

## TABLE OF CONTENTS

<b>INTRODUCTION</b> .....	1
<b>COUNTRY CONCERNS</b> .....	4
COLOMBIA .....	4
INDONESIA .....	9
ISRAEL AND THE OCCUPIED TERRITORIES .....	14
RUSSIAN FEDERATION / CHECHNYA .....	20
SAUDI ARABIA.....	25
ZIMBABWE.....	29
<b>THEMATIC CONCERNS</b> .....	35
THE DEATH PENALTY .....	35
“DISAPPEARANCES” .....	37
Draft International Convention on the Protection of All Persons from Enforced Disappearances.....	37
RACISM.....	39
UN World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance .....	39
TORTURE.....	42
UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment .....	42
Draft Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment .....	44
ANNEX      Selective list of other Amnesty International documents .....	47



## 2002 UN Commission on Human Rights: Rights at Risk

*“...in pursuing the objective of eradicating terrorism, it is essential that states strictly adhere to their international obligations and commitments to uphold human rights and fundamental freedoms. While we recognize that the threat of terrorism may require specific measures, we call on all governments to refrain from any excessive steps, which would violate fundamental freedoms and undermine legitimate dissent. ... The purpose of anti-terrorism measures is to protect human rights and democracy, not to undermine these fundamental values of our societies.”<sup>1</sup>*

### INTRODUCTION

*Since the attacks in the United States of America on 11 September 2001, many states have taken steps to enhance the protection of people within their territories from similar criminal acts, including enacting new legislation and other law enforcement measures. Amnesty International condemns unreservedly the attacks and calls in the strongest terms for those responsible to be brought to justice.*

*Under international human rights law, states have a duty to protect their populations from violent criminal acts. However, measures taken should not be excessive and must not undermine fundamental human rights standards.*

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<sup>1</sup> Joint statement by Mary Robinson, UN High Commissioner for Human Rights, Walter Schwimmer, Secretary General of the Council of Europe, and Ambassador Gérard Stoudmann, Director of the OSCE Office for Democratic Institutions and Human Rights, 29 November 2001

Amnesty International is concerned that in their response to the attacks of 11 September, a number of states have introduced or are considering introducing measures that violate human rights standards. The challenge to states is not to promote security at the expense of human rights, but rather to ensure respect of human rights for all, including their own citizens, refugees and minorities. Amnesty International is particularly concerned that:

- the concept of “terrorism”, increasingly used in new legislation, is often vague or broadly defined, thereby creating uncertainty about what conduct is prohibited and thus leaves scope for abuse by criminalizing peaceful activities including legitimate exercise of the right to freedom of expression and association;
- by enacting laws providing for indefinite administrative detention as an alternative to prosecution, some states have in fact created informal criminal justice systems in which detainees are denied rights that they have in the ordinary judicial systems;
- some states have introduced special measures for the prosecution of cases of “terrorism” by special courts and/or under special rules of evidence that violate fair trial rights, such as the use of secret evidence and anonymous witnesses;
- some states have amended criteria and procedures to determine applications for refugee status, threatening the rights to seek and enjoy asylum, and not to be forcibly returned to a country where the asylum-seeker would be at risk of serious human rights violations.

Reports issued by Amnesty International and other human rights organizations describe these issues in detail.<sup>2</sup>

Amnesty International welcomes the statement of the 17 independent experts of the UN Commission on Human Rights (the Commission) on 10 December 2001, expressing their “deep concern over the adoption or contemplation of anti-terrorist and national security legislation and other measures that may infringe upon the enjoyment for all of human rights and fundamental freedoms. We deplore human rights violations and measures that have particularly targeted groups such as human rights defenders, migrants, asylum-seekers and refugees, religious and ethnic minorities, political activists and the media.”<sup>3</sup>

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<sup>2</sup> See, for example Amnesty International's documents, *United Kingdom: Creating a shadow criminal justice system in the name of fighting international terrorism*, (AI Index: EUR 45/019/2001) *India: Briefing on the Prevention of Terrorism Ordinance*, (AI Index: ASA 20/049/2001); *United States of America: Memorandum to the US Attorney General - Amnesty International's concerns relating to the post 11 September investigations*, (AI Index: AMR 51/170/2001).

<sup>3</sup> Statement by the Special Rapporteur (SR) on Human Rights on Freedom of Religion or Belief, SR on the Use of Mercenaries, SR on Torture, SR on Violence against Women, SR on the Independence of Judges and Lawyers, SR on Contemporary Forms of Racism, SR on Freedom of Opinion and Expression, SR on Extrajudicial, Summary or Arbitrary Executions, SR on Adequate Housing, SR on Human Rights and Extreme Poverty, SR on the Sale of Children, Child Prostitution and Child Pornography, SR on Human Rights of Migrants, SR on the Right to Education, SR on the Right to Food, the Representative of the Secretary-General on Internally Displaced Persons, Special Representative of the Secretary-General on Human Rights Defenders, and the Chairman-Rapporteur of the Working Group on Arbitrary Detention.

The risk to human rights by measures taken in the fight against “terrorism” is exacerbated by the absence of an international mechanism with specific responsibility to monitor legislation and practices that are commonly described by states as intended to deal with emergency situations, some of which explicitly or implicitly involve derogations of human rights guarantees.<sup>4</sup>

**Amnesty International calls on all special procedures of the Commission to:**

- pay specific attention in their reports to measures taken by states to combat “terrorism” whether or not these are related to the attacks of 11 September;
- organize a discussion at the Commission on the best means to ensure state compliance with their human rights obligations when taking measures to deal with “terrorism”. In that discussion, attention should be paid to the absence of an international mechanism to systematically monitor legislation and practice to combat “terrorism”.

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<sup>4</sup> In her study for the Council of Europe’s Committee of Ministers’ Steering Committee for Human Rights, Ms Françoise Hampson noted that, in the context of internal conflicts and situations of internal tension, it is a significant weakness of the current system of human rights protection that there is no international mechanism to systematically monitor legislation and practice in emergency situations (*Study on human rights protection during situations of armed conflict, internal disturbances and tensions*, Strasbourg, 31 October 2001, CDDH 920010 21, rev provisional).

Amnesty International further calls on all states to cooperate fully with the UN's human rights mechanisms, including by issuing further standing invitations to the thematic mechanisms of the Commission to visit their country.

In the following sections Amnesty International outlines its concerns in six countries (Colombia, Indonesia, Israel and the Occupied Territories, Russian Federation/Chechnya, Saudi Arabia and Zimbabwe) with a pattern of grave and systematic violations of human rights, as well as in relation to a number of thematic concerns (death penalty, "disappearances", racism and torture). Amnesty International draws the attention of the Commission to recommendations made by the UN High Commissioner for Human Rights, by the thematic mechanisms of the Commission and by UN treaty bodies, and calls on states to ensure the full and prompt implementation of such recommendations.

## COUNTRY CONCERNS

### COLOMBIA

At the 57<sup>th</sup> Session of the Commission, a Chairperson's statement<sup>5</sup> was agreed on the situation of human rights in Colombia, which welcomed the extension of the mandate of the Office of the High Commissioner on Human Rights (OHCHR) in Bogotá. It noted, that under its mandate of promoting and protecting human rights in Colombia, the OHCHR has played a vital role in the work against violations of human rights and international humanitarian law, including formulating a program of recommended actions to the Colombian government to tackle the human rights crisis. The statement urged the government to take further and more effective measures to fully implement these recommendations, and called on all parties to the conflict in Colombia to reach a comprehensive human rights and humanitarian agreement.

A report by the OHCHR in Bogotá<sup>6</sup> was before the Commission which detailed violations of human rights and humanitarian law in 2000 and reiterated its previous recommendations to:

- end impunity in cases of human rights abuses and dismantle the mechanisms of impunity;
- confront, combat and dismantle army-backed paramilitary forces;
- guarantee the safety of human rights defenders and other groups at particular risk, including indigenous and displaced communities.

Amnesty International remains gravely concerned at the deepening human rights crisis in Colombia which continues to intensify and spread throughout the country. The decades long conflict involving the Colombian security forces, their paramilitary allies and armed opposition groups is characterized by widespread and systematic abuses of human rights and international humanitarian law by all parties to the conflict. During 2001 more than 5,000 people were killed for political motives, over 300 were victim of forced "disappearances", and over 200,000 people were forcibly displaced. Eighty five of out-of-combat political killings were committed by paramilitary groups operating with the active or tacit support of the Colombian armed forces, and targeted peasant and indigenous communities living in the conflict zones, community leaders, journalists and land and human rights activists. Armed opposition groups committed widespread abuses of international humanitarian law, including arbitrary killings of civilians, kidnap and holding of hostages and recruitment of children into armed groups.

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<sup>5</sup> OHCHR/STM/CHR/01/02

<sup>6</sup> E/CN.4/2001/15

### **Peace talks**

Despite efforts by the Colombian government to advance peace talks with the main armed opposition groups, the FARC<sup>7</sup> and the ELN<sup>8</sup>, the conflict continues to escalate and few regions of the country remain unaffected. The peace talks between the government and the FARC, which were suspended in November 2000, were resumed in February 2001, but have failed to make substantive progress. In September 2001, a Commission of Eminent People presented a report to both sides to the conflict with proposals to advance the peace talks. These included measures to secure a truce, combat paramilitary forces and put an end to kidnapping. The peace talks stalled once again when the government rejected a number of demands from FARC, including lifting security force controls around and over the demilitarized zone, extending the demilitarized zone until August 2002, and taking decisive action against paramilitaries. However, by the end of November contacts between the government and the FARC looked set to resume.

Peace talks with the ELN have also failed to progress throughout 2001 with the parties unable to reach agreement on the creation of a peace zone in which peace talks could be held. In August 2001, President Pastrana announced that peace talks with the ELN were suspended and their political status has since been removed. In November 2001, attempts to reopen talks between the government and the ELN took place in Cuba. In December 2001 talks seemed set to resume with the announcement by the ELN of a Christmas cease fire and the agreement with the government on an agenda to move peace contacts forward.

While welcoming these initiatives to reach a peace agreement, Amnesty International remains convinced that future peace talks must take place within the framework of human rights and the subsequent peace agreement founded on ensuring respect for human rights and international humanitarian law.

### **Impunity**

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<sup>7</sup> Fuerzas Armadas Revolucionarias de Colombia (Revolutionary Armed Forces of Colombia)

<sup>8</sup> Ejército de Liberación Nacional (National Liberation Army)

The vast majority of perpetrators of violations of human rights and international humanitarian law continue to evade accountability in Colombia. This is an issue which has been repeatedly addressed by national and international human rights organizations and by the UN.<sup>9</sup> One of the key factors which enable impunity to continue is the military justice system. Despite reform in 2000 of the Military Criminal Code and adoption of a new law banning genocide, “disappearances” and forced displacement, military courts continue to hear cases of alleged human rights violations. In August 2001, the government ratified a National Defence and Security Law which provides members of the armed forces with judicial police powers in certain circumstances. The new law severely restricts the capacity of the Office of the Procurator General to undertake disciplinary investigations against security force personnel for human rights violations committed during military operations. These initiatives falls far short of UN recommendations<sup>10</sup> and the August 1997 ruling by the Constitutional Court in Colombia that all allegations of human rights violations, including those in which security force personnel are implicated, must be handled by the civilian courts. Military tribunals have consistently covered up crimes and acquitted high-ranking officers in spite of overwhelming evidence against them.

### **Para-military groups**

Throughout 2001 paramilitary groups have continued their military advances in many regions of Colombia. The government has consistently failed to take decisive action to confront and dismantle these groups and prevent further human rights abuses against the civilian population. Despite government denials of links between the security forces and the paramilitaries, these groups continue to operate with the apparent acquiescence and sometimes open support of the security forces.

In April 2001, paramilitary groups massacred more than 40 peasant farmers in the Alto Naya region of the department of Cauca. This massacre took place despite a heavy military presence in the area, including military control of all access routes to the region,

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<sup>9</sup> In its Concluding Observations on Colombia, the Human Rights Committee recommended “that in order to combat impunity, stringent measures be adopted to ensure that all allegations of human rights violations are promptly and impartially investigated, that the perpetrators are prosecuted, that appropriate punishment is imposed on those convicted, and that the victims are adequately compensated.” (Extract from CCPR/C/79/Add.76, April 1997).

<sup>10</sup> In its report to the forty-first session of the General Assembly the Committee against Torture noted “that the situation of impunity must be terminated by adopting the necessary legislative and administrative amendments to ensure that military courts judge only violations of military regulations” (A/51/44). Similarly, in its 1997 Concluding Observations, the Human Rights Committee urged “that all necessary steps be taken to ensure that members of the armed forces and the police accused of human rights abuses are tried by independent civilian courts” and recommended “that the jurisdiction of the military courts with respect to human rights violations be transferred to civilian court” (CCPR/C/79/Add.76).

and despite authorities being warned that an attack was imminent. The massacre met with strong international condemnation, and some 70 paramilitaries were arrested in April 2001 along the River Naya in a much publicized military operation. Amnesty International subsequently learned that the military commander who coordinated these arrests had been dismissed for alleged links with paramilitary forces.

Up until August 2001, some 400 paramilitaries were arrested. This is indicative of the increased international pressure on the Colombian government to combat paramilitarism, but does not necessarily signal that links between the security forces and paramilitary structures have been severed. Reports reaching Amnesty International indicate that strong links continue to exist between paramilitary groups and the security forces; paramilitary operations often occur in areas where the military is present and paramilitary bases and checkpoints appear able to operate unhindered.

The UN Special Rapporteur on violence against women visited Colombia in November 2001 and condemned the sexual abuse and killings of girls and women by paramilitary and guerrilla groups.

### **Human rights defenders**

In the last three years, more than 25 human rights activists have been killed while a similar number have narrowly escaped attempts on their lives. Many more live under constant threats and harassment by members of the security forces and their paramilitary allies. There are also reports of deliberate killings of human rights activists by members of armed opposition groups.

Political will appears to be lacking on the part of the Colombian government to investigate reported attacks on human rights defenders and to bring to justice those responsible. Despite public pledges by the government to protect human rights defenders, including instructing public officials to support and fully cooperate with human rights organizations, the government has failed to adopt a comprehensive program to guarantee the safety of human rights defenders and prosecute the perpetrators of violations against them.

During her visit to Colombia in October 2001, the UN Special Representative on human rights defenders expressed her concern for the safety of human rights defenders. In 1997, the Human Rights Committee recommended that special measures be adopted to enable human rights activists to exercise their rights and freedoms, without intimidation of any sort.<sup>11</sup>

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<sup>11</sup> Extract from CCPR/C/79/Add.76, Concluding Observations by the Human Rights Committee: Colombia, April 1997

**Amnesty International calls on the Commission to:**

- Adopt a resolution reiterating its concern at the deepening human rights and humanitarian crisis in Colombia;
- Urge the Colombian government to full and prompt implementation of the recommendations made by the OHCHR, relevant treaty bodies and thematic mechanisms of the Commission, and ensuring that implementation of these recommendations are monitored by appropriate UN mechanisms in advance of the 59<sup>th</sup> session of the Commission;
- Support the extension and strengthening of the mandate of the OHCHR;
- Call on all parties to the conflict in Colombia to reach a humanitarian agreement as a framework for peace talks;
- Urge the government to take urgent steps to end impunity for human rights violations by undertaking prompt and impartial investigations into all allegations of human rights violations, ensuring that those responsible stand trial in civilian courts in accordance with international standards for fair trial, and ensuring compensation to the victims;
- Call on the government to take effective and decisive action to combat and dismantle paramilitary groups and sever the links between the security forces and the paramilitaries;
- Urge the government to fully implement the *Guiding Principles on Internal Displacement*,<sup>12</sup> including prevention of forced displacement, protection of the internally displaced, access to humanitarian aid and the right to return or resettlement;
- Urge the government to take all necessary measures to guarantee the protection of human rights defenders from human rights violations, in accordance with the principles laid down in the *UN Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally*

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<sup>12</sup> These Principles were prepared by the Representative of the Secretary-General on internally displaced persons, Mr Francis Deng, in his report to the 54<sup>th</sup> Session of the Commission on Human Rights (E/CN.4/1998/53/Add.2, 11 February 1998).

*Recognized Human Rights and Fundamental Freedoms*, adopted by the UN General Assembly on 9 December 1998 ;

- Encourage the government to cooperate fully with the UN including issuing standing invitations to all the thematic mechanisms of the Commission to visit Colombia;
- Consider appointing a Special Rapporteur for Colombia as a complementary measure to support the work of the OHCHR;
- Request the High Commissioner for Human Rights to submit her report on Colombia to the 57<sup>th</sup> session of UN General Assembly.

## **INDONESIA**

The promise of human rights reform has not been realised in Indonesia, nor have greater democratic freedoms prevented widespread human rights violations from being committed. The new government, like its predecessors, has demonstrated a reluctance to hold perpetrators to account, including those suspected of committing crimes against humanity and other serious crimes in East Timor in 1999. The government has not complied with the recommendation of the Commission<sup>13</sup> to investigate these crimes fully and establish an *ad hoc* human rights court without further delay. It has also failed to act on other recommendations in the Statement by the Chairperson of the 57<sup>th</sup> Session of the Commission in April 2001, including cooperating with the United Nations Transitional Administration in East Timor (UNTAET) on investigating serious crimes. Adequate measures have also yet to be taken to facilitate the voluntary repatriation of East Timorese refugees remaining in Indonesia.

### **Repression of independence movements in Aceh and Papua**

The human rights situation in both Aceh and Papua has further deteriorated during 2001 as operations by the security forces intensified against pro-independence movements, both armed and peaceful. According to local human rights groups over 500 people, many of them civilians, were killed within six months of new security operations being launched in April 2001 in Aceh against the armed opposition group, the Free Aceh Movement (GAM). Scores of cases of unlawful detention, “disappearances” and torture, including rape, have also been reported.

In Aceh and Papua, attacks by GAM and the Free Papua Movement/National Freedom Army (OPM/TPN) have led to reprisals by the Indonesian security forces. In

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<sup>13</sup> Chairperson’s statement, Situation of human rights in East Timor (OHCHR/STM/CHR/01/01).

this context, civilians have become the victims of extrajudicial executions and other human rights violations, and houses and means of livelihood have been destroyed in both provinces as a form of collective punishment. GAM and OPM/TPN are also responsible for serious human rights abuses, including unlawful killings and abductions.

Political leaders and other prominent members of civil society have been deliberately targeted, including leading pro-independence activists who were tried and imprisoned and several members of parliament and other local political leaders who were unlawfully killed. Lack of credible investigations into these cases have further eroded confidence in government initiatives to resolve the conflicts in Aceh and Papua, including the implementation of legislation on special autonomy for the two provinces.

### **Human Rights Defenders**

The pattern of human rights violations against human rights defenders has become more deeply entrenched. Amnesty International documented over a dozen cases in which defenders, mainly in Aceh and Papua, were subjected to extrajudicial execution, unlawful arrest or torture. Threats and other forms of harassment by the police and military are also commonplace. Several activists were accused, and in one case formally charged, with defamation and other criminal offences for publicising human rights violations by the security forces. The increasingly dangerous environment for human rights defenders impedes their ability to carry out their legitimate work and has caused some to seek safety outside of the country.

### **Prisoners of conscience**

In another marked set back, prisoners of conscience have been sentenced to terms of imprisonment for the first time since 1998. During 2001, ten labour and independence activists have been imprisoned for the peaceful expression of their views. Over 30 others are still on trial at the time of writing. Seven of the convicted prisoners of conscience were found guilty of crimes under the Hate-sowing Articles of the Criminal Code prohibiting the "spreading of hatred" against the government. This law was used extensively in the past to suppress dissent but had fallen out of use in recent years. Long-standing commitments to amend the Criminal Code to ensure its consistency with international standards have not yet been fulfilled. The Hate-sowing articles are among the provisions which Amnesty International has consistently recommended be repealed.

Prisoners of conscience and political prisoners have been convicted after unfair trials. The defendants are commonly denied access to legal representation, to medical attention and to members of their families. In many cases detainees have been coerced into making confessions, including through torture.

### **Impunity**

The climate of impunity, which remains a root cause of the continued high level of human rights violations, was highlighted by the Committee against Torture in its review

in November 2001 of Indonesia's initial report. The Committee attributed the situation to the lack of progress "in bringing to trial members of the military, the police or other state officials, particularly those holding senior positions, who are alleged to have planned, commanded and/or perpetrated acts of torture and ill-treatment".<sup>14</sup>

Repeated promises to hold human rights perpetrators to account have not been realised. Delays in setting up human rights courts, including two *ad hoc* human rights courts to consider cases of serious crimes committed in East Timor in 1999 and in Tanjung Priok in 1984<sup>15</sup>, have led to serious doubts of the government's commitment to justice. There are also concerns that the fairness of any trials that do take place in the proposed human rights courts will be jeopardised, including because the legislation<sup>16</sup> under which they are to be established is not fully consistent with international human rights law and standards; there is no victim and witness protection program and judges and other relevant officials have not received adequate training in the practical implementation of international human rights law.

Doubts about the government's commitment to providing justice to the victims of serious crimes, including crimes against humanity in East Timor 1999, have been further reinforced because, while the President has approved the establishment of an *ad hoc* human rights court on East Timor, she has limited its jurisdiction such that the vast majority of crimes committed during 1999 cannot not be considered by it.<sup>17</sup> Moreover, the Indonesian authorities have consistently refused to cooperate with the serious crimes investigations being carried out by UNTAET, but rather has challenged the legality of the Memorandum of Understanding signed by UNTAET and the Indonesian Attorney General in April 2000. In the meantime, the government has not responded to over 30 indictments issued against individuals currently in Indonesia by the UNTAET Serious Crimes Unit.

Institutional and legal weakness, combined with political resistance, has prevented hundreds of cases of human rights violations in Indonesia itself, both past and

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<sup>14</sup> CAT/C/XXVII/Concl.3, 22 November 2001

<sup>15</sup> Scores of people were killed or "disappeared" when the Indonesian security forces opened fire on Muslim demonstrators in the Tanjung Priok area of Jakarta in September 1984 in the Tanjung Priok area of Jakarta. Around 200 people were arrested in connection with the protest of which around one half were brought to trial. Some were accused of acts of violence, but scores were sentenced to years in jail because of the peaceful expression of their beliefs.

<sup>16</sup> Law 26/2000 on Human Rights Courts.

<sup>17</sup> Presidential Decision 96/2001 limits the jurisdiction of the court to just the two months of April and September 1999 and to three out of 13 districts in East Timor.

present, from being resolved. Only a few cases were investigated during 2001, but they met with obstructions and did not result in trials.

### **Refugees**

The situation has not yet been resolved for some 75,000 East Timorese refugees, who fled or were forcibly expelled from East Timor in September 1999, and are still in West Timor, Indonesia. Although there has been a significant increase in the number of people returning to East Timor since elections in East Timor in August 2001, the Indonesian government failed to provide adequate guarantees of security, including through disarming and disbanding militia, to permit the UN High Commissioner for Refugees (UNHCR) to return to West Timor.<sup>18</sup> There is concern that government plans to cease assistance to the remaining refugees early in 2002 will lead to chaotic repatriations, placing refugees and those seeking to assist them at undue risk, while increasing the misery of those who are unable or unwilling to return.

### **Cooperation with United Nations Mechanisms**

Despite submitting its first periodic report to the Committee against Torture, Indonesia's record on cooperation with UN mechanisms has been inconsistent. Indonesia submitted its first report to the Committee against Torture (the Committee). However, few practical measures have been taken to implement the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment. The Committee, which examined Indonesia's report in November 2001, expressed its concern about the large number of allegations of torture, and recommended measures, including the prohibition of torture in law; the establishment of an effective, reliable and independent complaints mechanism and prosecutions of all persons suspected of involvement in torture.

The Special Representative of the Secretary-General on Internally Displaced Peoples, Francis Deng, visited Indonesia in September 2001. However, the Indonesian government has not yet responded to a request, first made in 1993, from the Special Rapporteur on torture to visit Indonesia. The OHCHR was compelled to suspend its technical assistance program on justice with the Attorney General's office because of its concerns in relation to the limited jurisdiction of the *ad hoc* Human Rights Court on East Timor. Recommendations made previously by the Commission and by its thematic mechanisms have also not been fully implemented and Indonesia's commitment to ratify the International Covenant on Economic, Social and Cultural Rights, under the five year National Plan of Action on Human Rights, has not yet been fulfilled.

### **Amnesty International calls on the Commission to:**

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<sup>18</sup> UNCHR was forced to evacuate West Timor in September 1999 after three of its staff were killed by pro-Indonesia East Timorese militia.

- Adopt a resolution condemning gross human rights violations in Indonesia, in particular the widespread extrajudicial executions, “disappearances”, torture and unlawful detentions in the provinces of Aceh and Papua;
- Urge the Indonesian government to take effective steps to halt the human rights violations, including by reaching, without delay, negotiated settlements based on respect for human rights and international humanitarian law with representatives of independence movements in Aceh and Papua;
- Request the government to cooperate fully with the UN’s human rights mechanisms and bodies, including by issuing standing invitations to all thematic mechanisms of the Commission to visit Indonesia, in particular the Special Rapporteur on torture, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Representative on human rights defenders;
- Urge the Indonesian government to take all necessary measures to ensure the protection of human rights defenders from human rights violations, in accordance with its obligations under the *UN Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*;
- Urge the Indonesian government to release all prisoners of conscience and to retry political prisoners in new trials which meet with international standards for fair trial;
- Call on the government to ratify the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the 1951 Convention relating to the Status of Refugees and its 1967 Protocol;
- Urge the Indonesian government to take concrete steps to end impunity, including by strengthening existing mechanisms to promptly and impartially investigate all allegations of human rights violations and to bring alleged perpetrators to justice in accordance with international standards for fair trial;
- Reiterate its recommendation that those responsible for serious crimes, including crimes against humanity, in East Timor during 1999 are brought to justice. To this end:
  - Urge the Indonesian government to take immediate measures to ensure that trials meet with fair trial standards and the death penalty is not imposed. Action should also be taken to ensure that the process

delivers full justice to the thousands of victims of serious crimes in East Timor by extending the jurisdiction of the *ad hoc* Human Rights Court for East Timor;

- Remind the Indonesian government of its commitment to cooperate with UNTAET, under the terms of the Memorandum of Understanding of 6 April 2000, in the investigation and prosecution of crimes which took place in East Timor during 1999;
- Remind the Indonesian government that failure to bring to justice *all* those responsible, in credible trials, will result in alternative processes being considered, including an international criminal tribunal, in accordance with the recommendations of the International Commission of Inquiry on East Timor and of UN Special Rapporteurs;
- Reiterate the need for the Indonesian government to facilitate the voluntary repatriation or resettlement of East Timorese refugees still in Indonesia without further delay, including by creating conditions which would enable refugees to make a free and informed decision on whether or not to return and which would make possible the return to West Timor of UNHCR and other agencies with expertise in facilitating and organizing repatriations.

### **ISRAEL AND THE OCCUPIED TERRITORIES**

A major flaw of the process which began with the Oslo Agreement in 1993 is that respect for human rights were not from the very beginning put at the heart of the agenda for peace. The past seven years have shown that if human rights are sacrificed in the search for peace and security there will be no peace and no security.

Over the years, there have been numerous UN initiatives aimed at improving the human rights situation in Israel and the Occupied Territories. At the request of members of the Commission, a Special Fifth Session of the Commission “to discuss the grave and massive violations of human rights of the Palestinian people” took place in October 2000. The Special Session adopted a resolution<sup>19</sup> calling for a “human rights inquiry commission” to be established, and for both the UNHCHR and several of the thematic mechanisms<sup>20</sup> of the Commission to undertake urgent visits to the Occupied Territories. The report of the UNHCHR’s visit to the Occupied Territories and Israel was published

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<sup>19</sup> S-5/1

<sup>20</sup> The Special Rapporteurs on extrajudicial, summary or arbitrary executions; torture; violence against women; religious intolerance; contemporary forms of racism; adequate housing; the Representative of the S-G on internally displaced persons; and the Working Group on Enforced or Involuntary Disappearances.

in November 2000, and the report of the Commission of Inquiry was submitted in October 2001. Both reports urged Israel to end violations of international humanitarian and human rights standards, including by stopping targeted killings and other unlawful killings, ending demolitions of Palestinian houses and restoring freedom of movement to Palestinians.<sup>21</sup>

### **Unlawful killings**

The clashes between Israelis and Palestinians since the start of the *intifada* on 29 September 2000 have been marked by systematic abuses of international human rights and humanitarian law. Palestinian demonstrations in September and October 2000 were met by excessive use of lethal force by the Israeli security forces and quickly escalated into a human rights crisis. By the beginning of December 2001, at least 700 Palestinians had been killed, most of them unlawfully by Israeli security forces. More than 200 Israelis have also been killed, most of them civilians deliberately targeted by armed groups and individuals. The death toll includes more than 150 Palestinian children and more than 40 Israeli children. Those maimed and wounded number more than 15,000.

Israeli security services have killed Palestinians, including children, unlawfully, including in stone-throwing demonstrations, near checkpoints and borders and by shelling and bombing residential areas. Israeli forces have also pursued a policy of deliberately targeting and extrajudicially executing those alleged to have carried out, or to be planning to carry out, violent attacks against Israelis. More than 70 Palestinians have been assassinated in this way, and more than 40 bystanders, including children, have been killed at the same time. This policy, combined with the Israeli government's failure to investigate killings by its security services, as required according to international standards<sup>22</sup>, is leading to a culture of impunity in the security forces and a cycle of abuses and revenge.

During the same period, Israeli civilians have been killed, including in drive-by shootings and by bombs placed to target busses or public places. These killings have been carried out by various armed groups including *Fatah*, *Hamas* and *Islamic Jihad*. However, human rights abuses by opposition groups or individuals can never justify abandonment of human rights and humanitarian law obligations by a government.

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<sup>21</sup> Similar recommendations were made by the former Special Rapporteur on the situation of human rights in the Palestinian territories occupied by Israel since 1967, Giorgio Giacomelli, in reports submitted to the Special Session of the Commission on Human Rights in October 2000 and to the Commission on Human Rights in March 2001.

<sup>22</sup> Such standards include the Principles on the effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Principle 9).

### **Torture and ill-treatment**

Israeli security services have arrested more than 1,500 Palestinians, many of them children, in Israel and the Occupied Territories since the start of the *intifada* and charged them with stone-throwing or other offences related to the *intifada*. Some of those arrested reported they were beaten or kicked immediately after their arrest or during pre-trial detention. Palestinians are frequently held for more than 20 days in incommunicado detention and methods of interrogation amounting to torture and ill-treatment have been frequently reported.

*The Special Rapporteur on torture stated in his 2001 report that: "as long as the Government [of Israel] continues to detain persons incommunicado for exorbitant periods, itself a practice constituting cruel, inhuman and degrading treatment (as repeatedly confirmed by the Commission) the burden will be on the Government to prove that the allegations [of torturous techniques] are untrue."*<sup>23</sup>

In a historic judgement in September 1999, a year before the start of the *intifada*, the Israeli supreme court declared that methods of torture, which had been used and effectively legalized in Israel and the Occupied Territories for many years, were now banned. The methods declared unlawful included "shaking", *shabeh* (holding in painful positions), *gambaz* (prolonged squatting), and sleep deprivation. However, during the *intifada* an increasing number of cases of alleged torture, including use of the methods banned by the supreme court in 1999, have been recorded. The Committee against Torture recently recommended that "interrogation methods prohibited by the Convention should not be utilized ... in any circumstances" and that the government should "take all necessary effective steps to prevent the crime of torture ... and institute effective complaint, investigative and prosecution mechanisms relating thereto".<sup>24</sup>

### **Administrative detention**

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<sup>23</sup> E/CN.4/2001/66, paragraph 665, 25 January 2001

<sup>24</sup> Conclusions and Recommendations of the Committee against Torture: Israel, CAT/C/XXVII/Concl.5, paragraphs 7 (d) and (e)

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Amnesty International is also concerned about the use, in Israel and the *Occupied Territories*, of administrative detention to hold detainees without charge and with no intention of bringing the detainee to trial. Under administrative detention orders<sup>25</sup> a detainee is set a specific term of detention, which is frequently renewed. This process can continue indefinitely. In its Conclusions and Recommendations following examination of Israel's Third Periodic Report<sup>26</sup> in November 2001, the Committee against Torture recommended that "the State Party should review its laws and policies so as to ensure that all detainees, without exception, are brought promptly before a judge, and are ensured prompt access to a lawyer".

*Although the number of administrative detainees has greatly decreased since 1998 (the total number in administrative detention under Israeli or Occupied Territory law is now around 34), the basic elements of this form of detention remain unchanged and detainees still are not told the reason for their detention nor whether they will be released at the end of the detention order or be issued with a further order.*

In 1994, the Working Group on Arbitrary Detention stated that "individual liberty cannot be sacrificed for the government's inability either to collect evidence or to present it in an appropriate form".<sup>27</sup>

In January 2001, the Palestinian Authority executed two Palestinians after a summary and unfair trial before the state security court; at least another seven Palestinians remain under sentence of death. More than 30 Palestinians are reported to have been killed by members of the Palestinian security services and the authorities appear to have made no attempt to identify the perpetrators and bring them to justice. The Palestinian Authority has also failed to arrest and try those alleged to have carried out attacks on Israeli civilians. Around 500 Palestinians suspected of "collaboration" with Israel have been arrested between 1994 and 2001 and remain in detention without

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<sup>25</sup> In Israel and East Jerusalem, administrative detention orders are issued by the Minister of Defence; in the Occupied Territories (except for East Jerusalem) they are issued by military commanders.

<sup>26</sup> CAT/C/XXVII.Concl.5

<sup>27</sup> E/CN.4/1995/31/Add.2, Para. 9, 18 November 1994.

charge or trial. Prolonged incommunicado detention and torture, particularly of those suspected of “collaboration”, is frequent.

### **House demolitions**

Since 1967, when Israel occupied the Gaza Strip and the West Bank, thousands of Palestinian homes have been demolished. Israel has for years pursued a policy of demolishing Palestinian homes, as a form of collective punishment if anyone living in the house had committed, or was suspected of having committed, an attack on an Israeli national. Houses have also been demolished for alleged security reasons and as part of a discriminatory planning policy which prohibits the building of Palestinian houses while freely allowing Israelis to construct settlements for Jewish settlers. The Committee against Torture recently noted that “Israeli policies on house demolitions ... may ... amount to cruel, inhuman or degrading treatment or punishment” and recommended that Israel “desist from the policies”.<sup>28</sup>

During the current *intifada* there has been large-scale demolition of Palestinian homes. In Gaza, 360 homes were demolished between October 2000 and September 2001, and more than 200 homes have been demolished in the West Bank. Homes continue to be demolished almost every day in the Gaza Strip, the West Bank and East Jerusalem. A minimum of 2,000 Palestinians have thus been made homeless over the past year, the vast majority of them children.

### **Closures**

Over the past years, Israel has instituted and intensified their policy of closures of towns and villages inhabited by Palestinians in the Occupied Territories. Most of the inhabitants of the Gaza Strip have been enclosed for 10 years in this narrow strip of land, 45 kilometres long and never more than 12 kilometres wide<sup>29</sup>. In the West Bank, since the beginning of the *intifada*, almost every town and village has been cut off behind piles of earth, concrete blocks or military barriers which block every access road. These closures constitute a grave human rights violation and a collective punishment targeted against all Palestinians in the Occupied Territories for killings committed by a few.

The right to freedom of movement is a fundamental right, as laid down in Article 12 of the International Covenant on Civil and Political Rights, which guarantees the right to liberty of movement and not to be subject to restrictions except as provided by law. The Committee against Torture has stated that Israeli policies on closure “may ... amount

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<sup>28</sup> CAT/C/XXVII/Concl. 5, paragraph 6 (j)

<sup>29</sup> More than 20% of the area is taken up with Israeli settlements.

to cruel, inhuman or degrading treatment or punishment” and called on Israel to “desist from the policies of closure and house demolition”.<sup>30</sup>

**Amnesty International calls on the Commission to:**

- Adopt a resolution condemning the grave violations of human rights in Israel and the Occupied Territories;
- Call on all parties to future peace talks to ensure that human rights are put at the heart of the agenda for peace;
- Support the urgent deployment of international observers to monitor, investigate and report on respect for human rights and international humanitarian law standards and call on Israel and the Palestinian Authority to cooperate fully with such an initiative;
- Urge the Israeli government to respect international human rights standards governing the use of force and firearms, to stop using lethal force except to prevent imminent danger to life, to carry out prompt and impartial investigations into all killings and to bring to justice those responsible in the course of proceedings which meet international standards for fair trial;
- Urge the Palestinian groups to end deliberate and arbitrary targeting of civilians;
- Urge Israel to incorporate the provisions of the Convention against Torture into domestic law, to immediately cease the use of torture and ill-treatment, to ensure a prompt and impartial investigation into all allegations of torture and ill-treatment, and to bring to justice those responsible in the course of proceedings which meet international standards for fair trial;
- Urge Israel to release all administrative detainees or promptly charge them with a recognizable criminal offence in a court in accordance with international standards for fair trial, and to ensure that all detainees have access without delay to relatives and lawyers of their choice;
- Urge the Palestinian Authority to stop executions; to bring those who have ordered or carried out attacks on Israeli civilians or extrajudicial executions of Palestinians to justice; and to ensure that no one is detained incommunicado, tortured, or detained without fair trial;

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<sup>30</sup> CAT/C/XXVII/Concl. 5, paragraph 7 (g)

- Call on Israel to cease carrying out demolitions of houses as punishment or in reprisal, to cancel outstanding demolition orders based on discriminatory policies and to end the discriminatory policies;
- Call on Israel to remove physical barriers and other punitive restrictions on free movement of Palestinians within the Occupied Territories, including East Jerusalem;
- Remind Israel that its obligations to respect and protect human rights apply equally in the Occupied Territories;
- Encourage Israel to issue standing invitations to all the thematic mechanisms of the Commission to visit Israel and the Occupied Territories.

#### **RUSSIAN FEDERATION / CHECHNYA**

At the 57<sup>th</sup> session in 2001, the Commission adopted a resolution on the human rights situation in Chechnya<sup>31</sup> which strongly condemned abuses of human rights and international humanitarian law by both Russian forces and Chechen fighters, and called on the Russian government to set up a national broad-based and independent commission of inquiry to investigate the alleged violations.

In September 2001, the UN High Commissioner for Human Rights (UNHCHR) reported to the General Assembly on the progress of implementation of the Commission's resolution. Amnesty International welcomes some of the measures taken by the authorities as reported by the UNHCHR, but remains concerned that both parties to the conflict continue to commit serious violations of human rights and international humanitarian law. Violations by Russian forces include arbitrary detention, detention in unofficial and secret places (including in pits in the ground), torture and ill-treatment, "disappearance" and extrajudicial executions. Chechen fighters have also failed to take measures to avoid civilian deaths and are alleged to have tortured and killed Russian soldiers after their capture. Amnesty International is deeply concerned at the continued failure by the Russian authorities to ensure that all human rights violations are promptly and effectively investigated and that alleged perpetrators are brought to justice in the proceedings which meet international standards of fairness and do not result in the imposition of the death penalty.

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<sup>31</sup> E/CN.4/RES/2001/24

During “cleansing operations” (*zachistka*) in towns and villages, Russian forces continue to arbitrarily arrest and use disproportionate force against civilians. Most people detained during such operations are reportedly beaten or subjected to torture, including rape, while held incommunicado. Bribes are often extorted from relatives in exchange for their release; others simply “disappear” in custody. The mutilated corpses of some of the “disappeared” and many other unidentified individuals have been discovered in more than a dozen dumping grounds throughout Chechnya.

### **Human rights defenders and independent media**

People promoting human rights or investigating their abuse in Chechnya continue to be subjected to harassment. One example is the case of Dik Altemirov, a respected Chechen human rights activist and former government minister and vice president who, because of his human rights activities, was taken into custody by members of the Russian forces on 24 May 2001 in Grozny and held in incommunicado detention. Following protests from human rights and intergovernmental organizations Dik Altemirov was released two days later without charge. Amnesty International considers that he was detained as a prisoner of conscience held solely for the peaceful exercise of his right to freedom of expression.

The Russian authorities exercise strict control of the information flow to and from Chechnya, and non-governmental organizations and independent journalists continue to face significant obstacles in gaining access to Chechnya and to carry out their work there.

### **Internally displaced people**

Hundreds of thousands of people remain internally displaced both inside Chechnya and in other republics of the Russian Federation. According to reports, there are some 150,000 displaced people in Ingushetia alone, some of whom have just recently arrived from Chechnya. In November 2001, Amnesty International was informed that the camps in Ingushetia were becoming overcrowded and therefore unable to register new arrivals. The Joint Working Group on Chechnya of the Council of Europe reported to the Parliamentary Assembly in September 2001 that the living conditions in the camps “remain dire and very precarious” and that the main factor which prevented the displaced from returning to their homes was the unsatisfactory security situation in Chechnya.

### **Commission of inquiry**

For the past two years, Amnesty International has been calling on the Commission to establish an international commission of inquiry into allegations of grave abuses of human rights and humanitarian law in Chechnya as the most effective means of ending impunity and ensuring justice for the victims. Two national bodies have already been established by the Russian authorities, but to date these have not proved fully effective in investigating allegations of human rights abuses and in bringing those responsible to justice. The *National Public Commission*, set up in April 2000, has no powers to mount

its own investigations into allegations of grave abuses nor to subpoena official documents or witnesses. Although it has reportedly received hundreds of complaints, its output has so far been limited to public denunciations of human rights violations by Russian forces, and the establishment of local offices to receive complaints of human rights violations and provide legal advice to alleged victims. The second initiative is the *Office of the Special Representative of the President on Human Rights and Freedoms in the Chechen Republic* which was established in February 2000. Some progress has been made on processing complaints of human rights violations in collaboration with experts from the Council of Europe.<sup>32</sup> However, according to information available to Amnesty International, no effective criminal investigations have been initiated into reports of indiscriminate use of military force and massacres of civilians, nor into allegations of arbitrary detention, torture or ill-treatment. As far as Amnesty International is aware, only one such case has ever reached the courts, i.e. the case of Colonel Yury Budanov charged with the rape and murder of 18-year old Kheda Kungaeva. At the time of writing, the trial was still ongoing.

Over the years, there have been various UN initiatives aimed at improving the human rights situation in the Russian Federation. The Special Rapporteur on torture noted in his 2001 report to the 57<sup>th</sup> session of the Commission that he had received information indicating that torture and other forms of ill-treatment were widespread in the Russian Federation, in particular in relation to the conflict in Chechnya.<sup>33</sup>

Amnesty International welcomes the invitation to visit Chechnya extended earlier to the Special Representative of the UN Secretary-General on children and armed conflict, as well as the progress made in arranging a visit by the UN Special Rapporteur on violence against women. The organization continues to urge the government to respond positively to the outstanding requests to visit the Russian Federation made by the UN Secretary General's Special Representative on internally displaced persons, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture.

It is important to note, however, that human rights concerns in the Russian Federation are not confined to the Chechen Republic. According to reports received by Amnesty International, human rights also continue to be violated in other parts of the Russian Federation.

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<sup>32</sup> According to a statement on 27 September 2001 by the Secretary General to the Parliamentary Assembly of the Council of Europe.

<sup>33</sup> E/CN.4/2001/66, paragraphs 865-939

**Prisoners of conscience**

People continue to face imprisonment for peacefully exercising their human rights. Former prisoner of conscience Grigory Pasko, a journalist and naval captain, faces a retrial following a decision by the Russian Supreme Court in November 2000 to send his case back to the Military Court of the Pacific Fleet for further investigation. Grigory Pasko was originally arrested in November 1997 after exposing the dumping of nuclear waste by the Russian navy. During his imprisonment he was kept in solitary confinement for about 10 months and his health deteriorated. At a closed trial, which lasted from February to July 1999, he was sentenced to three years imprisonment for “abuse of office”, but immediately released under an amnesty. At the time of the trial, Amnesty International raised serious concerns about its fairness and the lack of impartiality and independence of the court. The organization is concerned that the new charges brought against Grigory Pasko are part of a current trend in the Russian Federation to crack down on journalists, as well as environmental and human rights activists for exercising their right to freedom of expression.

**Torture and ill-treatment**

Amnesty International continues to receive reports alleging that people arrested by the police, including women and children, have been subjected to torture and other cruel, inhuman or degrading treatment or punishment. Torture and ill-treatment are also widespread in the Russian armed forces, where a number of conscripts have died as the result of ill-treatment by fellow soldiers or superior officers.

On 10 April 2001, former school teacher Nadezhda Ubushaeva was reportedly ill-treated by police while in their custody in Elista, the capital of the Russian Republic of Kalmykia. Police detained her in the main city square, where she was peacefully protesting her family’s eviction from their home that morning. It is alleged that she was dragged to a police car and beaten with a blunt instrument. She was released from the police station after two hours’ detention. A medical certificate issued three days later indicated that she had suffered injuries to her hips, shoulders and face consistent with these allegations of ill-treatment.

Amnesty International remains concerned that conditions in pre-trial detention centres and prisons are so harsh as to amount to cruel, inhuman or degrading treatment or punishment. Hundreds of thousands of people awaiting trial are held in grossly overcrowded conditions. Cells are filthy and pest-ridden, and medical treatment is often inadequate. It is reported that an average of 10,000 inmates die each year. When considering the Second Periodic Report of the Russian Federation, in November 1996, the Committee against Torture recommended that the government “radically improve

conditions in prisons” and “establish effective machinery to monitor ... the conditions under which persons are held”.<sup>34</sup>

### **The death penalty**

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<sup>34</sup> A/52/44, paras.31-43, 14 November 1996

Amnesty International opposes the imposition of the death penalty in all cases and welcomes the statement by President Vladimir Putin on 10 July 2001 in favour of abolishing the death penalty in the Russian Federation.<sup>35</sup> Despite several calls in the past year for lifting the *de facto* moratorium on the death penalty, the President announced that he was against reinstating the death penalty. In October 1995, the Human Rights Committee recommended that the government “reduce substantially the number of crimes for which the death penalty may be imposed ... with a view to its eventual elimination”.<sup>36</sup>

### **Refugees and asylum-seekers**

Amnesty International is concerned about numerous reports that asylum-seekers arriving at Moscow’s international airport at Sheremetevo have not had their claims of asylum fully and impartially examined within a fair procedure, but have been forcibly returned to their country of origin where they may be at risk of human rights violations. For example, on 29 March 2001 an Iranian asylum-seeker was forcibly returned to Iran, where it was believed he would risk ill-treatment.

### **Amnesty International calls on the Commission to:**

- Adopt a resolution condemning the grave violations of human rights in the Russian Federation, including the Chechen Republic;
- Establish an international commission of inquiry into allegations of grave abuses of human rights and international humanitarian law in the context of the armed conflict in Chechnya, and report back to the Commission in 2003;
- Call on the government of the Russian Federation to take urgent steps to end torture and ill-treatment and establish systems to ensure prompt and impartial investigation into all allegations and to bring to justice those responsible;
- Urge the government to release all prisoners of conscience;
- Urge the government to take all necessary measures to guarantee the protection of human rights defenders from human rights violations, in accordance with the principles laid down in the *UN Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally*

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<sup>35</sup> During a televised meeting on 9 July 2001 with the Head of the World Bank

<sup>36</sup> Concluding Observations of the Human Rights Committee: Russian Federation, 3 October 1995 (CCPR/C/79/Add.54)

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*Recognized Human Rights and Fundamental Freedoms*, adopted by the UN General Assembly on 9 December 1998;

- Urge the government to fully implement the *Guiding Principles on Internal Displacement*,<sup>37</sup> including prevention of forced displacement, protection of the internally displaced, access to humanitarian aid and the right to return or resettlement;
- Call on the government to abolish the death penalty and to ratify the Second Optional Protocol to International Covenant on Civil and Political Rights aiming at the abolition of the death penalty;
- Encourage the government to issue standing invitations to all the thematic mechanisms of the Commission to visit the Russian Federation;
- Urge the government to ensure immediate and effective access to Chechnya for human rights and humanitarian non-governmental organizations and the media.

#### **SAUDI ARABIA**

Saudi Arabia continues to systematically violate many fundamental human rights, despite public statements by senior government representatives that Saudi Arabia is committed to “the protection and promotion of human rights through carefully studied measures within the context of a comprehensive human rights strategy”<sup>38</sup>.

However, Amnesty International continues to be deeply concerned that the criminal justice system in Saudi Arabia is one that leads to serious and systematic violations of human rights and that this is sustained by the level of secrecy which surrounds the system, including arrest and detention, treatment in detention, the various stages of trial, and the punishments imposed. The system extends excessive powers to the arresting and judicial authorities and breaches the rights of people who come into conflict with it. As a result, over the past two decades, people face harsh treatment and arbitrary detention, torture is routine, flogging is regularly imposed, over a thousand people have been executed and scores have been subjected to amputation of limbs.

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<sup>37</sup> These Principles were prepared by the Representative of the Secretary-General on internally displaced persons, Mr Francis Deng, in his report to the 54<sup>th</sup> Session of the Commission on Human Rights (E/CN.4/1998/53/Add.2, 11 February 1998).

<sup>38</sup> Statement by the Deputy Foreign Minister at the Commission on Human Rights in April 2000.

Since 1994, Saudi Arabia's human rights record has been reviewed by the Commission under the confidential 1503 procedure, which allows scrutiny behind closed doors of complaints of a "consistent pattern of gross human rights violations". Amnesty International continues to submit information on Saudi Arabia under this procedure.

### **Torture and ill-treatment**

Systematic torture and ill-treatment in Saudi Arabian prisons and police stations continue to be reported and the authorities fail to ensure prompt and impartial investigations into allegations of torture as required by the Convention against Torture, which came into force in Saudi Arabia in 1997. As a party to this Convention, Saudi Arabia is obliged to bring its national legislation in line with the Convention, but as yet there is no unequivocal prohibition of torture in Saudi Arabian law and the criminal justice system remains deeply flawed. Saudi Arabia submitted its Initial Report to the Committee against Torture for consideration originally at its session in November 2001; however, shortly before that Saudi Arabia advised the Committee that the government would be unable to present their report. The review is currently rescheduled for the April/May session in 2002. While Amnesty International welcomes Saudi Arabia's Initial Report it regrets that the report fails to provide an adequate analysis of the issue of torture in the country. The Report sets out to convey the message that Saudi Arabia is a torture-free country. Yet according to information reaching Amnesty International torture and ill-treatment is rife.

Radical reform of laws, procedures and practices are needed to eradicate torture in Saudi Arabia. Amnesty International welcomes the introduction of new laws, including a code of criminal procedure and a law regulating the legal profession, and urges the Saudi Arabian government to take this opportunity to tackle the issues of torture and detention by bringing the new laws into conformity with the Convention against Torture and other international human rights standards. Arbitrary and incommunicado detention, the use of confessions extracted under torture and lack of access by detainees to legal counsel and the outside world are all factors facilitating torture taking place in police stations and prisons.

At the session in 2000 of the Commission, the Saudi Arabian Deputy Foreign Minister issued an invitation to the Special Rapporteur on the independence of judges and lawyers to visit the country. The visit was originally scheduled to take place in October 2001, but has been postponed several times by the Saudi Arabian government citing the current international security situation as the reason. At the time of writing, a new date for the visit has not been set.

Although torture is widespread, few accounts of torture ever reach the outside world, due to the systematic use of incommunicado detention. In the rare instances, when detainees are allowed access to families, or consular representatives in the case of

foreign workers, this takes place under tight supervision by prison officers and under strict orders not to talk about their treatment in detention or the case against them. However, some information did come to light, including the case of an Indian national who was accused of theft and held in incommunicado detention. At his release in December 2000, he reported that while in detention he had been beaten with sticks and ropes by three plain clothed officers while he was handcuffed and his legs were chained.

Amnesty International is also deeply concerned at the continued imposition of corporal punishments such as amputation, a form of torture, and flogging, which it considers may amount to torture or cruel, inhuman and degrading treatment. In January 2001, on reviewing Saudi Arabia's Initial Report, the Committee on the Rights of the Child recommended that Saudi Arabia "take all necessary steps to end the imposition of corporal punishment, including flogging and all forms of cruel, inhuman or degrading treatment or punishment".<sup>39</sup> However, extrajudicial floggings continue to be carried out, including on hundreds of teenagers suspected of harassing women and other behaviour deemed immoral. For example, last year three youths were given 15 lashes each in the al-Rashid Shopping Mall in al-Khobar in the Eastern Province, where they had committed the alleged offences. According to media reports, the floggings were announced over the mall's loudspeaker system to allow shoppers time to gather and watch the punishments being carried out. Flogging also remains widely applied throughout the country as a judicial corporal punishment after grossly unfair trials.

### **The death penalty**

During January-November 2001, Amnesty International recorded 79 executions in Saudi Arabia. All were sentenced to death after trials which fall far short of international standards of fair trial. Defendants often have no access to legal counsel nor do they have the right to effective appeal against their sentence. The scope of the death penalty remains wide and includes offences without lethal consequences, in violation of international standards which require that the death penalty is only imposed for the "most serious crimes" of lethal consequences.<sup>40</sup>

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<sup>39</sup> CRC/C/15/Add.148, paragraph 34

<sup>40</sup> International Covenant on Civil and Political Rights, Article 6

Amnesty International is particularly concerned about the lack of clarity in Saudi Arabian law relating to the obligation not to impose the death penalty on children. In its January 2001 review, the Committee on the Rights of the Child expressed its serious concern that as the age of majority is not clearly defined in Saudi Arabian law, there is a risk that the death penalty could be imposed for offences committed by children under the age of 18.<sup>41</sup> The Special Rapporteur on extrajudicial, summary and arbitrary executions also noted with concern that Saudi Arabia had executed persons who were under 18 at the time of the crime.<sup>42</sup>

### **Discrimination against women**

In Saudi Arabia, law and custom facilitate discrimination against women, including through restricting their freedom of movement. Women cannot move freely without the company of an immediate relative, even to seek urgent medical attention. Such restrictions, in turn, underpin denial of other rights, in some cases leading to arbitrary detention. The religious police, *al-Mutawa'een*, who is mandated to ensure strict adherence to established codes of moral behaviour, have more latitude to arrest and detain women than men because more constraints are placed on the conduct of women.

Severe discrimination against women put them at increased risk of domestic violence. This is perpetuated by prevailing social conditions and tolerated by the state. Foreign domestic workers are particularly vulnerable to such abuses. The form of violence, mostly committed by the male head of the family or male children, varies from food and sleep deprivation to beating and sexual assault.

Amnesty International believes that a human rights framework must be put in place to combat discrimination and violence against women. Under international human rights law states have a responsibility to put in place effective measures to protect women from violence whether committed by state officials or by private individuals. In its Concluding Observations on Saudi Arabia's Initial Report, the Committee on the Rights of the Child recommended that the "State party take effective measures ... to prevent and eliminate discrimination on the grounds of sex and birth in all fields of civil, economic, political, social and cultural life"<sup>43</sup>.

### **Amnesty International calls on the 2002 Commission to:**

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<sup>41</sup> CRC/C/15/Add.148, paragraph 27

<sup>42</sup> E/CN.4/2001/9, paragraph 81

<sup>43</sup> CRC/C/15/Add.148, paragraph 24

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- Adopt resolution deploring the continued grave violations of human rights in Saudi Arabia, and calling for the undertakings made by the Saudi Arabian representative at the 2000 Commission to be put into immediate effect;
  - Call on the government of Saudi Arabia to ensure prompt and impartial investigations into all allegations of torture, and to adopt laws expressly prohibiting torture in accordance with the provisions of Convention against Torture;
  - Urge the government to implement reform of the judicial system to ensure fair trials, end incommunicado detention, and establish a system of juvenile justice in accordance with the provisions of the Convention on the Rights of the Child;
  - Urge the government to immediately suspend all executions pending total abolition of the death penalty;
  - Urge the government to abolish all discriminatory laws and practices against women, girls and minorities;
  - Encourage the government to issue standing invitations to all the thematic mechanisms of the Commission to visit Saudi Arabia, and to facilitate the previously agreed visit by the Special Rapporteur on the independence of judges and lawyers without further delay;
  - Call on the government to ratify, without reservations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the 1951 Convention relating to the Status of Refugees and its 1967 Protocol and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, as well as withdraw its reservations to the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on Elimination of All Forms of Racial Discrimination, and to incorporate the obligations in these treaties into national law;
  - Urge the government to allow non-governmental human rights organizations access to Saudi Arabia.

## **ZIMBABWE**

*The human rights situation in Zimbabwe has not been scrutinised by the Commission, despite the continuing systematic violation of*

fundamental human rights in that country. During the past year, Amnesty International has become deeply concerned that there is not only a clear pattern of widespread human rights violations, but a sharp escalation in the number of state-condoned or facilitated arbitrary arrests, torture and intimidation.

Recent investigations by Amnesty International reveal that the professionalism and impartiality of the Zimbabwe Republic Police, the country's security forces<sup>44</sup> and the judicial system have been deliberately eroded by the government in order to ensure impunity for perpetrators of state-sanctioned human rights violations.

Amnesty International is also concerned that the Zimbabwean authorities and their ruling party are using militia -- comprised of land occupiers, so-called "war veterans" and supporters of the ruling Zimbabwe African National Union-Patriotic Front (ZANU-PF) party -- as proxy forces to brutalize and displace farm workers and to assault members of the opposition Movement for Democratic Change (MDC) party.

The steep decline in the rule of law in Zimbabwe has attracted the attention of the international community. Ministerial-level representatives of the Commonwealth nations first met to negotiate the September 2001 Abuja Agreement, which aimed to establish an orderly process of land redistribution that respected the rule of law and took strong action to end violence and intimidation. Initiatives by the European Union (EU), the Southern African Development Community (SADC), and the Commonwealth Ministerial Action Group have continued to hold discussions with their

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<sup>44</sup> The term security forces includes the Zimbabwe National Army and the Central Intelligence Organization.

Zimbabwean government counterparts but with no sustained improvement in the respect for internationally recognized human rights.

President Mugabe reportedly told a team of SADC ministers visiting in December 2001 that the EU decision to begin a period of bi-lateral discussions under the threat of cutting off donor funds -- and the adoption of a measure by the United States House of Representatives to impose travel and financial sanctions on him and his close associates -- were "illegal" because the United States and EU had not "put their case against Zimbabwe before the United Nations".<sup>45</sup>

Amnesty International believes that the deteriorating human rights situation in Zimbabwe must be addressed by the Commission on Human Rights. The systematic and widespread violations of human rights in Zimbabwe fit the mandate of several thematic mechanisms of the Commission. A thorough investigation by the United Nations, effected through visits by the Special Rapporteurs on torture, the independence of judges and lawyers, the promotion and protection of the right to freedom of opinion and expression and on extrajudicial, summary or arbitrary executions would assist both the international community and the people of Zimbabwe in objectively assessing the validity of the mounting allegations of human rights violations across that country, as well as identifying opportunities to offer solutions.

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<sup>45</sup> Reuters, 11 December 2001, "Zimbabwe's Mugabe says presidential vote in March".

### **Violations in the context of farm occupations**

As of December 2001, up to 70,000 farm workers were estimated to have been assaulted and forced to abandon their homes by the militia, according to both the Commercial Farmers Union and the General Agriculture and Plantation Workers' Union of Zimbabwe. Both farm workers and serving soldiers in the Zimbabwe National Army confirmed to Amnesty International that army officers, out of uniform, have helped coordinate land occupations since February 2000. During that time, Commissioner of Police Augustine Chihuri ignored two High Court orders as well as a further Supreme Court order in 2000 to evict illegal occupiers of land. Indeed, Chihuri has himself allegedly benefited from the land seizures when in December 2001, he was said to have been allocated a 99-year lease on land seized from a commercial farmer by order of Joe Made, Minister of Lands, Agriculture and Rural Resettlement.

Despite several High Court orders to police to ensure that farming operations would continue without interference, attempts by farm workers to do their work often led to violent assaults by the state-sponsored party militia. A farm foreman in the area of Marondera, for example, told Amnesty International in November 2001 that the militia members have continued to intimidate and assault the workers. "They came looking for me, to kill me, and beat my wife with sticks when they didn't find me... Last night, they told me that they would tie stones on me and drown me in the dam." A white commercial farmer in the same area, Iain Kay, had been

assaulted by government supporters in 2000. In July 2001, he was held captive in his house by a group of land occupiers. A High Court then ordered police to evict the "war veterans" and "squatters" from the farm -- but senior police officers had refused to comply with the rulings. By October 2001, the state-sponsored militia -- which included police officers -- forced their way into his house. During the incident, the mob beat farm workers with sticks and whips, while police did not intervene. Failure to comply with court rulings not only undermines the independence of the judiciary, as well as the police, but jeopardises respect for human rights and perpetuates a culture of impunity.

Amnesty International welcomed the urgent appeal made in April 2000 by the Special Rapporteur on extrajudicial, summary or arbitrary executions about her serious concerns over the safety of opposition activists and supporters who had been intimidated and attacked in rural areas since February 2000.<sup>46</sup> The Special Rapporteur also expressed her concern over continuing reports of attacks by former independence fighters and other supporters of ZANU-PF against commercial farmers and their employees, with at least nine persons reportedly being killed since the beginning of the hostilities. The government stated that the "farm occupations" were in fact demonstrations on farms by the war veterans and there was no deliberate policy by the Zimbabwean government encouraging the

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<sup>46</sup> Special Rapporteur on extrajudicial, summary or arbitrary executions: Urgent Appeals in her report to the Commission on Human Rights in 2001 (E/CN.4/2001/9/Add.1).

demonstrations on the farms.<sup>47</sup> This does not represent reality, according to the evidence gathered by Amnesty International.<sup>48</sup>

### **Torture and Political Killings**

In the month of November 2001 alone, Zimbabwean human rights groups estimated that there were six political killings and 115 cases of torture. Since that time, Amnesty International has continued to receive daily reports of assaults and torture in Zimbabwe, with the authorities failing to ensure prompt, independent and impartial investigations into allegations of torture. Indeed, in many credible allegations of torture the police and security forces have been directly implicated. While the Commission addresses grave violations of human rights that involve large numbers of killings, the Zimbabwean government continues to employ a pattern of "terror tactics" that emphasize threats, beatings and torture.

In a series of interviews conducted by Amnesty International in December 2001, a pattern of systematic and gross violation of human rights was documented. For example, in the rural town of Gokwe in northwestern Zimbabwe, a rule of terror has been imposed by state-sanctioned militia. Victims told Amnesty International of beatings by ZANU-PF supporters, often seen loitering at the police station. Ruling party activists, provided with police uniforms and given

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<sup>47</sup> *Ibid*, "Communications Received".

<sup>48</sup> Amnesty International, "Zimbabwe: Terror tactics in the run-up to parliamentary elections, July 2000", 8 June 2000, AI Index: AFR 46/14/00.

the status of Special Constabulary, inflict beatings on those suspected of supporting the opposition. A senior magistrate fled his home in November 2001 after ruling party supporters attacked him for sentencing one of their members to an eight-month jail term for robbery. MDC activist, Vusumuzi Mukweli, died in a Gokwe police station cell in August 2001 after officers refused to provide him with anti-seizure medication he needed after a severe beating by the state-sponsored militia in 2000. Zeke Chigagwe, an activist for the opposition Movement for Democratic Change (MDC), was allegedly beaten to death by members of the ruling ZANU-PF party in June 2000. Police claimed to be investigating the political violence in Gokwe, but as of September 2001 the Commanding Officer for the province had not yet concluded his investigation.

### **Impunity**

A clemency order issued by President Robert Mugabe on 6 October 2000 granted an amnesty for people who committed politically motivated crimes in the violent run-up to the June 2000 parliamentary elections. The order grants total amnesty to every person “liable for criminal prosecution for any politically-motivated crime committed during the period of 1 January 2000 to 31 July 2000”, excluding “specified offences” such as “murder, robbery, rape, indecent assault, statutory rape, theft, possession of arms and any offense involving fraud or dishonesty”. This order, however, did grant amnesty for people who committed assault, grievous bodily harm, kidnapping, abduction and “disappearances”. On 2 November 2000, the Special Rapporteur on torture sent a joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions expressing concern that this order granted amnesty to suspected torturers, further detailing this in his Report of 2001.<sup>49</sup> Indeed, the majority of the beneficiaries were ZANU-PF supporters, who in 2001 again began committing similar assaults that had been pardoned under the clemency.

### **Attacks on the independence of judiciary**

The government orchestrated a campaign to force the resignation of four members of the Supreme Court. Attacks appeared in the government-controlled newspaper on some justices and Justice

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<sup>49</sup> Special Rapporteur on torture: Joint urgent appeal with the Special Rapporteur on extrajudicial, summary or arbitrary executions re: amnesty law, letter dated 6 November 2000.

Minister Patrick Chinamasa made several attacks in parliament calling for the removal of several superior court judges. Such action by the government is incompatible not only with the Constitution of Zimbabwe, but also with international human rights standards, including the International Covenant on Civil and Political Rights (ICCPR), which guarantees the independence of the judiciary. The Special Rapporteur on the independence of judges and lawyers sent an urgent appeal to the Government of Zimbabwe in February 2001 expressing concern about “harassment, intimidation, attacks and threats against the independent judiciary and its judges”<sup>50</sup>.

Demonstrations outside the Supreme Court building by “war veterans” and ZANU-PF supporters were followed by the November 2000 invasion of the Supreme Court, which trapped the Justices in their robing room for almost an hour. Despite repeated calls the police delayed their arrival until after the attackers left. Supreme Court Chief Justice Anthony Gubbay was forced into early retirement as from July 2001 since when the Zimbabwean government has appointed three new Supreme Court judges. Two of the three were alleged to have benefited from the government’s land redistribution. “In a situation like this, the good judges resign,” according to one justice, who asked to remain anonymous.

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<sup>50</sup> Special Rapporteur on the independence of judges and lawyers, letter of urgent appeal, 21 February 2001 and Report of Commission on Human Rights 2001, Para. 13,243.

Amnesty International notes that while prosecution of members of the opposition has taken place, supporters of ZANU-PF who are alleged to have committed human rights violations are seldom investigated, rarely arrested and very rarely prosecuted. This uneven application of the law violates Section 18 of the Zimbabwe Constitution, which guarantees to all Zimbabweans the equal protection of the law, as well as the provisions of Article 14 of the ICCPR, which Zimbabwe acceded to on 13 May 1991.

Following the murder of ruling party supporter Cain Nkala in November 2001 Vice President Joseph Msika threatened those responsible with a "blood bath". In a sweep the police detained almost 20 MDC officials and state controlled television broadcast the confessions of two MDC supporters Kethani Sibanda and Sazini Mpofo, who later alleged that police had held them in prolonged incommunicado detention, tortured and threatened to kill them unless they sign the already typed up confession.<sup>51</sup> Amnesty International remains concerned about the violation of internationally accepted rights of those arrested, including their right to presumed innocent until found guilty in a court of law and treated in accordance with international standards for fair trial. The organization received credible evidence that police had tortured four of the detainees -- Kethani Sibanda, Remember Moyo, Sazini Mpofo and Gilbert Moyo -- to force them to implicate themselves and six other MDC officials, including MDC Member of Parliament for Lobengula/Magwegwe Fletcher Dulini Ncube and MDC Advisor Simon Spooner. Despite the torture allegations and the retraction of these confessions, which were the substantial basis for their detention, a High Court judge refused to dismiss the charges.

**Amnesty International calls on the Commission to adopt a resolution:**

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<sup>51</sup> *The Zimbabwe Herald*, "Nkala Laid to Rest", 18 November 2001.

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- Expressing its concern at the human rights crisis in Zimbabwe, and the systematic and widespread human rights violations that are being committed there;
  - Urging an investigation into all alleged human rights violations to bring the perpetrators of political killings, “disappearances” and torture to justice, with a view to ending impunity, and urging an impartial judicial review of Clemency Order No. 1 of 2000 to fully investigate its impact on the granting of impunity to those who allegedly committed torture;
  - Calling upon the Zimbabwean government to comply with its international human rights obligations, including by taking effective and decisive action to stop its state-sponsored militias from intimidating and attacking opposition activists, farmers, farm workers and other Zimbabwean citizens;
  - Calling upon the Zimbabwean government to guarantee the independence of judiciary, and thus expressing support for the recommendations by the Special Rapporteur on the independence of the judiciary;
  - Urging the Zimbabwean government to cooperate fully with the UN by issuing

standing invitations to the Special Rapporteurs on torture, independence of judges and lawyers, freedom of expression and extrajudicial, summary or arbitrary

executions to visit the country;

- Requesting the Zimbabwean government to request an urgent review of its policing practices by the Southern African Regional Police Chiefs Cooperation Organization

(SARPCCO), a regional body that is tasked in part with improving the standards of professionalism for police work across Southern Africa;

- Urging the government to ratify international human rights instruments, particularly the Convention against Torture and other Cruel, Inhuman or Degrading Treatment

or Punishment, as well as the optional protocols that provide for individual

complaints procedures to be implemented, including the Optional Protocol to the International Covenant on Civil and Political Rights.

## **THEMATIC CONCERNS**

### **THE DEATH PENALTY**

At its 57th session the Commission adopted a resolution<sup>52</sup> on the death penalty which was similar in scope to that adopted in previous years in calling for a worldwide “moratorium on executions, with a view to completely abolishing the death penalty”. It welcomed the 17 August 2000 resolution of the Sub-Commission on the Promotion and Protection of Human Rights which reaffirmed “that the imposition of the death penalty on those aged under 18 at the time of the commission of the offence is contrary to customary international law”<sup>53</sup>. The resolution further urged all states that still maintain the death penalty “not to impose the death penalty on a person suffering from any form of mental disorder or to execute any such person” and requested the UN Secretary-General to submit to the Commission a yearly supplement to his quinquennial report on capital punishment “paying special attention to the imposition of the death penalty against persons younger than 18 years of age at the time of the offence”.

In the past year Amnesty noted the following concerns in relation to the death penalty:

In the aftermath of the 11 September attacks in the USA, many states have planned or adopted legislation aimed at enhancing the protection of people within their territories from similar criminal acts. Amnesty International is concerned that various measures adopted or proposed by states may violate or infringe upon a number of rights, including the right to life. The measures that pose risks specifically to the right to life are:

- prescribing the death penalty for new, so-called “terrorist” crimes;
- permitting trials for crimes for which the death penalty may be imposed to be conducted under procedures that violate standards of fair trial;
- permitting the extradition of people charged with “terrorist” crimes to jurisdictions where they may face the death penalty.

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<sup>52</sup> Resolution 2001/68, adopted by 27 votes to 18 with seven abstentions and one country absent.

<sup>53</sup> Resolution 2000/17

Despite all states being parties to international treaties<sup>54</sup> which prohibit the imposition of the death penalty for crimes committed by persons below the age of 18, Amnesty International recorded three executions in the past year of persons who were aged under 18 at the time of the offence. These executions took place in Iran, Pakistan and the USA.

But there were also positive developments:

During the past year Chile abolished the death penalty for ordinary crimes making the total number of countries which do not retain the death penalty for ordinary crimes 15, while 75 countries have abolished the death penalty for all crimes. Another 20 countries are abolitionist in practice. Only 86 countries retain and use the death penalty.

Bosnia and Herzegovina, and Yugoslavia ratified the 2<sup>nd</sup> Optional Protocol to the International Covenant on Civil and Political Rights which aims for the abolition of the death penalty, bringing the total of states parties to 46. Armenia and Azerbaijan signed the 6<sup>th</sup> Optional Protocol to the European Convention on Human Rights concerning the Abolition of the Death Penalty bringing the total of signatories to three, while states parties number 39, and Chile signed the Protocol to the American Convention on Human Rights to Abolish the Death Penalty (states parties number 8).

In televised remarks from a meeting on 9 July with the Head of the World Bank, Russian President Vladimir Putin said that “The state should not assume the right which only the Almighty has - to take a human life. That is why I can say firmly I am against Russia reinstating the death penalty.” President Putin was also quoted as saying he believed that state-sponsored cruelty did nothing to fight crime and only engendered new violence. He said that Russia should continue to uphold the moratorium on the death penalty which has been in place for five years despite widespread public support to reinstate executions.

### **Amnesty International calls on the Commission to:**

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<sup>54</sup> All states are parties to at least one of the following treaties all of which prohibit the imposition of the death penalty on persons who were under the age of 18 at the time of the offence: The International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, and the American Convention on Human Rights.

- Adopt a resolution on the question of the death penalty which urges all states that have not yet abolished the death penalty to establish a moratorium on executions, with a view to completely abolishing the death penalty, while ensuring full application of the Safeguards guaranteeing protection of the rights of those facing the death penalty and other relevant international standards;
- Call on states to ensure that anti-terrorist legislation does not prescribe the death penalty for so-called “terrorist crimes”, and does not permit extradition of people charged with “terrorist” crimes to jurisdictions where they may face the death penalty;
- Confirm that the imposition of the death penalty on persons under 18 years at the time of the offence is in contravention of customary international law.

## “DISAPPEARANCES”

### **Draft International Convention on the Protection of All Persons from Enforced Disappearances**

At the 57<sup>th</sup> session, the Commission adopted a resolution<sup>55</sup> which, *inter alia*, requested the Chairperson of the 57<sup>th</sup> Commission to appoint an independent expert to examine the existing international criminal and human rights framework for the protection of persons from enforced or involuntary disappearance, including the draft International Convention on the Protection of All Persons from Enforced or Involuntary Disappearance. Moreover, the Commission decided that an inter-sessional, open-ended working group of the Commission should be established, at the 58<sup>th</sup> session of the Commission, with the mandate to elaborate a draft legally binding normative instrument for the protection of all persons from enforced disappearance, based on the draft International Convention on the Protection of All Persons from Enforced or Involuntary Disappearance and other findings of the independent expert, for consideration and adoption by the General Assembly. Amnesty International welcomes these decisions and urges their prompt and full implementation.

“Disappearances” constitute one of the most appalling forms of human rights violations. When a person “disappears”, it causes extreme agony not only to the victims

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<sup>55</sup> Question of enforced or involuntary disappearances, E/CN.4/RES/2001/46, 23 April 2001

but also to their relatives, who are likely to be subjected to profound and prolonged suffering, often for the rest of their lives, searching in vain for the “disappeared”.

The draft International Convention on the Protection of All Persons from Enforced

Disappearances would if adopted advance the international protection of victims of “disappearances” in a substantive and novel way and provide a comprehensive and integral

approach to address the problem. It establishes concrete obligations for states to prevent “disappearances” and to impose sanctions in their national legislation. It seeks to combat

impunity for “disappearances” by listing enforced “disappearances”, their instigation, conspiracy to commit the crime of “disappearance” and the failure of the obligation to investigate, prevent and punish “disappearances” as international crimes subject to universal jurisdiction. Moreover, it treats the systematic and massive practice of “disappearances” as a crime against humanity. It requires states to make the abhorrent practice of abducting children of the “disappeared” a specific criminal offence, and also requires states to guarantee victims the right to reparation, which includes restitution, compensation and rehabilitation, not only in physical and psychological but also in legal terms. The draft Convention creates a flexible mechanism to monitor compliance with the Convention and to deal with communications by individuals or groups, to be heard by a Committee against Disappearances which would have automatic competence to hear communications once a state becomes a party to the Convention.

**Amnesty International calls on the Commission to:**

- Establish without delay an inter-sessional, open-ended Working Group of the Commission with a mandate to elaborate a draft legally binding normative instrument for the protection of all persons from enforced disappearance, which reflects the latest developments in international law and preserves and strengthens the current draft International Convention on the Protection of All Persons from Enforced Disappearances;
- Ensure that the Working Group receives all necessary assistance, including adequate resources, to enable it to work within the tightest possible time-frame and in close consultation with non-governmental organizations.

**RACISM**

**UN World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance**

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The Third UN World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (World Conference against Racism), which took place in Durban, South Africa, on 31 August - 8 September 2001, set out to adopt a Declaration that recognized the damage caused by past expressions of racism and reflected a new global awareness of modern forms of racism and xenophobia and to agree a practical Programme of Action to carry forward the fight against racism. However, discussions at the Conference proved to be both protracted and difficult and at the close of the Conference a number of issues remained unresolved, including the exact placement of paragraphs on reparation for slavery and colonialism within the final Declaration and Programme of Action.

Amnesty International participated actively in the World Conference against Racism, including the various preparatory meetings<sup>56</sup>. During this process, the organization submitted a set of detailed recommendations for issues to be addressed in the Declaration and Programme of Action, in particular by highlighting the impact of racism on the administration of justice, including a discriminatory imposition of the death penalty, lack of protection for detainees and violations of the rights of refugees and asylum seekers. Amnesty International is pleased to note that its concerns regarding racism in the administration of justice, the importance of fair trial proceedings, training of immigration and law enforcement officials and implementation of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, have been addressed in the Programme of Action. The organization urges governments to address, through other appropriate mechanisms, its remaining concerns, including the plight of the Dalits, as a group suffering from discrimination based on work and descent; the issue of overlap between racism and sexual orientation; and the impact of racism on the imposition of the death penalty.

Racism is an attack on the very notion of human rights that each and every human person's dignity and value should be respected. It systematically denies certain people their full human rights because of their race, colour, descent, ethnicity, caste or national origin. The right not to suffer racial discrimination is one of the most fundamental principles of international human rights law, and appears in virtually every major human rights

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<sup>56</sup> As a contribution to the World Conference against Racism, Amnesty International publishes two reports, *Using the international human rights system to combat racial discrimination: a handbook* (AI Index: IOR 80/001/2001) and *Racism and the administration of justice* (AI Index: ACT 40/020/2001).

instrument; yet racial discrimination persists in every society. People around the world continue to suffer human rights violations simply because of their racial identity. Some have been victims of genocidal onslaughts. Some have suffered “ethnic cleansing”. Some have had their land stolen and been thrown into destitution.

Amnesty International has sought to draw specific attention to the need to eliminate racism from the administration of justice. This includes the functioning of law enforcement and custodial agencies, the judiciary, and asylum determination systems. Amnesty International’s work over the years has highlighted many patterns of racism in the administration of justice. Around the world, national or ethnic conflicts form the backdrop, and sometimes the official justification, for systematic discrimination in the administration of justice. Indigenous peoples, minority ethnic groups and people from so-called lower castes are among those most often abused because of their identity. Such people suffer disproportionately from police brutality and other violations of their rights when they come into contact with the law. Many face routine harassment and ill-treatment by police because of their colour or ethnic origin. In a few countries, racial discrimination by the state through its laws and administration of justice is overt; in many other countries, ostensibly neutral laws have a racially discriminatory impact, because of the way they are implemented.

Racism also increases the vulnerability of certain people to physical and mental abuse once they are caught up in the justice system. Torture and ill-treatment are nourished by racism, including by dehumanizing victims from racial groups that are perceived negatively in the society. Amnesty International called on governments at the World Conference against Racism to adopt national strategies and plans of action to combat racism relating to the administration of justice.

One of the ways in which racism affects the administration of justice relates to the fairness of trials and the imposition of sentences, including the death penalty. In the USA, for example, studies have consistently indicated that race, particularly of the murder victim, is a key factor in determining who is sentenced to death. Blacks and whites are the victims of murder in almost equal numbers, yet more than 80 percent of prisoners executed since 1977 were convicted for the murder of a white person. At the World Conference against Racism, Amnesty International called on governments to ensure that the conduct of trials and the imposition of sentences do not discriminate on grounds relating to race. It further urged governments which still use the death penalty to investigate any disproportionate impact of such punishment on racial grounds and to declare a moratorium on executions pending the outcome of such investigations. Language proposed by Amnesty International on this issue was initially included in the

Programme of Action, but was subsequently dropped due to lack of agreement among states as well as time constraints.

Foreigners in many places face discrimination in the administration of justice, particularly where xenophobia is either encouraged or left unchallenged by the authorities. Around the world, racism is being nourished by xenophobic responses to immigration. Immigrants, migrant workers and asylum seekers who have left their homes in search for a life with basic dignity and security are often met with racist ill-treatment and denial of their rights by officials in the countries to which they travel. This is happening in the north and south, in the east and west, and in developing as well as industrialized countries. At the World Conference against Racism, Amnesty International called on governments to acknowledge that refugees and asylum-seekers are increasingly subjected to xenophobia and racism and to ensure their protection in accordance with international law, including the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

Amnesty International firmly believes that human rights are universal and should be enjoyed by everyone everywhere, in fulfilment of the Universal Declaration of Human Rights. It urges all governments to protect all people, without distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin, from any form of abuse.

**Amnesty International calls on the Commission to:**

- Adopt a resolution urging all governments to honour their international obligations to implement measures necessary to eradicate racial discrimination, including through adopting national strategies for the full and prompt implementation of the Declaration and Programme of Action of the World Conference against Racism;<sup>57</sup>
- Call on governments to ensure that the issues of discrimination based on work and descent, the overlap between racism and sexual orientation, and the impact of racism on the imposition of the death penalty, are addressed through appropriate mechanisms;
- Call on governments, in countries where the death penalty is still imposed, to investigate any disproportionate impact of the such penalty on racial groups and declare a moratorium on executions pending such investigations;

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<sup>57</sup> At the time of writing, these documents had not yet been finalized.

- Urge all governments to accede to and fully implement, in a non-discriminatory, manner the 1951 Convention relating to the Status of Refugees and its 1967 Protocol;
- Urge all governments to become party to the International Convention on the Elimination of All Forms of Racial Discrimination, without limiting reservations, to lift existing reservations and to make a specific declaration under Article 14 of the Convention to allow individuals or groups to submit communications to the Committee on the Elimination of Racial Discrimination.

## **TORTURE**

### **UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

Fifteen years ago, on 26<sup>th</sup> June 1987, the UN Convention against Torture and Other Cruel,

Inhuman or Degrading Treatment or Punishment entered into force<sup>58</sup>. Despite numerous commitments by all governments to ratify it, the Convention against Torture remains the least ratified of the six international human rights treaties with only 127 states parties<sup>59</sup>.

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<sup>58</sup> General Assembly resolution 39/46 of 10 December 1984.

<sup>59</sup> As of 10 December 2001, there are 147 states parties to the International Covenant on Civil and Political Rights, 145 to the International Covenant on Economic, Social and Cultural Rights, 161 to the International Convention on the Elimination of All Forms of Racial Discrimination, 168 to the Convention on the Elimination of All Forms of Discrimination against Women and 191 to the Convention on the Rights of the Child. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families has not yet entered into force.

Torture is expressly prohibited under the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, various international standards and regional human rights treaties. Prohibition of torture is also part of international customary law. The Convention against Torture contains detailed steps that states parties must take in carrying out their obligation to prohibit and prevent torture. It also establishes a committee of 10 independent experts, the Committee against Torture, mandated to monitor the implementation of the provisions of the Convention by states parties. The Committee carries out its mandate by reviewing state party periodic reports, deciding on individual communications and carrying out confidential inquiries under Article 20. To date only 45 states have made the declaration to Article 22 to provide for individual complaints<sup>60</sup>.

Amnesty International is calling on governments to use the occasion of the 15<sup>th</sup> anniversary to renew their commitment to the eradication of torture by making a public statement at this session of the Commission of their intention to ratify the Convention against Torture, making the necessary declarations under Articles 21 and 22<sup>61</sup>, and withdrawing any limiting reservations - in particular, to Article 20.<sup>62</sup>

**Amnesty International calls on the Commission to:**

- Adopt a resolution on the question of torture, which urges all states to ratify the Convention against Torture without reservations and to make the necessary declarations under Articles 21 and 22 as a matter of priority and preferably by the 26<sup>th</sup> June 2002, the 15<sup>th</sup> anniversary of the entry into force of the Convention against Torture;
- Urge all states parties to comply with their reporting obligation, by filing their Initial or Periodic Reports on time before the Committee against Torture;
- Urge all states parties to fully implement their obligations arising from the Convention against Torture and to implement the recommendations of the

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<sup>60</sup> As of 10 December 2001, 101 states have ratified the Optional Protocol to the International Covenant on Civil and Political Rights, which provide for individual complaints before the Human Rights Committee.

<sup>61</sup> States parties may make a declaration under Article 22 that they recognize the competence of the Committee against Torture to consider communications from or on behalf of individuals who claim to be the victims of violations of the Convention. If states parties have made a declaration according to article 21, the Committee against Torture may receive and consider communications in which a state party alleges that another state party is not complying with its obligations under the Convention. Both the state party making the complaint and the state party which is the subject of the complaint are required to have made a declaration under article 21.

<sup>62</sup> Article 20 provides for the Committee against Torture to receive and consider, in a confidential procedure, reliable allegations of the systematic practice of torture in countries which are states parties to the Convention.

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Committee against Torture and comply with its decisions on individual communications; and to urge all states parties to withdraw their reservations to the Convention against Torture, and in particular to Article 20;

- Call upon the OHCHR and relevant agencies providing technical assistance to accord priority to assisting states to ratify the Convention against Torture, as well as preparing the periodic reports and implementing the concluding observations of the Committee against Torture.

### **Draft Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

A Working Group of the Commission has been meeting every year since 1992 to review the draft text of an Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, originally submitted by Costa Rica in 1991. At its 57<sup>th</sup> session in 2001, the Commission approved the report of the 9<sup>th</sup> session of the Working Group<sup>63</sup> and renewed its mandate to continue drafting the Optional Protocol.

The aim of the Protocol is to establish an expert body, a Sub-Committee to the Committee against Torture, to carry out inspection visits to places of detention and subsequently submit confidential reports to the relevant authorities with concrete recommendations for how to prevent torture and ill-treatment. By focussing on *prevention* of torture and ill-treatment, rather than response to ongoing violations, this global mechanism would be unique within the UN system.

Amnesty International has participated actively in work of the Working Group and has noted that, while many states appear willing to negotiate a strong and effective protocol, a few states maintain objections on key provisions which could substantially weaken the text. During the February 2001 session of the Working Group, new drafts texts were tabled by Mexico and the EU. The draft from Mexico includes a possible role for national mechanisms in undertaking visits to places of detention.

Amnesty International opposes the idea that national mechanisms should take the place of an international mechanism, as it is the organization's experience that national bodies sometimes lack impartiality and independence; although national bodies can play an important role in the prevention of torture and ill-treatment<sup>64</sup>, the importance of

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<sup>63</sup> E/CN.4/2001/67.

<sup>64</sup> For further details, see National Human Rights Institutions: Amnesty International's recommendations for effective protection and promotion of human rights October 2001 (AI Index: IOR 40/007/2001).

international action to prevent torture, based on international standards, should not be lost.<sup>65</sup>

The upcoming session of the Working Group in January 2002 will be crucial, and it is Amnesty International's hope that consensus can be reached so that a strong and effective Protocol can be approved at the 2002 session of the Commission. However, Amnesty International is concerned to ensure that the Protocol emerges as an effective international mechanism to prevent torture and ill-treatment. Consensus should not be reached at any cost and a weak Protocol would be a major set-back for the protection of potential victims of torture and could even undermine the important preventive work undertaken by organizations such as the International Committee of the Red Cross or UN thematic mechanisms.

The key principles for an effective Protocol to prevent torture and ill-treatment remain:

1. ***The notion of no-prior consent:*** A standing invitation to the Sub-Committee to visit the territory of any state party to the Protocol is central and needs to be clearly stated in the text. The Sub-Committee must be able to carry out visits to any state which has ratified the Protocol without having to seek further permission for each individual visit.
2. ***Scope of missions:*** The Sub-Committee should be guaranteed unlimited access to all places of detention and to all detainees and have the right to interview detainees in private.
3. ***Publication of Sub-Committee reports in special cases:*** In the event that a state refuses to cooperate or only partially releases the Sub-Committee's report, the Sub-Committee should be able to make a public statement or publish its report.
4. ***No reservations:*** The Protocol does not include any new substantive norms, but merely creates a mechanism designed to help states parties implement their existing obligations to prevent torture, as stipulated by the Convention against Torture, and therefore reservations to the Protocol should not be permitted.
5. ***National legislation:*** National legislation should not be permitted to limit or restrict the work of the Sub-Committee.

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<sup>65</sup> For full details of Amnesty International's position on the current stage of the negotiation, see the Optional Protocol on the Convention against Torture: Time to take a stand on the prevention of torture, September 2001 (AI Index: IOR 51/006/2001).

**Amnesty International calls on the Commission to:**

- Give full support to the Working Group and ensure that a strong Optional Protocol to the Convention against Torture is adopted which reflects the above five principles and which provides for an effective system in which ratification of the Protocol serves as consent of the state party concerned.

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**ANNEX      Selective list of other Amnesty International documents**

For more details please refer to our website [www.amnesty.org](http://www.amnesty.org)

**General**

*Amnesty International Report 2001* (AI Index: POL 10/001/2001)

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