansing by whipping up hatred against ethnic groups. Television, radio stations and newspapers all played a role in creating public support for, or acceptance of, what are now seen as war crimes. Journalists, however, have not been prosecuted in these countries, although some have been driven out of the profession. The war crimes tribunal has confined itself to those who committed the crimes, rather than those who laid the groundwork for them.

In Rwanda four media executives were indicted on charges that included that they incited genocide in 1994. Hassan Ngeze, former editor of the Rwandan newspaper *Kangura*, has been tried on charges of conspiracy to commit genocide, direct and public incitement to commit genocide, complicity in genocide and crimes against humanity. The verdict was due in December 2003. According to the indictment *Kangura* was the best-known example of

Government-sponsored hate propaganda, printed free of charge by the National Printing Press, and distributed in part by the head of Military Intelligence in the Rwanda Armed Forces, Colonel Anatole Nsengiyumva. The indictment accuses the newspaper of repeating calls by the authorities for the elimination of Tutsis, in the words: "Let us learn about the Inkontanyi plans and then let us eliminate every last one of them". The indictment says: "Hate propaganda, presented in its crudest form, appeared in the publication of the Hutu Ten Commandments in the Kangura newspaper. The Hutu Ten Commandments not only denigrated and persecuted Tutsi women but called on all the Hutu to hate and despise the Tutsi population." Hassan Ngeze pleaded not guilty and said that freedom of expression had been put on trial. He argued that the prosecutor had quoted selectively from his newspaper.

Some argue that the organs had virtually ceased to be media in any real sense and had become weapons of war. The same can be said of Radio Television Serbia, and much of the printed media in the former Yugoslavia where individuals and ethnic groups were targeted in such a way that violence was inevitable. Certainly it is possible to draw a line between direct exhortations to violence and other hostile material. But States provide no safety net once the media has been subjugated to the politicians. The language may be a mark of how 'sophisticated' the audience has become at interpreting media messages. Before and during the wars in the former Yugoslavia, one motor in the drive towards conflict was that media began to define everyone according to their ethnicity or religion, often using trigger words to make them feared and hated. The most important thing about any individual became his or her ethnicity and association with the past. Statutes and codes of conduct are no help if nobody uses them. *Radio television libre des mille collines* in Rwanda broadcast under a statute that proscribed broadcasts "likely to incite ethnic hatred, violence and division".

But it is also possible to use temperate language and still promote intolerance and ethnic discord. Media resort relatively rarely to the extremes of hate speech which make a direct appeal to violence. But journalists also need to avoid "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination or hostility". This can appear much more respectable than ruffian calls for violence.

For example, in August 2001 when Macedonian peace talks were at a crucial stage, the respectable Greek national daily *Ta Nea* wrote: "Informed sources in Athens predict that 'it is difficult for Skopjans and Albanians to coexist in a multicultural state. The demographic reality itself does not allow for that. Today's 70-30 shall be tomorrow's 50-50. The Albanians have the largest population growth in Europe. It is not to the Skopjans' benefit to coexist in the same state as them'."

(Quoted by Athamadia Baboula and Lina Roussopoulou in "Shedding light on an invisible crisis", in *Macedonia: The Conflict and the Media*, published by the Macedonian Institute for Media, 2003).

This passage certainly does not use 'hate speech' and there is no call to vio-

Radio des mille collines called for slaughter of Tutsis

In May 2000, Belgian journalist Georges Ruggiu, from *Radio television libre des mille collines* (RTL) in Rwanda, pleaded guilty to inciting killings during the genocide of 1994. According to the indictment: "Broadcasts over RTL promoted ethnic hatred and incited ethnic violence. The broadcasts identified individuals by name, indicated the hideouts of targeted citizens and as a result, thousands of citizens were massacred. The broadcasts described the entire Tutsi population as the enemy and called on the Hutus to finish off the 1959 revolution." One broadcast said: "It should be stressed that people must bring a machete, a spear, an arrow, a hoe, spades, rakes, nails, truncheons, barbed wire, stones and the like, in order, dear listeners, to kill the Rwandan Tutsis, who are currently in the Ituri District. They must attack them. Wherever you see a Rwandan Tutsi, regard him as your enemy. We shall do everything possible to free ourselves from the grip of the Tutsis. Open your eyes wide, those of you who live along the road. Jump on the people with long noses, who are tall and slim and want to dominate us."

Closing TV station was not the answer

At an IFJ human rights course in Albania, participants discussed an incident on Mirror TV in Romania. The leader of an extreme nationalist party was given eight hours of TV time to abuse Roma, Jews and Americans with minimal interruption from his host.

The National Council for Radio and TV then closed the station. The view of journalists on the course was that the show was unacceptable, and that the station owner and journalist in charge deserved to be punished, but that it was unacceptable for the station to be closed. Fines and censures imposed by organisations of professional journalists would have been appropriate.

lence. However, it encourages one group not to live with another in a State where an ethnically fuelled conflict had already claimed more than 200 lives. The paper's logic is that the agreement that was eventually signed should not be agreed by ethnic Macedonians, simply on the grounds that they should not want to live in a State where ethnic Albanians may eventually be as numerous as they themselves are. There does not seem to be any other justification in this passage to reject the peace deal other than an appeal to ethnic fear. The alternative at the time appeared to be more shooting and more lost lives. This is not hate speech but an example of what we might call ethnic intolerance.

Journalists are not in favour of laws that inhibit the rights of freedom of expression, even where writers and broadcasters express strong views which may be unpopular. That, after all, is one test of a free media. Journalists therefore have a strong interest in self-regulation, through codes of conduct that are enforced, to take on those who peddle racial malice. If there is a strong enough professional collegiate body of opinion that will act as watchdog against assumptions of ethnic superiority, it will become harder for 'intolerance speech' to become the mainstream in media and for 'intolerance speech' to turn to 'hate speech'. If there is effective self-regulation it can also ensure that these restrictions on inciting national, racial or religious hatred do not become an excuse for more widespread censorship.

This is not the preserve of a few countries in times of war. Asylum seekers in Western Europe have often been depersonalised in tabloid media and presented as a group to be feared and rejected. This kind of reporting plays on people's fears. It tells one ethnic group that it is weak and at risk from the other. It portrays both ethnic groups as mutually incompatible. Media often use individual cases of crime to present a paradigm of one group as criminal and the other as victims.

Some have called for stronger legislation and the Council of Europe has made proposals to make hate speech on the Internet a criminal offence. The majority view amongst press freedom groups in the United States is that such legislation is incompatible with the First Amendment on freedom of expression. Material on the Internet, a medium without national borders, could result in prosecution in one part of the world but not another. The BBC's monitoring unit has started monitoring the Internet for hate speech and will report to the Foreign Office as well as to the news teams.

The International Federation of Journalists has supported self-regulation within the media rather than legislation, as experience has shown that hate speech laws, however well meant, are used to silence media on a range of issues. Recently the IFJ was asked to consider adding a new clause to its Code of Conduct, that a journalist should not knowingly produce or process material likely to endanger human life. The idea is that this would strengthen the hand of media workers to try to prevent such material being distributed. The issue will be discussed again, but there are problems with definitions.

Journalists need to develop a sharper and clearer approach to ethnically divisive coverage. This cannot be done through granting the State greater powers to censor or to ban media. It can be done through promoting journalism that sees people's ethnicity as just one part of what makes them who they are, and by journalism that shows there are great differences in people of the same ethnicity, and investigates (and therefore usually blows apart) the ethnic myths that fuel conflict. If we wrote and broadcast more about ethnicity and identity, rather than less, we might contribute to greater understanding.

Journalists, defamation and privacy

Journalists have to be aware of national legislation that protects people's rights to privacy and their right not to have their reputation unfairly damaged. Such national legislation must accord with the principles outlined in the Covenant on civil and political rights, which says:

“No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

“Everyone has the right to the protection of the law against such interference or attacks.”

Article 17 ICCPR

The International Federation of Journalists and press freedom bodies say that this protection is properly observed by giving members of the public a right to sue in a civil court for publication of allegations that are untrue and damaging. Journalists should never be successfully sued for what they can show to be true, and where journalists do libel someone the appropriate penalty is a fine, never imprisonment. Moreover fines should reflect the seriousness of the offence and ability to pay. Fines should not be used to shut down media and should not be used to prevent publication. Journalists have a duty of care for what they write and publish and the damages imposed on untrue and defamatory publications can reflect the degree of recklessness on the part of the journalists, taking into account for example such things as whether the person defamed was given an opportunity to rebut allegations.

Article 17 gives everyone an equal right to protection from unlawful interference and unlawful attacks. However, in many countries politicians take for themselves a right to greater protection, meting out heavy punishments to journalists or media who criticise them, or protecting themselves through laws which ban “insult to the State”. Human Rights instruments do not support such laws or rules. Indeed they contravene Article 3 of the Convention which says:

“The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.”

44

Exposing corrupt official 'in the public interest'

In 2001, Tomas Smrcek was cleared of breaching the Czech Secrecy Act after he published a classified Government document to expose a senior official who was trying to get a friend off a drink driving charge. A court accepted that he had acted in the public interest. Senate Deputy Chairman Jan Ruml said that protection of classified documents "cannot be abused to the detriment of a journalist who is obliged to inform the public".

Closure threat 'unconstitutional'

In Croatia a weekly satirical journal, *Feral Tribune*, was brought to the edge of extinction after courts fined it 27,000 Euros and froze its bank accounts. It was convicted of 'moral damage' and 'cosmopolitan opinions and views' for articles criticising the Mestrovic Foundation and one of its attorneys. The charges were laid under a penal code article that the Constitutional Court had declared unconstitutional. IFJ General Secretary said that the laws were: "archaic, intolerant and should be rendered obsolete."

In April 1994, the Constitutional Court of the Czech Republic abolished the offence of defaming government officials. A provision against defamation of the president and the Czech Republic was retained until September 1997 when it was repealed. Under the old law journalists could, in theory, be jailed for up to two years. However, repealing the laws was not enough to protect the media. In 2001 the Czech Prime Minister Milos Zeman sued the weekly *Respekt* for defamation after it referred to "the corrupting behaviour of Ministers - beginning with the youngest, Brezina and ending with the oldest, Gregr." He asked for US\$4.5 million in compensation, "so that *Respekt* finally ceased to exist". The attempt was widely criticised as an attack on media freedom. In 2002 Zeman resigned as Prime Minister and the case stalled.

The IFJ promotes the involvement of journalists in self-regulatory bodies, such as a properly constituted Press Council, that are free from State control and which can hear complaints and uphold standards.

However, cases are also brought to try to close down publications by imposing huge fines. This was common practice in Serbia under Milosevic, and can still happen in other countries. Official attempts to punish journalists are also often linked to attempts to cover up improper conduct by politicians or officials. Journalists need to be able to rely on a defence that publication is in the public interest.

Attacks on journalists can be abuse of power on a small or large scale. In Bulgaria a theatre critic was dismissed from her job for criticising a play written by a politician, while an editor was sacked simply for trying to establish who owned his paper.

In September 2003 the Zimbabwe Government closed the only independently owned daily newspaper, the *Daily News*, under the Access to Information and Protection of Privacy Act (AIPPA), which imposes a stringent registration and licensing process for all newspapers and journalists in the country, renewable annually. More than a dozen journalists were charged under the media law, which President Mugabe signed soon after his reelection in 2002. The matter was before the courts as we went to press. When there was a similar threat to the Sunday newspaper *The Standard* and the *Zimbabwe Independent*, Junior Information Minister Jonathan Moyo was quoted as saying: "Really, we should shut these papers down because they are trash, they injure our national interest".

The Southern African Association of Journalists (SAJA) condemned the closure of the *News* as "a concerted effort by the Zimbabwean authorities to silence independent voices in the country." It was also condemned by the International Federation of Journalists (IFJ) and by the International Press Institute (IPI).

Sometimes attacks on freedom of expression crop up in the most unlikely places. In March 2003 *Reporters Sans Frontières* staged a protest during a meeting of the UN Commission on Human Rights to protest over a decision to appoint Libya to chair the body. In July 2003 the UN Economic and Social

Council (ECOSOC) suspended RSF's consultative status (i.e. its right to attend and speak at consultations) for a year. Libya and Cuba requested the vote, supported by 25 countries including China, Iran, Pakistan, Libya, and Zimbabwe. Aidan White, IFJ General Secretary, wrote to UN Secretary General Kofi Annan and to the UN High Commissioner for Human Rights Sergio Vieira de Mello, saying:

“We may not agree with the style of protest, but this suspension is wholly unjustified. It is a tragic sign of the times that freedom to dissent which many of these countries have outlawed at national level, is now being curtailed on a global level. It looks increasingly as though the UN human rights agenda is being hijacked by governments dedicated to censorship and intolerance of dissent.”

Protection of sources

To function effectively journalists need sources – people who tell us things, often at great risk to themselves. Journalists need to be able to protect the identity of those sources. This ability is put at risk by national courts and by government departments that seek to punish those who leak official information and discourage others from doing so in future.

In a number of worrying cases across Europe, national courts continue to threaten journalists, while anti-terrorist laws extended police powers to intercept phone calls and e-mails. Police raids on the homes and workplaces of journalists have become commonplace. The German Constitutional Court ruled this year that police can track journalists by tracing mobile phone signals. In Belgium, journalists have been jailed and fined for refusing to comply with court orders. The need to protect sources was also highlighted by the death of British scientist Dr David Kelly, who apparently committed suicide after his name became known as the source for a BBC story that the Government had 'sexed up' a report on the threat from Iraq.

In 2003, the European Federation of Journalists (EFJ) and the IFJ launched a campaign to protect journalists from State intrusion, urging unions to pursue cases to the European Court of Human Rights (ECHR) to prevent courts and police from extending their powers. Gustl Glattfelder, chair of the EFJ steering committee, says:

“Protection of sources really means the protection of our profession, especially as the human right to freedom of expression and information is under fire.”

Professor Dirk Voorhoof, a legal expert from Ghent University, agrees.

“Sources and the public should not get the impression that journalists are a tool of the police or the judiciary. Whistle blowers have to be confident that their anonymity can be safeguarded.”

Journalists do not all agree whether a court order to reveal a source can ever be justified – if for example lives are at risk. Irish journalist Ronan Brady, who helped to carry out an EFJ survey on the issue says:

“No rights are absolute. The ultimate goal is justice. Protection of sources cannot exist in a vacuum – it is part of a system of laws and protections.”

Tim Gopsill, from the National Union of Journalists of Great Britain and Ireland, believes that journalists should never break a promise given to a source, unless the source gives them permission:

“The Code of Conduct says journalists shall protect confidential sources of information. This is an absolute duty if the journalist has given the source a promise that he or she will never identify them.”

Inger Rasmussen from the Danish Bar and Law Society says that lawyers and journalists have a common interest in defending their right of professional confidentiality.

“There are similarities between the professions. Both have a watchdog role. Both try to balance power. Both have to protect their independence and confidentiality. We have to take care of the watchdogs.”

There is no special right for journalists to protect sources. The right, so far as it exists, is implicit in the right to freedom of expression. Protection of sources is therefore not a privilege for journalists but a right for the ordinary men and women who may become a source for a journalist. The European Court of Human Rights has repeatedly said that journalists should only be ordered to reveal sources in exceptional circumstances. It has overturned court decisions in Britain, Denmark, France and Belgium because they clashed with Article 10 of the European Convention on Human Rights (freedom of expression). In effect, The European Court has become a powerful defender of media freedom. However, the Court has never given journalists an absolute right to protect their sources.

Journalists giving evidence in court

Closely connected with the protection of sources is the question of whether journalists should give evidence about what learn while working as journalists. If they do, they will inevitably be asked not only about what they published but also about how they came to know about what they published. An apparently simple question resolves into two separate questions.

1. Should journalists give evidence in court?
2. Should journalists be compelled to give evidence in court?

A journalist may have evidence of something or be an eyewitness to events incidentally to his or her work, just like any other citizen. There would seem to be no problem with journalists giving evidence in such cases, in the inter-

How the European Court of Human Rights defends the right of journalists to protect sources

United Kingdom

Bill Goodwin of *The Engineer* received a leaked report about financial problems at a computer firm. The company gained an injunction to prevent publication and an order to disclose the source of the leak. The UK House of Lords fined Goodwin £5,000 when he refused to comply. Backed by the NUJ and Liberty, Bill Goodwin took the case to the European Court.

In March 1996, the Court supported Goodwin in a landmark ruling. It said: "Having regard to the importance of the protection of journalistic sources for press freedom in a democratic society and the potentially chilling effect an order of source disclosure has on the exercise of that freedom, such a measure cannot be compatible with Article 10 of the Convention, unless it is justifiable by an overriding requirement in the public interest.

"Without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest. As a result the vital public watchdog role of the press may be undermined and the ability of the press to provide accurate and reliable information may be adversely affected."

Belgium

In 1995, a Belgian judge ordered 160 police officers to carry out simultaneous raids on files and computers at *Le Soir*, *Le Soir Illustré* and *De Morgen*, broadcaster RTBF and the homes of five journalists. The aim was to identify the source of leaks from an investigation into the murder of André Cools, former head of the Socialist Party. The European Court found that the large-scale searches and seizures "had not been reasonably proportionate to the legitimate aims pursued". The Belgium Government had violated Article 10 and Article 8 (respect for private and family life, home and correspondence).

France

Fressoz and Roire of *Le Canard Enchaîné* were convicted of publishing confidential tax details of the chief executive of Peugeot. In January 1999 the ECHR ruled that France had breached Article 10 because the public interest in being informed outweighed the "duties and responsibilities" that journalists had when they received documents of suspect origin.

Luxembourg

Robert Roemen revealed in the Luxembourg *Lëtzeburger* that a Minister had been fined for tax evasion. A judge ordered searches at the journalist's home and work and at his lawyer's office to discover the source of the leak. In February 2002 the ECHR concluded that the searches were not justified by an "overriding requirement in the public interest".

"Having regard to the importance of the protection of journalistic sources for press freedom in a democratic society and the potentially chilling effect an order of source disclosure has on the exercise of that freedom, such a measure cannot be compatible with Article 10 of the Convention, unless it is justifiable by an overriding requirement in the public interest.

"Without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest. As a result the vital public watchdog role of the press may be undermined and the ability of the press to provide accurate and reliable information may be adversely affected".

European Court of Human Rights
March 1996

ests of justice. Where a journalist observes events or receives information as part of the job, things become a little more complicated.

Journalists collect information to use as part of, or to support, their reports. As already seen above, journalists should never be seen as an arm of the police or the State and it is highly undesirable for journalists routinely to give evidence about what they discover.

Journalists are often present at demonstrations or riots, where there is conflict between a crowd and the police or security forces. The ability of journalists to do this job rests on a kind of tacit approval by the security forces and by the demonstrators that the media will not be attacked. This often breaks down, resulting in attacks on photographers and reporters by one or both sides.

News teams covering these events are at much greater risk if demonstrators believe that they will give evidence in court against them, and that their film will be handed over to police. Courts all over Europe continue to demand that news organisations hand over film of riots and demonstrations so they can use them to identify suspects. The European Court has been much less willing to protect this material than it has been to protect sources.

This undoubtedly puts journalists in danger and the IFJ has suggested that freelance journalists and news organisations resist handing over film, and even place their material abroad, outside the jurisdiction of their national courts, in advance of any official request.

What is true for riots and demonstrations is even more applicable during wars. Journalists' lives are particularly at risk when someone has carried out a brutal act which could be classified as a war crime and fears that a journalist will report on it. Journalists are expected to support 'their side' and keep their mouths shut about human rights abuses. It may not even be possible for the journalist to disengage from the danger area to be able to file copy. In the context of the wars in the former Yugoslavia, journalists had to consider whether they would ever be safe from reprisals, and whether their news organisation would even consider using material that accused their 'own' side of human rights abuses.

When the day of reckoning comes, and as soon as they are able to do so, journalists do have a responsibility to write about what they have seen. The basis of the war crimes tribunals for Yugoslavia and for Rwanda is that these matters are never closed, although it is not clear that all countries are equal in this respect. There has never been a war crimes tribunal for Vietnam and it seems unlikely that the USA will ever permit its personnel to go in front of the International Criminal Court over allegations in Iraq.

Nor will there be, it appears, international reckoning for the treatment of prisoners at Guantanamo Bay. This failure of the justice system strengthens the need for journalists to write about what they have seen.

Journalists have a right to decide for themselves whether to give evidence in front of a court.

In 2002, the International Criminal Tribunal for the Former Yugoslavia subpoenaed former *Washington Post* reporter Jonathan Randall, to give evidence about what he had already reported.

Randall at first agreed to make a statement but later refused on ethical grounds. In December 2002, the Tribunal upheld his appeal against its own ruling, saying that to compel journalists could have "a significant impact upon their ability to obtain information."

The Tribunal did not rule out compulsion in future cases in cases where the evidence was essential and where there was no other way of obtaining it. This is essentially the same test that the European Court of Human Rights has set. Thomas Verfuss, President of the Association of Journalists at the International Criminal Court, believes that the appeal strengthens the position of journalists. "I think this was a positive judgement. It establishes a test for journalists to be subpoenaed very similar to Strasbourg but with different wording."

This does not preclude journalists from testifying if that is what they believe they should do. Serbian journalists Dejan Anastasijevic and Jovan Dulovic who now work for *Vreme* magazine, gave evidence in October 2002 to the International Criminal Tribunal for the Former Yugoslavia about events in Croatia and Bosnia in 1991 and 1992.

At an EFJ Seminar in Prague in May 2003, they explained why they had done so. Dejan Anastasijevic agreed to this in 1999, when Milosevic was in power. He said: "I did not come to cover the war in Yugoslavia because of a sense of adventure or because I wanted to be a war correspondent. The war came to me and I believed it was my duty to contribute and to shed a light on the events that took place in my own country. The second thing I wanted to do was to break the ice. The International Tribunal is still very unpopular in Serbia even more unpopular than NATO. I wanted to prove it was possible for citizens of Serbia to come and talk about the crimes. After I did that, more Serbian witnesses came and spoke without protection."

Jovan Dulovic was in 1991 a correspondent for the pro-Milosevic *Politika*



Journalists Dejan Anastasijevic (left) and Jovan Dulovic from *Vreme* magazine in Serbia both gave evidence to the International Criminal Tribunal for the Former Yugoslavia at The Hague. They explained why this was important to them, speaking at a European Federation of Journalists' conference in Prague in May 2003.

Ekspres and had access to Serbian forces in Croatia. He interviewed people who had apparently taken part in the Vukovar killings. One officer even invited him to help himself to jewellery taken from the prisoners.

He had no ethical dilemma when he was asked in 1996 to testify. "I went to The Hague and spent three days talking to the tribunal. This was based on my notes but also on what I saw, because I saw things that just get imprinted on my mind and stay for a very long time. No one ever forced me to testify. On the contrary. Even if someone tried to damn me for testifying I would still have found a way to do it, because I feel that war criminals need to be prosecuted. I have no doubt that there were also crimes from the other side in the war, but I could only give evidence of what was seen by my own eyes."

Chapter 5

Human rights reporting

Human rights are about freedom from violence, fear and hunger and about equal treatment, fair treatment and respect for human dignity. Making those rights a reality is a two-way street, which requires checks on people in power and a well-informed population. People in positions of authority should (in a democratic world) protect our rights. In practice checks and watchdogs are needed to prevent them becoming agents of human rights abuses. Amongst those watchdogs are specialist NGOs and the media, which has the dual role of exposing human rights abuses and of informing ordinary people about their rights so that they are in a position to assert them. In many countries, particularly those which have emerged from periods of dictatorship where individual human rights were considered secondary to the interests of the State, most people have little awareness of their rights. In their dealings with bureaucracy or police, members of the public do not feel in a position of strength. Many still believe that the State has rights while citizens have a duty to do as they are told.

The media has a crucial role to play in changing this level of awareness so that each individual knows that he or she has rights equal to those of other people. They also need to understand that other people — even people they do not like or regard as enemies — have equal rights with them.

To achieve this, journalists have to incorporate human rights principles into their work in a way that makes these rights dynamic and attractive. The public do not need (and will not pay attention to) academic and distant ‘human rights’ lectures. It is the job of journalists to inform the public as well as possible, rather than to ‘educate’ the public in a patronising sense. People pay attention to reporting that reflects the reality of their lives and which looks at the world through their eyes. And although journalists do need some knowledge of human rights principles, in the main a human rights perspective comes from spending time with people and representing them in the media. If, for example, the media is preoccupied only with what powerful people think and say, and politics is exclusively covered as the preserve of politicians, then ordinary people’s human rights come to resemble a side-show. If, however, politicians are interviewed in the context of reports that show the effects of their decisions on people’s lives and that give a voice to the people whose lives have been affected, then they will have to justify what they do in a human rights context. Moreover, by giving equality of cov-

erage to the governed and those who govern, the media is itself delivering on people's right to freedom of expression. This does not just hold true for politicians. A media that is obsessed with rich and powerful celebrities crowds out the views of ordinary people. People retain the right to freedom of expression in theory but they have no means to deliver on that right.

Journalists need a capacity to look at conflict and problems from more than one perspective, and to explain the viewpoints of different participants. Media should never make some people the 'object' of their story without being prepared also to look at the story from their perspective. A journalism which divides the world into 'goodies' and 'baddies' or 'us' and 'them' promotes the human rights of one group over the rights of another. And that is bad journalism because it shows a situation only from one viewpoint.

This chapter looks at some of the ways in which human rights reporting can be applied in relation to a number of topics. Some of these issues emerged from human rights courses run by the IFJ in conjunction with the Albanian Media Institute in Tirana, and the Macedonian Media Institute in Skopje.

Police

The police service and other State agencies should be accountable and media scrutiny is one of the main methods of accountability. This means that the police service should be open and willing to answer media inquiries. There should be a clear understanding of who in the police service is allowed to talk to the media, and a swift response to media inquiries. If there is a press office, then it should have some standards about how long it will take to answer inquiries.

Most police services initiate publicity through a regular release of information about police operations and arrests. Some media treat these police statements as undisputed fact. These versions of events may eventually be challenged in a court, and should therefore always be attributed and not reported as established fact.

In all reporting of police operations it is important to distinguish between someone being interviewed ('helping police' etc), someone who has been arrested and someone who has been charged. Only the last of these has been accused, and even in this case there is no presumption of guilt. The presumption of innocence until proven guilty applies to the media as much as to the courts.

In some countries, police release film that they themselves shot during an operation to television companies. This puts news producers in a dilemma. They are usually short of dramatic film, and film shot during a raid or arrests is always dramatic. They should remember that such film gives the police viewpoint, and will have been edited to remove any improper action by police. If such film is used it should be clearly marked and introduced as

'police film'. It should never become the usual method of reporting on crime. Journalists should also take care if they are allowed to film or observe a police operation that they do not damage the rights of those being arrested or interviewed.

Pressure is often put on media not to criticise the police, who are there to protect the public and often have to confront violent criminals. However, an inquiring and critical media is not a threat to good policing. The evidence is that 'closed' police forces become a law unto themselves, and are more likely to abuse the rights of suspects, or indeed to become involved in corruption. A police force that accepts the right of the media to ask questions is on its way to becoming publicly accountable.

This sense of fair treatment works both ways. Allegations of police malpractice should be carefully investigated and unless there is some outstanding reason why not, the allegations should be reported, together with a police reply. These cases should be followed up. Was an inquiry held? What did it find? Were any police disciplined? This is perhaps particularly important if the allegations come from members of a minority ethnic group. This is not because they have any greater rights than other people. It is because they are less likely to achieve satisfaction if malpractice did take place. The watchdog role of the media is critical. But it should not be *assumed* that the police are guilty, and they too should have a right of reply.

If there are allegations of brutality at a demonstration or public event, then a true picture of events can usually be put together. Are allegations being made by many people or by a few? Are people reporting what they themselves saw, or what someone else told them? Are allegations made only by those who were in the greatest conflict with police or also by those who were marginally involved or bystanders? Are there injuries and if so how were they caused? How many people were taken to hospital? What do medical staff say about their condition? Were police injured, and if so how many and how? Is there film of the event? Do photographs show that police are clearly identifiable or were identification badges covered up? It is easy for office-based editors to assume that all violence at public events is the fault of 'troublemakers'. It is, however, the duty of media to break out of such static ways of thinking when reporting events, and to report the evidence. Of course, the best evidence is often what well-placed reporters, photographers and camera operators saw for themselves.

Police reporting should not just be 'events-driven'. Opening up the police to public scrutiny means that reporters should be able to spend time at police training sessions, and should be able to interview recruits about why they want to join, and about their attitudes to the public. The media needs to pay attention to any special police forces, or quasi-paramilitary police forces. Who are they answerable to? How are they accountable? What powers do they have? How are those powers being used or abused?

Police reporters have a difficult job. They need to become close to the

Police open to the media — up to a point

In Albania, the transformation from a dictatorship to a democracy saw big changes in the relationship between the Ministry of Public Order and the media.

In the past the media published only what it was told by the Ministry. Today, the ministry and regional police forces each publish a daily press release of events over the previous 24 hours. The Ministry had previously been off limits to civilians who did not work there. Today the press office holds a daily 'open hour' for journalists to call in and request information. The press office answers most media inquiries on the same day, although it asks for notice of questions about statistics.

This opening of police services to media inquiry has brought about big improvements in relations between media and police. However, journalists say that they still find it difficult to get information when a story is critical of police operations.

The International Covenant on Civil and Political Rights

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 9

police and to get to know their culture and ways of working and to develop close contacts who will give them information. However, they also need to retain their independence. Editors may need to rotate staff or give them breaks from their usual beats to ensure that they do not 'go native' and end up as spokesmen or women for the people they are reporting on. This is true for all specialist reporters.

People in detention

People who have been arrested often disappear into a system that is not open for public inspection. Many cases of mistreatment happen during or soon after arrest, before a prisoner is even properly in the system. Criticism or questioning of police may not be popular, as there is a natural resentment towards 'soft' treatment for prisoners. However, rights for arrested people are a protection for all citizens – since in police States, where these rights do not exist, anyone can be arrested and nobody can defend their rights. It is often useful to ask the question: "How would you expect your son/daughter to be treated if he or she was arrested?"

Journalists need to know how Article 9 of the ICCPR has been incorporated into national legislation. Journalists must be able to find out who is in custody, whether they have been charged, where they are being held and in what conditions. Journalists should also be able to discover where and when a prisoner is going to appear before a court and, except in exceptional cases (see passage on Courts below), have the right to observe and report on the hearing. There should be a system of giving media notice of court hearings and who is appearing, and this list should not be altered at short notice, for example, to protect somebody important from media coverage. Media should monitor and publish any delays in bringing people before a court.

In addition journalists should be able to report on the conditions in which detained people are kept. Those who are detained should be kept separately from those who have been convicted. In practice this can lead to unconvicted prisoners being kept in worse conditions than convicted prisoners, because the prisons may not have sufficient space, and people are often held in police stations, which are not designed for long-term detention.

Juveniles should always be kept separately from adults, and their conditions should be particularly monitored. Sometimes what is said to be a separate facility is just a cell around the corner from the adult cells.

National laws may entrust inspection of detention facilities to a special civil servant or official. The reports that they make should be public and reported. In addition, NGOs may be given rights of access to detention. Their reports should be publicised. Where a prisoner is held on remand (i.e. unconvicted) for a long period and where the circumstances are controversial, journalists should press to be allowed to see or interview the prisoner. Rules vary between countries, but prisoners on remand should be able to consult their

lawyers and have outside visitors. These contacts can become a valuable source of information for journalists where someone in custody wants their arrest or the details of their detention to become more widely known.

State must provide 'plausible explanation' for injuries to people in custody

Anguel Zabchekov, aged 17, died in police custody on 29 January 1996, several hours after he was arrested while breaking into cars in Razgrad, Bulgaria. His condition deteriorated at the police station and by the time he was transferred to hospital he was dead. An official investigation concluded that death was due to an injury which must have pre-dated his arrest. Anguel had a speech defect and a learning disability. His family challenged the findings.

In June 2002 the European Court of Human Rights ruled that Bulgaria was in breach of the European Human Rights Convention.

In its ruling the Court said: "Where an individual is taken into police custody in good health but later dies, it is incumbent on the State to provide a plausible explanation of the events leading to his death." It added that where the authorities have exclusive knowledge of the events "the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation."

The Court found the official explanation for his death implausible. It doubted whether Anguel Zabchekov could have gone out to steal cars or have attempted to run away from capture if he was already injured. Handcuff marks on his wrists suggested that he was ill-treated. Moreover, police had acted in a suspicious manner by delaying calling a doctor and by altering detention records.

The Court ruled there was a violation to Anguel Zabchekov's right to life, that medical treatment had been unacceptably delayed, and an ineffective investigation had been carried out. Injuries showed that he had been subjected to inhuman treatment, and that his detention had been unlawful because there was no written order, or records of his detention.

Key evidence given to the European Court included photographs taken by a local newspaper at the request of Anguel Zabchekov's mother when she recovered her son's body from hospital. These showed a number of bruises to the head and body.

The International Covenant on Civil and Political Rights

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons.
(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 10

Courts

Court reports makes up a considerable chunk of the content of many national and regional papers. Crime sells papers and people like to read about murders, robberies and crimes of violence. However, a court reporter should never simply be a retailer of moral tales to make the public shudder. At the same time as reporters record the content of trials, they must also be watching the process. Is this a "fair and public hearing by a competent, independent and impartial tribunal"? Is the person before the court equal to all others, or are they treated as inferior because they are inarticulate or because of their ethnicity, or as superior because they are a powerful politician or because they are rich? Is the defendant given the presumption of innocence? Has the trial gone ahead without undue delay. If the State has provided a lawyer for the defendant, is the lawyer up to the job? If the defendant or witnesses are from a minority ethnic group, is the case conducted in a language they understand?

Primary responsibility for protecting people's rights lies with the justice system and judges. But journalists provide an independent scrutineer on the performance of the courts and the judges. Court reporters need to have daily access to the court, and to be able to cite, and write about, the rights of defendants and witnesses.

As with other human rights, journalists do not have any special privileges. Courts should normally be open to the press and public. When they are closed they are usually closed to both.

Article 14 allows matrimonial disputes and cases about the future care of children to be conducted in private. Other possible reasons for excluding the press and public are:

- reasons of morals,
- public order or national security in a democratic society, or
- when the interest of the private lives of the parties so requires, or
- to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

Morality is rarely quoted as a reason for closing courts. Privacy is often a reason for excluding reporting of divorce cases and other cases involving the care of children. The two most contentious issues are 'public order or national security' and 'where publicity would prejudice the interests of justice'.

Journalists should always be ready to challenge closures for these reasons. Some delay in reporting may be considered reasonable if two trials are being conducted one after the other, and reporting of the first trial might prejudice a jury hearing the second. This might happen for example one where one person is being tried for two different robberies, or where one person has admitted and another has denied an offence for which they are jointly charged. That is no reason for closing the court and reporting should be freely allowed when the second case is over. Even in these circumstances

How the International Covenant on Civil and Political Rights defines a fair trial

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
 - (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
 - (c) To be tried without undue delay;
 - (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
 - (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
 - (g) Not to be compelled to testify against himself or to confess guilt.
4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.
6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.
7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country

Kosovo journalists refuse 'lottery' for trial reporting

Journalists had to fight for the right to report a trial in Kosovo in 2003 which saw four leading members of the KLA jailed for a total of 45 years. They had been found guilty of illegal arrest, kidnapping and torture of people they suspected of collaborating with Serbs during the Kosovo conflict.

Rrustem 'Remi' Mustafa was jailed for 17 years; Latif Gashi for 10 years. Nazif Mehmeti, 13 years and Naim Kadriu, 5 years.

What became known as in the 'Llap trial' took place under strict security in a Youth Sports Hall in Pristina. The start was postponed for four days when a decision to limit the media backfired.

Journalists refused to take part in a lottery to allow just six of them each day into the court. Instead The Association of Professional Journalists of Kosovo (APJK) called for a boycott until more places were provided. When journalists showed professional solidarity in refusing to attend, the court agreed to create more space for reporters.

Continued on facing page

there should only be a delay when it is clearly necessary in the interests of justice, the delay should be as short as possible and the media should be able to challenge any such order. Media should be especially sensitive to ensure that the order is not being misused and that the interests of defendants are properly protected. Media should cover the case fully, even though their reports may be delayed.

Public order or national security are often quoted as reasons to restrict reporting, rarely with justification. States often want to make official material a State secret, but the test should be far tougher than this. There may be cases where the identity of witnesses has to be withheld for their safety, or where details of some evidence may be given in private – but these should be challenged and tested by journalists. Even more limited measures such as giving evidence anonymously from behind a screen should be used only when strictly necessary, as this damages the rights of the defendant to open justice. In practice this is often used as an administrative convenience, because, for example, undercover police officers or special forces do not want their names to be known. However, the interests of defendants dictate that they should know who is making allegations against them and have the right to cross-examine that witness. Protection given to witnesses should never damage the second, and only restrict the first when absolutely necessary.

Journalists and media need access to a special procedure to challenge the ruling of a judge to close a court or to withhold evidence, or to withhold the name of a witness, and that challenge should be quickly heard by a higher court. In this respect the media does seek an extra right that the public does not have – the right to be heard as to why closure of the court is against the interests of free and fair reporting. Where no appeal is granted, journalists should be prepared to make their voices heard.

Journalists also have to consider whether in their reporting they themselves might damage the principles of fairness and justice. Sometimes, from pressure of time, journalists are sent to cover the opening of trials but do not sit through the whole process. The defence case may get a passing mention or no mention at all. This is unacceptable practice. If a trial is worth reporting then ways have to be found to follow it through to the end.

There is also a question about what it is proper to print while a trial is in process. In the UK fair and contemporaneous accounts of court proceedings are 'privileged' and cannot become the target of libel actions. However, reporting of things said outside court can result in a publication being held in contempt of court, which could lead to large fines or even (in theory) the jailing of the editor. In the United States, on the other hand, media routinely interview attorneys during the trial but outside the court and comment on the case. Some media in South-eastern Europe go further. They publish — while a case is in progress — evidence or witness accounts which were not heard in court. This is an area fraught with danger since evidence in court is tested by cross-examination, while evidence in the media is not. However the

practice was strongly defended by some journalists on IFJ Human Rights Courses as increasing the likelihood that offenders will be brought to justice. They had little confidence in the courts and believe they need to pressure judges to behave more fairly. Journalists need to discuss the best system for their country situation. However, the interests of justice should be upheld. Journalists do not seek freedom to publish as a means of damaging the rights of defendants or people seeking justice in court. Fair reporting is part of a fair system of justice, even though journalists must remain completely independent of the courts.

Journalists should look into what training judges are given, how judges are recruited, how they guard themselves against bias, the extent of their ethnic awareness, their knowledge of human rights legislation and instruments, and their attitude to defendants and to police.

Reporting on children

One defining characteristic of children is their relative lack of power. Their rights are absolute in theory but conditional on adult behaviour in practice. The media has an important role in examining how the rights of children are abused and in highlighting shortcomings in a system of protection.

From the point of view of the media one of the most important rights is Article 12 of the Convention on the Rights of the Child (CRC).

“Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the view of the child being given due weight in accordance with the age and maturity of the child.”

This implies that children should be visible in the media – not only as problems or victims, but also as young people who hold views and opinions and who are entitled to express them. The CRC sees the role of mass media as a positive one. Under Article 17, States:

“recognise the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.”

If journalists do one thing to improve the rights of children it should be to give them a voice, both through special programmes or publications and within mainstream programming and publications. This need to bring children into a greater range of media coverage is not simply to do with traditional ‘child’ issues. Economic correspondents can relate fiscal changes to the impact on services for children. Sports reporters can focus on the opportunities for young people. Media, fashion and show-biz reporters may investigate whether marketing targeted at adolescent girls puts them at risk.

Llap trial shut out Kosovo reporters

Continued from facing page

The court, under the auspices of UNMIK with international judges, frequently excluded the press and public. Journalists could accept that several witnesses were allowed to give evidence anonymously. What they could not accept was being completely excluded from hearing this evidence in court.

Journalists did what they could to fill gaps in information from defence lawyers.

The APJK said: “The right of the public to be present at all court proceedings is of crucial importance. We strongly believe that the court authorities are obliged to exhaust all alternatives that enable the protection of a witness and his identity without having to close the courtroom to the public and the media.”

Agron Bajrami, editor of the daily *Koha Ditore*, said the case damaged the process of building a transparent court system in Kosovo. “The closing of the courtroom will cause a decline in the credibility of the process, and the responsibility for this will have to rest with those who decided to close the doors.”

Young people capture audience

An audience survey in Albania found that 1.5 million people (40 per cent of the population) regularly watch *Troc*, a highly regarded national news magazine produced by a network of 13- to 18-year-olds working in 11 youth video bureaux around the country. Young reporters identify, research, report, film and narrate video news reports on a range of topical youth issues each week.

Children also have a role as young journalists seeking out the views of other young people and helping to publish them.

Much of the CRC is about measures to protect children. Yet, despite the global support for this convention, children's rights are grossly abused in a number of ways, through war and through trafficking and abuse. The sale and abuse of children has become an increasing global problem, stimulated by the existence of poor and rich societies side by side. Police forces have been urged to work across national borders to combat trafficking of women and children, and media too should be prepared to work with counterparts in other countries to put together an overview of what is happening and to follow the trail of trafficked children.

In highlighting these abuses, the media has a duty not to further damage the rights of children. Media should never name or publish pictures of children who have been trafficked or abused. In interviewing children journalists should always work with parents or with NGOs to ensure that the rights of children are protected.

UNICEF has drawn up a set of principles for journalists to work by:

- 1 The dignity and rights of every child are to be respected in every circumstance.
- 2 In interviewing and reporting on children, special attention is to be paid to each child's right to privacy and confidentiality, to have their opinions heard, to participate in decisions affecting them and to be protected from harm and retribution, including the potential of harm and retribution.
- 3 The best interests of each child are to be protected over any other consideration, including over advocacy for children's issues and the promotion of child rights.
- 4 When trying to determine the best interests of a child, the child's right to have their views taken into account is to be given due weight in accordance with their age and maturity.
- 5 Those closest to the child's situation and best able to assess it are to be consulted about the political, social and cultural ramifications of any reportage.
- 6 Do not publish a story or an image which might put the child, siblings or peers at risk even when identities are changed, obscured or not used.

The IFJ also has a Code of Practice for working on children's issues:

The preamble says journalists should "strive to maintain the highest standards of ethical conduct " and two of the clauses are similarly positive:

- 1 Strive for standards of excellence in terms of accuracy and sensitivity.
- 6 Give children, where possible, the right of access to media to express their own opinions without inducement of any kind.

Four IFJ guidelines can be classified as 'cautionary':

- 4 Consider carefully the consequences of publication of any material con-

cerning children and minimise harm to children.

- 7 Ensure independent verification of information provided by children and take special care to ensure that verification takes place without putting child informants at risk.
- 9 Use fair, open and straightforward methods of obtaining pictures and, where possible, obtain them with the knowledge and consent of children or responsible adult, guardian or carer.
- 10 Verify the credentials of any organisation purporting to speak for, or represent the interests of children.

The other five urge journalists to avoid damaging practices:

- 2 Avoid programming and publication of images which intrude upon the media space of children with information which is damaging to them.
- 3 Avoid the use of stereotypes and sensational presentation....
- 5 Guard against visually or otherwise identifying children unless it is demonstrably in the public interest.
- 8 Avoid the use of sexualised images of children.
- 11 Don't make payments to children for material involving the welfare of children or to parents or guardians of children unless it is demonstrably in the interests of the child.

When journalists' associations and unions come to draw up their own Codes of Professional Practice they should also consider emphasising the positive measures as outlined in *Putting Children in the Right*, published by the IFJ in 2002. This suggests that there could also be guidelines that say:

Journalists shall seek out the views of children on all relevant issues and help them to gain an audience for those views.

and

Journalists shall strive to understand the world through the eyes of the child.

All the guidelines take a tough line on naming or portraying children without permission. When interviewing young children, journalists should always seek permission from parents, schools or someone acting in the place of the parent. As children get older it is more appropriate that they are able to be consulted themselves. However, so long as they are under the age of 18 parental consent may be needed. Journalists who are writing about street children may not find a suitable adult to consult. In this case they should try to work with an NGO that works with street children. In other cases, such as child labour, it may be that the very adults who are 'in charge' of the child are the people who are abusing them. Again it may be possible to work with an NGO.

There may be circumstances where 'asking permission' is impossible and the human rights of the child are best served by journalistic intervention.

Pictured without permission?

On June 8 1972, Associated Press photographer Huyn Cong (Nick) Ut took a picture of a young girl and families fleeing the village of Trang Bang in Vietnam, their bodies seared by napalm. The picture of the screaming girl contributed to growing anti-Vietnam War sentiment in the USA, and the photographer won the Pulitzer Prize.

Clearly the photograph was taken without permission and arguably it infringed the human rights of the girl in the picture. On the other hand, it was the bombers who napalmed her village who really abused her rights. The photographer merely recorded it, and in doing so helped (in small part) to bring about the end of a war.

The girl was Phan Thi Kim Phuc who underwent 14 months of painful rehabilitation to third degree burns covering half of her body. Kim is now a Canadian citizen and a peace activist. She is a Goodwill Ambassador for UNESCO, and has never criticised the photographer.

But this should only happen after a discussion in the newsroom and the presumption should be that the media can find an adult to work with who will protect the interests of the child. Even children in the worst of situations, such as those who have been trafficked into prostitution, have the right not to have their situation made worse by insensitive and clumsy media intervention. If media 'expose' prostitution, while naming children and showing their pictures, they could worsen abuse worse rather than reduce it. There are tough choices here for a newsroom, since the interests of the child may require withholding elements of a story (such as pictures) that would make it more dramatic. On other occasions even getting permission is not enough. For example, teenagers may choose to be interviewed / filmed without thinking through the consequences of the decision. Journalists should advise them of any harmful effects – not just take advantage of their naivety.

Interviewing children

A responsible adult should be present during an interview with younger children. This protects the child and protects the reporter. However, the reporter should always interview the child, not the adult, and treat what they say with respect. Make sure that the children are not acting out for the camera – i.e. that your presence is not sparking off the event you are filming.

Here are ten tips for interviewing children and using the material afterwards:

- 1 Do not do an interview alone. Ensure that the child has a relative or guardian with them.
- 2 Make sure the interviewee is comfortable. Put yourself at the level of the child. Get the child to relax with the TV camera etc. This may take time.
- 3 Make sure the child knows you are a reporter and that what they say might be published.
- 4 Ask your questions in a gentle and accepting way and do not make judgmental comments.
- 5 If asking about traumatic events go at the pace of the child.
- 6 Ask questions more than one way to establish a clear picture of the facts. Children rarely lie but may paint themselves in a passive role.
- 7 Take the child seriously – never patronise.
- 8 Do not go on too long. Finish before the child is worn out.
- 9 Finish on an upbeat note – make the child feel good about themselves.
- 10 You have a duty of care to the child to make sure they are not put in danger by the story.

A child's rights can be damaged after the reporter returns to base as editors seek to make the story more sensational. The journalist who carried out the interview needs to make it clear that they have given undertakings of good practice. The front-line journalist is the ethical guardian of his or her story and needs to fight for those ethics in the newsroom.

Women's rights

In Western Europe progress (or lack of it) in women's rights is measured by such things as the wages of women, the number of women in Parliament and abortion rights. These are important issues everywhere, but in the formerly 'Socialist' countries, formal measures of women's rights were to some extent guaranteed. In these countries the economic position of women may be less revealing than domestic violence, sexual violence and sexual harassment. Trafficking and violence are issues that are crucial for women as well as for children.

Violence in the home is often hidden. According to a survey in Serbia and Montenegro every third woman has been beaten and many did not know that their husbands could be prosecuted for violence within a marriage. Police often regard 'domestic violence' as something different from criminal assault and are reluctant to prosecute.

In South-eastern Europe a high proportion of journalists are women — indicative perhaps of the generally low wages in the profession. However, the number of women in senior positions does not reflect their number in the workforce.

The image of women in a society is to a large extent media-driven and so what is written or portrayed about women will always be controversial. There are some specific ways in which media can abuse women's rights and where practice can be quickly changed. It is unacceptable to reveal the name or publish the photograph of a victim of a sexual assault, unless the woman has freely agreed to waive anonymity. The names of women should be protected in court hearings about rape or sexual assault. There is also a case for withholding the name of men charged with rape or sexual assault until such time as they are convicted.

Ethnic minorities and refugees

Coverage of minority ethnic groups is often hostile, sensationalist or completely absent from majority media. In part this issue was covered in the previous chapter when discussing hate speech, but minority ethnic groups can also simply disappear from the media and not be regarded as an audience. One way to improve coverage of minority ethnic groups and issues is to recruit from a wider ethnic pool, so that newsrooms start to reflect more accurately the ethnic composition of populations. Whoever is in the newsroom, the job of the journalist is to challenge received wisdom and open up coverage to people from minority ethnic groups. This does not simply mean 'balancing' stories full of accusations with denials, but reporting on the lives of people in minority communities so that they see and recognise themselves in the media. It also means broadening the range of contacts, so that media avoid relying only on a few spokespeople. Part of the process of dehumanising a minority ethnic group is quoting only their most extreme representatives. Minority ethnic groups are made up of men, women and children with

Discrimination in the profession

A survey in Greece showed that more than half of women journalists working in Athens believe they are discriminated against because of their gender. Outside Athens one in three women journalists blame gender discrimination.

many different viewpoints and beliefs. The contacts between journalists and members of the ethnic group should reflect this. This is not just good journalism, but good economics as well. Many newspapers, magazines and broadcast channels shut themselves off from minority ethnic groups and could increase their audiences if they broadened their appeal.

Refugees are often the most abused of minority communities, as they arrive in large numbers in a country, fleeing violence and repression. They are visible as a group, and have no natural protection. They are usually housed in poor areas where they may be vulnerable to resentment from peo-

Roma refugees left at impasse after being refused permission to move to EU

One IFJ human rights course examined the plight of 2,700 Roma refugees in Macedonia who had arrived from Kosovo in 2001. This was the 'third wave' of refugees in Macedonia, following the arrival of 60,000 Bosnian refugees in 1992, and 360,000 refugees from Kosovo in 1988/89. Most Bosnians had returned home and many earlier refugees from Kosovo had been assimilated. Although Kosovo had been declared a 'safe' country it was accepted that it was not safe for Roma to return. The Macedonian Government wanted to reclassify the Roma as Humanitarian Assisted Persons and to assimilate them into Macedonia with support from the UN High Commission for Refugees (UNHCR).

Some agreed, but 680 burned their camp and travelled to Mejit Medzidita on the Greek border where they had set up a camp and asked to cross into Greece. Macedonian police prevented them from leaving and Greek police from entering Greece. There was a stand-off and even the possibility that UNHCR could withdraw as the new camp was not official.

Conditions in the camp were poor and the Roma included 85 children. Five babies were born in the month that the refugees were there. There was some conflict with nearby communities.

In this situation journalists must reflect the different viewpoints without fanning the flames of hatred. The refugees, the nearby communities, the UNHCR and the Government all had a story to tell.

There is no point in being naïve — good journalism will not solve the refugee problem. However, it will help people to understand each other. On the human rights course, some journalists felt that finding a way for refugees to get home was the essential task. Others felt that journalists had a duty to offer some hope with their stories. One point made on the course was that almost every country in central and Eastern Europe has experienced refugee crises in the recent past. It should not be difficult for journalists to help 'host' communities relate to the problems of refugees.

The Roma refugees in Macedonia eventually returned to a new camp near Skopje. At the time of going to press they were still there.

ple who have only a little more than they do. Journalists cannot heal divisions in societies or undo the damage done to refugees. But, in writing about refugees and their neighbours, journalists can reflect the multiple perspectives involved and try to show that most families want the same things: to live in security, peace and decent conditions.

People with disabilities

People with disabilities often disappear from the media, just as they once disappeared from society into inhumane and shameful institutions. Journalists played a role in Greece, Bulgaria, Romania and other countries in exposing some of the worst conditions of these institutions. However, the story is not over once the institutions have been closed. People with disabilities are often regarded as lesser human beings, at worst to be mistreated, and at best to be pitied and patronised.

People with disabilities are people first and they have full human rights. This does not just mean having the right to humane conditions. It means having a say in their own future and having a voice that is heard. Most should be able to live ordinary lives in the community, and they should have choices. The future must, so far as possible, lie in staying with their families, going to ordinary schools and having a life in the community. Many people with disabilities work, marry, have children and have fulfilling lives. Disabled people have stories to tell. Journalists should help them to tell them. In doing so we need to be careful not to present people with disabilities as victims or pitiful sufferers. Giving people with disabilities a voice and letting them speak for themselves is the best way to prevent discriminatory coverage.

General and specialist reporters

All general news reporters need to be sensitised to human rights issues so that they can integrate them into their work. The same is true for other specialist writers and reporters. For example, a health reporter may investigate the balance between the right of an individual to keep the result of an HIV test confidential, and the right of the sexual partner to be informed. An education reporter may investigate why more girls than boys drop out of school. A business reporter should consider the environmental impact of a new factory on the communities living nearby. A labour reporter will investigate the conditions under which people are working,

A sports reporter may investigate whether children have equal access to sports facilities, what happens when the right of a woman to take part in sport offends a cultural code, or whether young soccer players are encouraged to sign contracts that later curb their freedom.

A fashion reporter may usually write about colours and clothes. But a fashion reporter should also be interested in the connection between fashion and women's self-image, and the use of child labour to produce fashion garments.

A human rights agenda sharpens the work of every journalist. Once

Closing institutions is not enough

In Bulgaria a TV crew reported on appalling conditions in a hospital for people with learning disabilities (mental handicap).

The result of the report was that the hospital was marked for closure, and the women living there were moved to a number of smaller institutions. When another TV crew returned to see what had happened, they found that conditions had improved, but that a group of women was to be separated. They blamed the TV crew for what was happening to them.

The crudest human rights abuse (the appalling conditions) was addressed, but this was not enough. The women should have the same right as other people to choose where they live and who with. The TV crew felt frustrated that the report had not had better consequences.

reporters are sensitised to a human rights agenda, they make connections and ask questions which might not otherwise be asked.

Working with NGOs

Journalists often work with NGOs that specialise in human rights or in defending the rights of women or children or refugees. These relationships need to develop on a professional basis, just as the relationships with the police and politicians need to be professional. NGOs can provide access and are therefore invaluable. There should, however, be a degree of distance between the media and the organisations, and a recognition that their reports etc. are sources that are also fallible. Journalists need to respect the relationship, by making clear agreements in advance about any ground rules for interviewing people and using film or other materials. Any agreements made should be kept, and therefore these agreements should be approved at editor/ producer level, not just by the reporter. If TV or newspapers use film shot by NGOs where no reporter was present, these should be attributed in the same way as film shot by the police would be attributed.

Positive coverage of human rights achievements

There is evidence that people in countries of the former Soviet Union, the former Yugoslavia, and Albania are not well informed about their human rights, even those that have been recently incorporated into national legislation. Journalists have a role in promoting human rights, so that their readers, listeners or viewers better understand what they are and how to achieve them. Reporting human rights success stories is one way to do this while still keeping the focus on real people rather than on paper resolutions.

The core message is that journalists should recognise that every person has human rights and treat them accordingly. Journalists need to be independent of politicians or special interest groups, and have a sufficient degree of detachment for their reports to be credible and reliable. Journalists need codes of practice and the means to enforce them. Journalists also need trade unions to defend their own rights. Part of being a professional means that you can stand up for your own rights because without that ability, journalists will not be in a position to stand up for the rights of other people.

Reporting on wars and conflicts

War, by definition, infringes the most fundamental of human rights – the right to life. Reporting during conflicts means reporting in a situation where human rights are already being destroyed. In such times the State and irregular forces take extra powers to themselves and often suspend civil rights. Journalists may be personally at risk and operating in an environment where rights are not recognised and criticism is not tolerated. Wars with divided civilian populations destroy the right to live in freedom of fear and create refugee populations who lose all their property, their right to move freely

and their rights to homes, family lives and every sort of creature comfort.

Different journalists are also in very different circumstances. The international reporter embedded with US troops in Iraq and the Sarajevo journalist reporting the bombardment of his or her own city had different priorities, expectations and necessities. One journalist goes to seek out a war; others find that the war has come to them. It is hard to write about reporting with a human rights perspective during conflict, without recognising that there are many different conflicts and many different journalists.

War reporting is beyond the scope of this booklet, although it is clear, following the Iraq invasion of 2003, that there needs to be a sober assessment of what happened to objectivity and balance in that war.

Journalists from the Balkans who attended training courses to be told how they did everything wrong in reporting their own conflicts, may have watched in bemusement as the US media marched to the sound of patriotic war drums into the conflict. Despite 2,000 'unilateral' journalists in Iraq and 600 embedded reporters with US and British troops, the truth about what was happening was hard to pin down. Towns fell to the Allied forces on one day, and then fell to them again on the next and the day afterwards, and still remained to be captured. This was the war where millions of rounds of ammunition were fired, but the US media adopted a heroine of a battlefield, who turned out to have fired none. Private Jessica Lynch made the cover of Newsweek and was the top story on CNN and CBS. But her battle against capture was a fiction and her rescue from hospital in An Nasiriyah was a pantomime. This was the war where the civilian dead were not counted, but where 12 year-old Ali Abbas became 'human interest' after a US missile strike hit his home outside Baghdad, killing his parents and brother and causing him to lose both arms. He was flown to the UK for medical treatment and to have artificial arms made for him.

This was the war where the toppling of the statue of Saddam Hussein in the centre of Baghdad represented the rage of the Iraqi people, until the camera pulled back to reveal the small number of people present, and the choreography of the event became apparent. Above all perhaps this was the war where the reasons for the invasion were never justified by the facts uncovered after the invasion. As we went to press it was also clear that the 'end' of the war did not mean the end of the deaths, either of the occupying forces or of civilians in Iraq.

Amongst the casualties of the war were 20 journalists and many of the deaths have never been properly explained.

"Whose side are you on?" is a question often asked of journalists, sometimes at the barrel of a gun. The Iraqi invasion has shown, just as the conflicts in the former Yugoslavia showed, that patriots and nationalists make terrible journalists. Patriots do not question the version of events put out by their generals. They discount civilian casualties on the other side, either as fabrications, or as accidents or as something inflicted by the enemy on them-

selves. They portray their own side in a noble light, even if that nobility consists of dropping bombs on terrified women and children. Iraqi information minister Mohammed Saeed al-Sahhaf won cult status as 'Comical Ali' for his fantasies about how Iraqi forces were slaughtering the Americans. However, his transparent lies have come to seem almost refreshing alongside the relentless propaganda waged by Alliance forces and politicians since the war was declared to be over.

Of course a reporter embedded with troops will come to care about those troops and to see the conflict through their eyes, just as a reporter living in a community will care far more about the fate of their neighbours, than of the nameless soldiers on the other side.

But reporters can remain aware that one human life has the same value as another. That all sides mourn their dead equally. That when a mother loses a son, or a son loses a sister, there is an equality of grief. And if individual reporters are in no position to show a war from two sides, then the media for whom they work has far greater facilities to provide balance. As soon as journalists become supporters of a war, then their public loses its right to information with the necessary degree of detachment and scepticism. They generally lose sight also of the reasons for the conflict, as the news is overtaken by daily battle reports (often containing highly inaccurate information) and casualty counts.

Guantanamo Bay

Recent conflicts have also thrown up new challenges to the human rights of those captured in or after a battle. The camp at Guantanamo Bay holds about 800 'battlefield detainees' captured inside or outside Afghanistan. The camp is designed to avoid bringing detainees under the jurisdiction of US Courts and although the US says that is applying the principles of the Geneva Convention, it is not abiding by what the conventions say.

Prisoners at Guantanamo Bay have been detained without charge and without trial, and have not had access to lawyers of their choice. Countries at war are only allowed to hold prisoners until the hostilities end, and there is no active US military campaign in Afghanistan to justify their continued detention. Moreover, they are not regarded as Prisoners of War, on the grounds that they were not part of a recognised army. But most were fighting as part of the Afghan regular forces, although the Government was not recognised by the US. There is no requirement under the Geneva Convention for the Government to be recognised. Indeed the Convention applies equally to militia who fight as part of the armed forces. Some detainees were arrested outside Afghanistan, including in Bosnia-Herzegovina. In these cases international human rights law should apply, which gives prisoners the right to be formally charged, informed of their rights and permitted access to legal counsel. Detainees include a few former child soldiers who should be rehabilitated, not punished. Some detainees have been returned to countries

with poor human rights records, including Uzbekistan, Egypt and Russia, where they may be tortured. When those who continue to be held at Guantanamo Bay do come to trial, the trials will be supervised by the military and there will be no appeal to a civilian court. The lack of independent appeal allows the executive to serve as both prosecutor and judge.

In May 2002 Human Rights Watch wrote to the US Defence Secretary Donald Rumsfeld, saying "The detainees' status must still be determined in accordance with the Geneva Conventions. The United States should then prosecute, within a reasonable time and with adequate due process, those detainees accused of committing or plotting criminal acts, including war crimes, crimes against humanity, and terrorism. Such prosecutions would be far better than the unlawful alternatives of holding detainees indefinitely without trial or extraditing them to countries where they risk torture."

The Geneva Conventions

The Geneva Conventions demand respect for human beings in time of armed conflict, and that includes respect for the human rights of journalists, who are classified as civilians entitled to protection from violence, threats, murder, imprisonment and torture. These legally binding treaties date from 1949 and have been ratified or acceded to by most countries. They form part of international humanitarian law. Violation makes a soldier or militia member guilty of a war crime. Journalists need to know and to assert these rights.

The International Committee of the Red Cross (ICRC) says that States must:

- Care for friends and enemies alike;
- Respect every human being, his or her honour, family rights, religious convictions and the special rights of the child;
- Prohibit inhuman or degrading treatment, the taking of hostages, mass extermination, torture, summary executions, deportations, pillage and wanton destruction of property.

Protection for wounded combatants, prisoners of war and civilians

The first two Conventions cover the treatment of wounded and sick members of the armed forces and medical personnel on the battlefield and at sea. The Third Convention covers prisoners of war. All three refer to journalists only in the case of accredited war correspondents. The Fourth Geneva Convention covers the rights of civilians in enemy or occupied territory. Of most significance is Article 3, which applies to all the Conventions, and says:

1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any

other similar criteria. The following acts are prohibited at any time and in any place with respect to the above-mentioned persons:

- a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
 - b) Taking of hostages;
 - c) Outrages upon personal dignity, in particular humiliating and degrading treatment;
 - d) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognised as indispensable by civilised peoples.
2. The wounded and sick shall be collected and cared for.

Journalists are civilians too

Journalists must be protected as civilians. Protocol 1 to the Geneva Conventions (which came into force in 1978) says in Article 79:

1 Journalists engaged in dangerous professional missions in areas of armed conflict shall be considered as civilians within the meaning of Article 50, paragraph 1.

2 They shall be protected as such under the Conventions and this Protocol, provided that they take no action adversely affecting their status as civilians, and without prejudice to the right of war correspondents accredited to the armed forces to the status provided for in Article 4A 4) of the Third Convention.

3 They may obtain an identity card similar to the model in Annex II of this Protocol. This card, which shall be issued by the government of the State of which the journalist is a national or in whose territory he/she resides or in which the news medium employing him/her is located, shall attest to his/her status as a journalist.

Protocol 2 extends the Geneva Conventions to large-scale civil conflicts between the armed forces of a State and dissident armed forces or other organised armed groups on its territory. However, it excludes from the Conventions

“situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.”

Article 4 of Protocol 2 describes how parties must extend humane treatment to civilians:

1 All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. It is prohibited to order that there

shall be no survivors.

2 The following acts against these persons are and shall remain prohibited at any time and in any place whatsoever:

- a) Violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any corporal punishment;**
- b) Collective punishments;**
- c) Taking of hostages;**
- d) Acts of terrorism;**
- e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;**
- f) Slavery and the slave trade in all their forms;**
- g) Pillage;**
- h) Threats to commit any of the foregoing acts.**

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