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United Nations Commission on Human Rights

Overview of developments and trends at the 60th session (15 March - 23 April 2004)

Violence Against Women

The focus of a long-term campaign by Amnesty International, violence against women, committed by both state and non-state actors, remains widespread and wide ranging despite the adoption of international and regional standards aimed at the elimination of such violence. Amnesty International welcomes the strong resolution adopted by the Commission building on the work of the UN Special Rapporteur on violence against women, including by welcoming her recommendation to develop strategies for the implementation of international standards to end violence against women and her proposal for an intervention strategy involving the state, the community and women themselves. Amnesty International also firmly supports the Commission's decision to develop indicators on violence against women and on measures taken by states towards its elimination. Finally, Amnesty International warmly welcomes the inclusion in the text of confirmation of women's rights to control their sexual and reproductive rights.

The resolution provides important measures for addressing violence against women both in the area of violence in the family and in the context of armed conflict. The resolution stresses that states have a duty to exercise due diligence to prevent, investigate and punish all acts of violence against women and girls and stipulates various measures that states must take in carrying out this duty. In the area of violence against women in armed conflict, the resolution stresses the importance of the Rome Statute for the International Criminal Court which affirms that gender-related crimes and crimes of sexual violence may constitute crimes against humanity and/or war crimes. The resolution also promotes full implementation of Security Council resolution 1325 (2000) on women, peace and security which includes a wide range of measures to promote and protect women and girls' human rights.

Amnesty International also welcomes the declaration on violence against women, issued during the High-Level Segment by 20 women Foreign Ministers in which *inter alia* they call upon the political leadership and civil society worldwide to join efforts to remove obstacles impeding women's full enjoyment of human rights.

During this year's session Amnesty International hosted a meeting of experts, governments, UN bodies and NGOs to explore what further action the UN can take to end violence against women and how Amnesty International's global campaign can be used most strategically to achieve this aim.

The death penalty

Once again the Commission has adopted a strong resolution on the question of the death penalty which

calls for the abolition of the death penalty and a worldwide moratorium on executions. Amnesty International welcomes the inclusion of the reference to the yearly supplement of the UN Secretary-General on changes in law and practice concerning the death penalty worldwide which this year concludes that the trend towards abolition of the death penalty continues. Amnesty International is also pleased to note that the number of co-sponsorships rose to a total of 76 (last year the resolution achieved 75 co-sponsors). The resolution was adopted by a comfortable majority of 28 in favour, 20 against and 5 abstentions. As in previous years, a group of countries issued a joint statement in which they disassociate themselves with the resolution, arguing that there is no international consensus that capital punishment should be abolished. This year the statement was introduced by Saudi Arabia and signed by 48 countries.

Human rights and counter-terrorism

Amnesty International welcomes the adoption of the resolution on the protection of human rights and fundamental freedoms while countering terrorism, led by Mexico, which reaffirms that states must ensure that measures to combat terrorism comply with their obligations under international law and that national authorities involved in combating terrorism are aware of these obligations. The resolution further mandates an Independent Expert, for a period of one year, to assist the High Commissioner for Human Rights in examining the question of the protection of human rights and fundamental freedoms while countering terrorism, to make general recommendations concerning the obligation of states to promote and protect human rights and to provide assistance to states, upon their request. The Independent Expert will also work with the High Commissioner for Human Rights to finalize the study, mandated by the General Assembly in 2003, on the extent to which the existing Special Procedures of the Commission and the UN treaty monitoring bodies are able to address the compatibility of national counter-terrorism measures with international human rights obligations. However, Amnesty International continues to be deeply concerned at the global impact on human rights by counter-terrorism measures by states and continues to promote the establishment of a more proactive mechanism to monitor, on a global basis, the relationship of human rights and counter-terrorism, including by undertaking missions to and interacting directly with relevant states.

Human rights and sexual orientation

Sexual rights have had unprecedented visibility at this year's session of the Commission, but they have also come under sustained attack. Issues of sexual autonomy, sexual orientation and sexual and reproductive health and rights were challenged at every turn, across four resolutions: extrajudicial, summary or arbitrary executions; violence against women; the right to everyone to the enjoyment of the highest attainable standard of physical and mental health and human rights and sexual orientation; consideration of the latter was postponed until the 61st session in 2005.

Notwithstanding the sustained opposition on the part of a small group of states, Amnesty International is pleased to note that the Commission continued to support efforts against extrajudicial summary or arbitrary executions of persons targeted on the basis of their sexual orientation and confirmed, in the resolution on violence against women, women's right to control their sexual and reproductive health.

The backlash is particularly striking in the 10th anniversary of two major landmarks in the affirmation of sexual rights at the UN: the International Conference in Population and Development which recognized women's sexual and reproductive rights as human rights and the Human Rights Committee's decision in *Toonen v. Australia*, which first asserted the principle that sexual orientation discrimination is prohibited under international human rights standards.

Amnesty International continues to urge the Commission on Human Rights to act on the findings of its own appointed human rights experts, including that of the Special Rapporteur on the right to health who in his report to the Commission this year concluded that "the correct understanding of fundamental human rights principles, as well as existing human rights norms, leads ineluctably to the recognition of sexual rights as human rights" (E/CN.4/2004/49, 16 February 2004, para.54).

Refugees and asylum seekers

At the start of the 60th session, Amnesty International called on the Commission to work towards effective respect for the human rights of refugees, asylum seekers, and other migrants and non-nationals. While this session has witnessed some positive developments in this regard, there is still a long way to go. The organization reiterates that all these individuals, regardless of the labels that are applied to them, are entitled to respect for their inherent dignity as human beings and as such to respect for their fundamental human rights. Issues relating to these particularly vulnerable groups of individuals should therefore be at the forefront of the work of the Commission.

Amnesty International welcomes the explicit recognition in the resolution on the Human Rights of Migrants to an important decision of the Inter-American Court of Human Rights (advisory opinion OC-18/03) which affirmed *inter alia* that "the general obligation to respect and guarantee human rights binds States, regardless of any circumstance or consideration, including the migratory status of a person". The organization also welcomes the call on all states, in the resolution on the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, to "consider urgently signing and ratifying or acceding to the Convention".

In the resolution on Internally Displaced Persons (IDPs), the UN Secretary-General is requested to establish a new mechanism to address issues relating to IDPs, which removes the mandate on the human rights of IDPs from the Commission. Amnesty International urges that this new mechanism retains a primary focus on advocating for the protection of the human rights of all IDPs and on conducting an effective dialogue with governments to ensure that they uphold fully their obligations in this regard. This new mechanism should also retain a close and effective link with the Commission, including through regular reporting on the results of and recommendations arising out of visits to IDP situations.

The Commission also adopted a resolution establishing a Special Rapporteur on trafficking in persons, especially women and children. Amnesty International has advocated strongly for the effective human rights protection of all victims of trafficking, and calls on all concerned to ensure that the new mandate cooperates fully and effectively with all stake-holders, including in particular non-governmental organizations and civil society. Amnesty International takes this occasion to remind all concerned of the importance of nominating candidates who demonstrate independence, impartiality and expertise, and calls for the nomination of more persons who bring an established capability to integrate a gender perspective into the implementation of their mandate.

The Commission decided not to further the study on the rights of non-citizens carried out by the Special Rapporteur to the Sub-Commission on the Promotion and Protection of Human Rights. Amnesty International is, however, of the view that there remains a need to follow up on this study with further work, including but not limited to addressing the age and gender aspects of the issue and also addressing statelessness and situations of disputed nationality, detention and the economic, social and cultural rights of non-citizens.

Human rights norms for businesses

Although the human rights norms for businesses, drafted by the Sub-Commission on the Promotion and Protection of Human Rights, faced opposition from some countries, Amnesty International is very pleased to note that the issue of corporate responsibility for human rights is now firmly on the Commission's agenda. In a decision, adopted by consensus, the Commission requested the Office of the High Commissioner for Human Rights to compile a report setting out the scope and legal status of existing initiatives and standards on business responsibilities with regard to human rights, and to consider the draft norms in this process. Amnesty International continues to be firmly supportive of the norms as a framework for informing the human rights responsibilities of business enterprises and welcomes the Commission's acknowledgement that standards on business responsibilities in relation to human rights need to be strengthened.

Country situations

At the outset of the 60th session Amnesty International expressed concern at the way in which the Commission carries out its mandate in regard to promoting and protecting human rights in individual countries. The organization called on members of the Commission to undertake whatever reform necessary to enable it to better carry out its mandate to promote and protect human rights. At the close of the session, Amnesty International remains convinced that fundamental reform is urgently required if the Commission is not to become increasingly irrelevant rather than operating at the centre of the global human rights movement.

During the session the Commission considered over 20 country initiatives tabled under various agenda items. Amnesty International is pleased to note initiatives on a number of countries, including **Belarus, Cuba, Democratic People's Republic of Korea (DPRK), Myanmar, and Turkmenistan** (and in particular welcomes the new Special Rapporteur mandates on Belarus and DPRK), but extremely concerned at the failure of the Commission, as the UN's main human rights body, to address the human rights situation in countries such as **Chechnya, China, Iraq, and Zimbabwe** where the pattern of human rights violations is particularly grave. Draft initiatives on some of these countries were halted prematurely before any discussion could be had in plenary by the repeated misuse of motions of "no-action" (this was the case with the draft resolutions on both China and Zimbabwe and was also attempted, but failed, on the draft resolution on Belarus). Amnesty International urges the Commission's members to refrain from using this procedure to stifle the deliberation of the Commission and to robustly reject such motions. The resolution on the human rights situation in Chechnya was overwhelmingly defeated despite compelling evidence of serious and systematic violations of human rights.

Amnesty International is also concerned at the Commission's decision to terminate the mandates of some of its Special Rapporteurs. This year, for the first time in more than a decade, there was no resolution on the human rights situation in Iraq which means among other things that the mandate of the Special Rapporteur ended, and the Special Rapporteurs on the Democratic Republic of Congo (DRC) and Burundi were replaced with Independent Experts focusing on advisory and technical services rather than independent monitoring of the human rights situation. The human rights situation in all of these countries continues to be grave.

Amnesty International noted a growing trend towards moving country reviews from agenda item 9, "Question of the violation of human rights and fundamental freedoms in any part of the world", to item 19 "Advisory services and technical cooperation in the field of human rights". This was the case with both Burundi and Democratic Republic of Congo (DRC) thereby giving the erroneous impression that addressing these situations is principally a matter of capacity building.

A number of country situations, including **Afghanistan, Colombia, Haiti, Nepal and Timor-Leste**, were addressed through Chairperson's Statements drafted in consultation with the country concerned. Compared to resolutions, such statements usually assume an improving human rights situation and a level of cooperation on the part of the government. Amnesty International questions whether such assumptions are justified in relation to all the countries on which Chairperson's Statements were agreed.

Amnesty International was dismayed to learn that the draft resolution on the situation of the detainees held in **Guantánamo Bay** had been withdrawn. The Commission's attention to this situation is already long overdue, Amnesty International continues to call on the Commission to take urgent steps to address this human rights scandal, including by calling on the government of the United States of America to respect and protect the human rights of the hundreds of detainees held without access to the courts, legal counsel, and their relatives. Amnesty International is also concerned that the conditions under which the detainees are held may amount to cruel, inhuman or degrading treatment and that some of them have been *refouled* to countries where they are at risk of serious human rights violations.

At the time of writing the content and format of the Commission's initiative on the human rights situation in **Sudan** are not yet clear. It is clear, however, that the human rights situation in that country, in

particular in Darfur, is so grave as to warrant immediate action by the Commission. Amnesty International urges the Commission to take the following action to address the human rights crisis in Sudan:

- Support the creation of an international human rights monitoring presence to investigate and report on violations of human rights in Darfur;
- Call on the government of Sudan to grant immediate and unrestricted access for humanitarian organizations to address the needs of the civilian population trapped or displaced by the conflict;
- Urge the government to ensure that refugees and displaced persons are given the possibility to return home or resettle in conditions of safety;
- Support the establishment of an international and independent commission of inquiry into the human rights crisis in Darfur; and
- Urge the government of Sudan to issue a standing invitation to the Special Procedures of the Commission to visit the country and facilitate their visits without delay.

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