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1998 UN Commission on Human Rights - Building on past achievements

**“Human rights are African rights.
They are also Asian rights; they are European rights; they are American rights.
They belong to no government, they are limited to no continent,
for they are fundamental to humankind itself.”**

Kofi Annan, Secretary-General of the United Nations¹

INTRODUCTION

In July 1997 the Secretary General of the United Nations (UN), Kofi Annan, launched his report “Renewing the United Nations: A Programme for Reform”.² A key element of the reform programme is the integration of human rights into policy-making and programs, both at UN Headquarters and in the field. This coupled with the 50th anniversary of the 1948 Universal Declaration of Human Rights and the review of the Vienna Declaration and Programme of Action provides a unique opportunity to non-governmental organizations (NGOs), states and intergovernmental organizations to consider ways to make the UN human rights system more efficient and more effective in the promotion and protection of universal human rights. As we approach the 21st century the challenge for the UN Commission on Human Rights (the Commission) is to build on past achievements and ensure universal “respect for, and observance of, human rights and fundamental freedoms for all without discrimination as to race, sex, language or religion”³.

Country situations

Amnesty International as a worldwide movement works to prevent some of the gravest human rights violations wherever they occur. The organization does not grade countries according to their human rights record but concentrates on ending specific violations. This year Amnesty International is calling on the Commission to act in particular on **five** country situations where there is a pattern of persistent, severe and systematic violations of human rights. These are: **Cambodia, Colombia, Kenya, Saudi Arabia and Turkey**. In this document Amnesty International summarizes the severity of the human rights situation in each of the five countries and the extent to which the five governments

¹ Statement by UN Secretary-General, 15 October 1997, Press Release SG/SM/6359.

² A/51/950.

³ Article 1(3), Charter of the United Nations.

cooperate with the United Nations human rights machinery and other relevant intergovernmental fora.

The fact that Amnesty International is specifically campaigning on these five countries does not mean the organization is ignoring other countries where there are gross violations of human rights. At previous sessions the organization has called on the Commission to act because of grave human rights violations, for example, in **Algeria, China, Indonesia/East Timor and Nigeria**. The human rights situation in these countries remains a high priority for Amnesty International at the Commission. Likewise the human rights situation in other countries and regions, including the European Union and the United States of America, particularly with respect to human rights of refugees, requires much closer scrutiny and follow-up action by the Commission and its thematic mechanisms.

Amnesty International will also pay particular attention to the following themes at the Commission: the human rights of refugees, abolition of the death penalty, the draft declaration on human rights defenders, the human rights of women, and the review of the Vienna Declaration and the Programme of Action and the 50th anniversary of the Universal Declaration of Human Rights. Furthermore, Amnesty International continues to call for an agenda item which examines states' cooperation and progress on implementing recommendations made by the Commission and its human rights mechanisms.

In the 50 years since the adoption of the 1948 Universal Declaration of Human Rights the Commission on Human Rights has made a significant contribution to the formulation of human rights standards, the establishment of fact-finding procedures and technical programmes to promote respect for human rights. And yet, despite these achievements the Commission must remain vigilant: grave human rights violations persist throughout the world; the fundamental principle of the universality and indivisibility of all human rights is still questioned in some quarters; some states continue to hamper the drafting of international instruments; and there are attempts to undermine the effectiveness of the Commission's thematic mechanisms.

Human rights defenders: consensus versus the lowest common denominator

The governments of Cambodia, Colombia, Kenya and Turkey frequently violate the human rights of individuals who try defend the human rights of others, while in Saudi Arabia the government has curtailed freedom of expression and association to such an extent that there exists no real opportunity to defend the human rights of Saudi Arabian nationals or foreign workers. Since 1985 governments have drafted and redrafted the UN declaration on human rights defenders through a Working Group of the Commission.

But with each session of the Working Group on the draft declaration a minority of governments have sought to impose limitations and obligations on human rights defenders which would make their work practically meaningless. A few states, such as Cuba, China, Mexico, Nigeria and Syria, have used so-called consensus decision-making during the drafting process to try to curtail existing international human

rights law, to limit the freedom of NGOs to receive outside support and even to defend the rights of victims of human rights violations. At the same time lawyers, journalists, peasant leaders, trade unionists, students, relatives of victims and many others are assassinated, jailed, “disappeared”, harassed and intimidated because they had the courage to defend the rights of others.

The 1993 UN World Conference on Human Rights affirmed that “[n]on-governmental organizations and their members genuinely involved in the field of human rights should enjoy the rights and freedoms recognized in the Universal Declaration of Human Rights, and the protection of national laws”.⁴ Similarly the final document of 1995 Fourth UN World Conference on Women states “[g]overnments have a duty to guarantee the full enjoyment of all rights set out in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights by women working peacefully in a personal or organizational capacity for the promotion and protection of human rights”.⁵ Given these undertakings by UN member states it is appalling that a Working Group of the Commission has after more than twelve years failed to agree a declaration which would protect the rights of human rights defenders. In 1993 the UN World Conference on Human Rights had recommended “the speedy completion and adoption of the Draft Declaration”.⁶ Amnesty International urges the Commission to ensure completion of a strong and comprehensive text and to transmit the draft Declaration to the UN General Assembly for adoption at its 53rd session in 1998.

Unfortunately what has happened during the drafting of the declaration on human rights defenders is not an isolated case. There are, for example, similar problems in the Working Group drafting the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as well as in the Working Group drafting an Optional Protocol on the involvement of children in armed conflicts to the Convention on the Rights of the Child. In the latter Working Group the USA, for example, blocked consensus on 18 years as the minimum age for participation in hostilities despite the fact that the USA is not a party to the Convention on the Rights of the Child and consequently is unable to ratify the optional protocol should it be adopted by the UN General Assembly.

⁴ Vienna Declaration and Programme of Action, part I, para 38.

⁵ Beijing Declaration and Platform for Action, para 228.

⁶ Vienna Declaration and Programme of Action, part II, par 94.

The so-called consensus rule gives any government the opportunity to block action to defend and protect human rights. Drafting groups become hostage to a few states and are all too often faced with the stark choice of accepting the lowest common denominator or abandoning the drafting exercise. But this need not be the case. Drafting by consensus is a relatively recent development. Provisions of the International Covenant on Civil and Political Rights (ICCPR), for example, were voted upon by the drafters. Consensus decision-making should no longer be used unquestioningly as the working method for standard-setting initiatives. When drafting treaties it is necessary to adopt a text that enough states may ratify while maintaining a high standard of human rights protection. New treaties are meant to provide greater protection, not merely to reflect the status quo. With the drafting of non-treaty standards it is necessary to prevent a small minority of states undermining a broad international consensus and to ensure a sufficiently strong text. The balance has to be struck between sufficient international support for a standard and the strongest possible text. To this end the majority of states in favour of a strong text should make every effort to persuade the few states obstructing adoption of a consensus text to reconsider their position. Ultimately, in order to avoid the lowest common denominator approach, voting on the text may be necessary.

Strengthening the work of thematic mechanisms

Unfortunately it is not only international human rights instruments which are under attack. At the last Commission a number of states, mainly from the Asia region, turned their attention to the Commission's thematic mechanisms. Under the pretext of 'streamlining' and 'increasing efficiency' these countries proposed draft resolutions which if adopted would seriously undermine the effectiveness of the Commission's theme rapporteurs and working groups.⁷ While these draft resolutions were deferred until the Commission's 54th session in 1998 the mandate of the Working Group on Arbitrary Detention was curtailed in exchange for the resolution being adopted by consensus in 1997. Amnesty International believes the mandates of the mechanisms contain the minimum necessary for them to work well and should not be reduced. It looks to governments to further the effectiveness of thematic mechanisms and not cut them back. At the next Commission some thematic mandates, in particular the Special Rapporteur on torture, the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Working Group on Enforced or Involuntary Disappearances are due for renewal.

⁷See for example E/CN.4/1997/L.86 entitled Rationalization of the work of the special procedures system and E/CN.4/1997/L87 entitled Review of the special procedures system.

Amnesty International requests members of the Commission to ensure that the work of thematic mandates is not curtailed in anyway. Where possible states should renew the mandates of thematic mechanisms by consensus but where consensus is not achievable it may be necessary to vote on the resolution.

The Special Rapporteur on racism also came under attack and his report subsequently amended because it contained a quote⁸ which some states found offensive. The decision sets a bad precedent as it allows the Commission to modify reports of its experts if some states disagree with the content of a report. The Commission appoints special rapporteurs as independent experts and should respect the independent nature of the reports. Where governments disagree with the content they can make their views known during the debate under the appropriate agenda item or circulate a document giving the government's view.

The Commission's thematic mechanisms are central to the work of the Commission. These mechanisms address violations in any country; act throughout the year; take up urgent cases; carry out on-site visits and make recommendations tailored to those countries; examine the phenomenon of the violation in question and produce safeguards and recommendations applicable to all governments; act as the catalyst for new international standards; and constitute channels of communication between governments, the victims of violations, their relatives and NGOs. The annual reports of the thematic mechanisms to the Commission continue to demonstrate that such human rights violations take place throughout the world. The Commission, as the highest body dedicated to human rights within the UN system, must demonstrate that it has the political will not only to defend these mechanisms but also to strengthen their mandates and increase the resources available to them.

On previous occasions Amnesty International has called on the Commission to establish an agenda item to monitor states' cooperation and progress on implementing recommendations made by the Commission and its human rights mechanisms in particular after on-site visits. Such an agenda item would enhance the work of the thematic mechanisms. In cases where there is a pattern of violations and where the government persistently delays or obstructs cooperation with one or more of the theme mechanisms the mechanism(s) should transmit the full dossier to the Commission for further action. Where on-site visits have taken place by thematic rapporteurs or working groups governments must report back promptly on steps they have taken to implement the recommendations made following the visit. Each recommendation should be

⁸"The use of Christian and secular European anti-Semitism motifs in Muslim publications is on the rise, yet at the same time Muslim extremists are turning to their own religious sources, first and foremost the Qur'an, as a primary anti-Jewish source", E/CN.4/1997/71, para.27.

addressed and governments should state the time frame for implementation and indicate any difficulties they may experience in implementing the recommendations.

Thematic mechanisms should follow-up the implementation of recommendations in future reports and where necessary request a follow-up visit. Such follow-up visits may include a visit by another thematic mechanism if some violations are outside of the specific mandate of the thematic mechanism which made the initial on-site visit. In countries where there is a range of serious human rights violations it is necessary that a joint visit by the mechanisms be considered. This was the case when the Special Rapporteur on torture and the Special Rapporteur on extrajudicial, summary or arbitrary executions visited Colombia in 1994 and made a joint report to the Commission in 1995. In cases where violations cut across a number of mandates such as in the case of migrant workers or refugees, the mechanisms could consider undertaking a joint special study. Such studies could provide the Commission with an in-depth analysis of the human rights violations and specific recommendations aimed at protecting particular groups. Given the array of thematic mechanisms which already exist such a development might alleviate the need for the Commission to establish additional mechanisms on specific themes. In addition to the above the Commission must continue to look for ways to make better use of the facts, analysis and recommendations made by its mechanisms. There is an urgent need to consider ways to improve the dialogue between the mechanisms and the Commission on Human Rights.

The UN High Commissioner for Human Rights (HCHR) must ensure a better resourcing of the thematic and country mechanisms as well as other bodies and procedures. Within the Office of the High Commissioner there should be a central documentation centre. Country dossiers containing all relevant UN and other source material relating to particular countries should be available. In addition the HCHR should ensure that her staff has the necessary equipment to handle the volume of individual cases and to keep track of the status of each case. The HCHR should publish and update a compilation of recommendations by thematic and country mechanisms aimed at prevention and safeguards. Such recommendations should be considered as the minimum standards to be implemented by all governments. The HCHR should report to the Commission each year on possible measures to enhance respect for these minimum standards. As a matter of priority the HCHR should develop a strategy to strengthen the work of the Commission's country and thematic mechanisms by monitoring and reporting on implementation of their recommendations. The HCHR should also devise a strategy for all country rapporteurs who are denied access to countries for which they are responsible.

At a time when the Commission's investigative procedures are under threat states have accepted monitoring mechanisms in other fields which are far more intrusive than anything which presently exists in the UN human rights. The Convention on the

Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and their Destruction (Chemical Weapons Convention) - CWC is an obvious example. It has been ratified by more than 100 states and prohibits, *inter alia*, the development, production, stockpiling, transfer and use of chemical weapons and for their eventual elimination or conversion to peaceful purposes. The CWC provides for a comprehensive verification system which includes routine monitoring and systematic inspections of declared chemical weapons storage, production and destruction facilities, as well as relevant civilian chemical industry facilities. In addition, under the Convention there is also a system of 'challenge inspection' of any facility or location in the territory of another state party. Such inspections are conducted at short notice and there is no right of refusal.

Building on success

Despite massacres, other atrocities, occasional challenges to the universality of human rights and attacks on human rights system, the last 50 years is a history of gradual but sustained advancement in the promotion and protection of human rights. There is an international awareness of human rights and acknowledgement that human rights are a legitimate concern of the international community. The codification of human rights, increasing ratification of human rights treaties, and the adoption of the 1993 Vienna Declaration and Programme of Action reinforces the universal concept of human rights espoused in the Universal Declaration of Human Rights.

It is more than fifty years since the Commission on Human Rights first met. Half a century ago the Commission focussed primarily on drafting the Universal Declaration of Human Rights and the two International Covenants. In addition to its important standard setting function the Commission has developed procedures and mechanisms to address human rights violations and an agenda which allows consideration and action on a broad range of human rights concerns. From a small beginning the Commission has grown in size and importance within the UN system. At the Commission's last session in 1997 there were more than 2300 participants including: 53 member states, 92 observer states, 41 UN inter-governmental and observer delegations, 203 NGOs and numerous visitors which included heads of UN agencies and government ministers. Such participation has given the Commission a stature far beyond its formal status as a functional Commission of the Economic and Social Council (ECOSOC); in many respects it has become a mini General Assembly - a General Assembly on human rights. Unfortunately this enhanced status is eroded when the Commission fails to act even when confronted with clear evidence of grave human rights violations.

As the Commission looks forward to another fifty years it must build on past achievements. The 50th anniversary of the Universal Declaration of Human Rights, the review of the Vienna Declaration and Programme of Action and the Secretary-General's

reform agenda provide the Commission with the opportunity to evaluate past achievements, to build on successes and to equip itself with the tools to face the challenges of the next fifty years.

CAMBODIA

Despite massive investment by the international community in rebuilding Cambodia's institutions after years of civil war, the gains made have been progressively eroded by the Royal Cambodian Government's failure to protect human rights. The strong human rights provisions in Cambodia's constitution and its many international treaty commitments have proved empty promises to Cambodia's long suffering people. Systemic human rights violations and the impunity enjoyed by their perpetrators have undermined the rule of law and institutional life in Cambodia, causing continued political instability in the country and checking its economic development. This process has culminated in the current political crisis in the country, precipitated by the events of 5 and 6 July and earlier attacks against political opposition.

The signatories to the 1991 Comprehensive Settlement to the conflict in Cambodia, commonly known as the Paris Peace Accords, explicitly recognized "that Cambodia's tragic recent history requires special measures to assure protection of human rights and non-return to the policies and practices of the past". They undertook to "promote and protect respect for and observance of human rights and fundamental freedoms in Cambodia as embodied in the relevant international instruments in order, in particular, to prevent the reoccurrence of human rights abuses". Just as human rights protection was an integral part of the Paris Peace Accords, so too will it be essential to any lasting solution to the current political crisis.

To date, the focus of these efforts has been on the work of the UN Secretary-General's Special Representative and the Cambodia Office of the High Commissioner for Human Rights (the 'Cambodia Office') in Phnom Penh, mandated by the Commission and the General Assembly to assist in the promotion and protection of human rights. Despite UN efforts and initiatives, the Royal Cambodian Government has shown contempt for the most fundamental of the Special Representative's recommendations - taking action to end the prevailing impunity for human right violators.

Since 1993, the Royal Cambodian Government has claimed that it is committed to upholding human rights and the rule of law but its public statements are rarely followed by concrete action. It has conspicuously failed to cooperate with UN human rights bodies and mechanisms, particularly in the implementation of recommendations made by the Special Representative. The Special Representative has stated that military and police personnel continue to commit human rights violations with impunity and that

is one of the most central obstacles to the gradual establishment of the rule of law in Cambodia. The thematic mechanisms have reported that the government has not responded to appeals.⁹

As the international community seeks a resolution to the current political crisis and the normalization of government in Cambodia, it is beholden on the Commission to give strong political backing to the work of the Special Representative and the Cambodia Office by insisting that the Royal Cambodian Government takes serious action to redress past and current violations as a means of securing human rights protection for the future. Further, in view of the heightened political tension in the lead up to the elections, the Commission should require that concrete measures are enacted to secure the rights to freedom of expression, opinion and peaceful assembly for all Cambodians and the physical security of candidates, party workers and voters.

The Special Representative has repeatedly identified impunity as being fundamental to Cambodia's human rights problems. In his last report, he correctly characterised the problem as "both political and institutional". On the one hand, the government has demonstrated a clear lack of political will to take action on human rights violations. On the other, Cambodia's judicial structures are weak and there is no history of judicial independence in the country. Intimidation, harassment and threats against the judiciary by security forces personnel make it difficult for it to function without prejudice. Only a handful of cases, where it appears that the government sees an advantage to the prosecution, move through the courts with any speed.

⁹See, for example, the last report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, UN document E/CN.4/1997/60/Add.1, 23 December 1996, paragraphs 90-91.

Impunity has a long history in Cambodia. As the Special Representative has pointed out, no leader of the Khmer Rouge, who are "responsible for widespread atrocities, including massacres, executions of civilians and foreign nationals, and torture even after 1979" has ever been brought to justice by the Cambodian authorities. This situation continues even though numerous Khmer Rouge leaders and commanders have defected to the government side. Ieng Sary, Foreign Minister and Deputy Prime Minister under the Khmer Rouge government between April 1975 and January 1979, received a royal pardon in September 1996. He had been sentenced to death *in absentia* after an unfair trial in 1979 on charges related to human rights violations under the Khmer Rouge government. The pardon was requested by the co-Prime Ministers and was approved by a majority in the National Assembly. International efforts to bring Khmer Rouge leader Pol Pot to justice continue, following the initiatives of the Special Representative to promote this.¹⁰ One of the triggers for the events of 5 and 6 July were the efforts by both major parties, the National United Front for an Independent, Neutral, Peaceful and Cooperative Cambodia (FUNCINPEC) of the then First Prime Minister, Prince Norodom Ranariddh, and the Cambodian People's Party (CPP) of the Second Prime Minister, Hun Sen, to secure political and military support from breakaway Khmer Rouge groups.

There have been no serious government investigations and no one has been brought to justice for the deaths of at least 16 people and injury to more than 100 others in a grenade attack, apparently with official collusion, on a peaceful and authorized demonstration by around 200 supporters of the Khmer Nation Party on 30 March 1997. Heavily armed soldiers standing two hundred metres behind the demonstrators allowed two people who were seen throwing grenades into the crowd to escape, but prevented demonstrators from pursuing them. Police at the scene did not help the victims, some of whom lay dying in the sun for up to an hour. They included Sok Srey¹¹, a mother of five, whose injuries were so grave that she is now a paraplegic.

There has still been no outcome to the investigation of an earlier grenade attack, in September 1995, against the participants of the Congress of the Buddhist Liberal Democratic Party (BLDP) in which more than 30 persons were injured.

¹⁰ In June 1997, the then Cambodian co-Prime Ministers requested assistance from the international community for Khmer Rouge leaders to be brought to justice. The Special Representative proposed that a group of experts be appointed to look at the evidence of Khmer Rouge responsibility for human rights violations. The resolution adopted by the General Assembly in November 1997 asks the Secretary-General to examine both these proposals. These could be important steps in bringing some perpetrators to justice.

¹¹ For security reasons her name has been changed

It is not just in high profile political cases that the government has failed to act. Take the killing of six children in September 1996 at Krang Kontroul village in Kampong Chhnang province. The children - a boy and five girls, aged between two and eight years - were killed when a drunken soldier fired a B-40 rocket at the ice-cream stall where they had gathered. After the killings, each of the three families was sent 50,000 riels (approximately \$20) and a 50 kilogram bag of rice by the soldier's commander. Amnesty International was told that the soldiers, from the Mixed Unit of Special Military Region Forces which had arrived in the village the previous month, had stolen food and money from villagers and committed offences including assault and rape: everyone was frightened of them, including the police. Despite public exposure of this case and the personal intervention of the King, no one has been prosecuted for the children's deaths.¹²

¹² See *Kingdom of Cambodia - The children of Krang Kontroul: waiting for justice*, AI Index ASA 23/01/97, March 1997

This conspicuous failure to provide justice and redress for the most grave human rights violations is matched by a cynical use of the judicial system to prosecute those cases in which the government has an interest. The Special Representative has identified as “the only murder case with political implications in which the Government has arrested and prosecuted someone” the case of Srun Vong Vannak, the chief of security of the opposition Khmer Nation Party (KNP), who was sentenced to 13 years’ imprisonment in September 1997. Arrested on 14 February 1997 on suspicion of involvement in the murder of Kov Samuth, the brother-in law of Second Prime Minister Hun Sen the previous November, he was held incommunicado and illegally for 17 days at various unlawful places of detention. During that time, he made a taped confession. When he was brought to court on 3 March, he retracted the confession, claiming that it had been made under duress. At his trial the judge rejected arguments from his lawyer that his initial arrest and detention had been illegal and that the testimony of two other defendants was contradictory. The Special Representative commented that “[t]he trial fell short of the most elementary procedural requirements for fairness. The verdict appeared to have been prepared before the trial”.¹³

Cambodia was once again plunged into a political and human rights crisis when forces loyal to Hun Sen launched sustained and violent attacks against forces loyal to Prince Ranariddh in Phnom Penh on 5 July 1997. Prince Ranariddh was abroad at the time; many others followed him into exile, including politicians from FUNCINPEC, the BLDP and the KNP.

At least 43 people were extrajudicially executed in the aftermath of the coup. Victims included senior FUNCINPEC military personnel, and those linked to them. The government claimed that - with the one exception of Hor Sok, Secretary of State at the Ministry of the Interior - those killed died in the course of armed conflict. However, human rights monitors from the Cambodia Office exhumed the bodies of two senior FUNCINPEC officials, General Krach Yeuam and General Chao Sambath, who had been captured by forces loyal to Hun Sen on 8 July in Kampong Speu province. Krach Yeuam’s hands had been cut off and he had been shot dead. Chao Sambath had both arms broken, his right shoulder was dislocated and his left leg had an open fracture above the ankle. He had been shot three times. Other evidence, including the hasty cremation of bodies in Phnom Penh, without the necessary authorization, indicates that the victims were extrajudicially executed and did not die in combat.

¹³Paragraph 78, UN document A/52/489, 17 October 1997

Hundreds of people, mainly FUNCINPEC soldiers loyal to Prince Ranariddh, were detained in the aftermath of the fighting. Dozens were tortured. For example, 33 FUNCINPEC soldiers captured on 8 and 9 July by soldiers from Special Forces regiment 911 were taken to the regiment's base at Kambol and detained for over a week in a 12 metre square storage room where they could not all sit down at the same time. Almost all were subjected to beating and death threats to force them to admit to membership of the Khmer Rouge.¹⁴

On 22 August, the Special Representative submitted a Memorandum to the Royal Government of Cambodia (*Evidence of summary executions, torture and missing persons since 2-7 July 1997*). The Special Representative requested a criminal investigation into at least 41 cases referred to in the memorandum and requested that those responsible for summary executions or other serious crimes be promptly brought to justice. The Second Prime Minister Hun Sen agreed that "serious investigations were required into cases of executions and torture".¹⁵ Neither this nor other recommendations made by the Special Representative in August 1997 have been implemented. In December, speaking from Phnom Penh, the Special Representative reported that there had been no progress with investigations into the 30 March grenade attack or extrajudicial executions following the July coup.¹⁶ Second Prime Minister Hun Sen was reported to have subsequently referred to his report on the July extrajudicial executions as "pure slander".¹⁷

¹⁴See *Kingdom of Cambodia: Time for Action on Human Rights*, AI Index ASA 23/36/97, October 1997

¹⁵Paragraph 28 and 29 of S-G's Report

¹⁶ *Reuters* "UN rights chief for Cambodia sees scant progress" 5 December 1997

¹⁷*Agence Khmère de Presse*, quoted by *Agence France Presse* "Cambodian premier accuses UN rights official of slander over report" 8 December 1997

Until these violations are addressed, they will have a strong bearing on the political climate and will negatively affect the conduct of the elections. The Special Representative was reported in December as saying during a visit to Phnom Penh that “a climate of impunity for human rights threw into question whether a general election due next year could be free and fair”.¹⁸ The continuing cycle of impunity, particularly the partisan way in which the security forces continue to function outside the law, creates an environment in which human rights violations will continue unchecked. In 1993 more than 200 people were killed and over 330 injured in the two months preceding the elections alone. The victims included dozens of FUNCINPEC members extrajudicially executed by the police or armed forces. This indicates the risk of an upsurge in violations during the forthcoming election campaign.

The international community - including the Commission - has invested heavily in Cambodia, both politically and financially. It therefore has a position of special leverage and thus also a special responsibility. The Commission has recognized the grave situation of human rights violations in Cambodia through resolutions adopted at its last five sessions. It needs to send a stronger signal to the Cambodian authorities of its grave concern about violations of fundamental rights and freedoms of all Cambodians both in the lead up to next year’s general elections and in the longer term. The Commission must take every step it can to ensure that impunity is halted.

Amnesty International’s recommendations

Amnesty International calls on the Commission to:

- Urge the Royal Government of Cambodia to initiate full and independent inquiries into human rights violations, including the events of 5 and 6 July 1997. In the interim, the identities of those believed to have been killed should be made public and all those implicated in the killings should be suspended from duty pending prosecution or disciplinary action;

- Give full political and financial support to the Secretary-General’s Special Representative on Cambodia and the Cambodia Office of the Office of the High Commissioner for Human Rights in carrying out the tasks set them by the Commission;

- Provide assistance to the Royal Government of Cambodia to ensure that legislation relating to elections upholds the rights of all Cambodians to freedom of expression, association and assembly and that firm measures are enacted to assure the neutrality of all security force personnel and the physical security of all candidates during the election campaign;

- Urge the Royal Government of Cambodia to repeal laws, particularly Article 51 of the 1994 Law on Civil Servants, which provide impunity for state employees;

¹⁸*Reuters*, op cit

- Urge the full and prompt investigation of all past human rights violations and the bringing to justice of the perpetrators including Khmer Rouge leaders responsible for gross human rights violations between 1975 and 1979.

COLOMBIA

Colombia's deepening human rights crisis has been the focus of increasing international attention. The opening of an office of the UN High Commissioner for Human Rights in Colombia in April 1997 is an important manifestation of the growing concern of the international community to exercise necessary scrutiny over the human rights situation and to oversee the implementation of recommendations made by the UN thematic mechanisms designed to end gross and systematic human rights violations.

However, despite the increasing presence and attention of the international community, the human rights crisis in Colombia continues to deteriorate as the long-running armed conflict spreads and intensifies in many areas of the country. Extrajudicial executions, "disappearances" and torture are widespread. An estimated one million people have been internally displaced in the last ten years by the conflict. Although the numbers of abuses directly attributable to the armed forces has decreased in recent years, there has been a corresponding increase in the numbers of abuses committed by paramilitary groups operating with their support or acquiescence.

The escalation in political violence has been particularly marked since the breakdown in 1995 of government proposals to initiate peace talks with the main armed opposition groups - the *Fuerzas Armadas Revolucionarias de Colombia* (FARC), Revolutionary Armed Forces of Colombia, and the *Ejército de Liberación Nacional*, (ELN), National Liberation Army. Since then, the FARC and the ELN have continued and extended their campaigns of armed opposition throughout the country. There is now a significant guerrilla presence in half the municipalities of Colombia. Armed opposition groups have been responsible for frequent violations of international humanitarian law including deliberate and arbitrary killings and the kidnapping and holding hostage of hundreds of civilians.

A severe upsurge in political violence preceded the municipal and regional elections in October 1997. In March 1997 the FARC and ELN announced their intention of sabotaging the elections, which they claimed were undemocratic. In the run-up to the elections, these armed opposition groups launched a campaign of intimidation and attacks against electoral candidates designed to force their resignation and the suspension of the elections. The national paramilitary coordination *Autodefensas Unidas de Colombia*, (AUC), United Self-defence Groups of Colombia, threatened and killed candidates they perceived to be guerrilla sympathizers. Over 40 mayoral and council candidates were killed by guerrilla and paramilitary organizations and over 200 were kidnapped by the FARC and the ELN. Most were released unharmed but many hundreds of candidates resigned. Two election monitors of the Organization of American States (OAS) were among those retained and held hostage by the ELN. They were released unharmed after the elections.

Paramilitary groups, declared illegal in 1989, have achieved significant territorial gains through military offensives in several areas of guerrilla influence. In the past two years, these offensives have particularly affected the north and northwest of Colombia. Since their creation by the armed forces in the 1980s, paramilitary forces have committed widespread atrocities, including the extrajudicial execution of thousands of civilians. In some recent instances, paramilitary forces have employed a "scorched earth" military strategy, resulting not only in the displacement of the civilian population but also the destruction of entire villages. Each year tens of thousands of civilians are forced to abandon their homes, most as a result of paramilitary attacks against their communities; others flee aerial bombardments by the armed forces or threats and attacks by guerrilla organizations. In an attempt to escape the conflict, some communities in north-west Colombia have declared themselves "peace communities" and declared their neutrality in the conflict. However, their declared neutrality has not been respected and scores of residents in "peace communities" have been killed by army-backed paramilitary and the FARC.

The principal victims of the spiralling conflict continue to be civilians, mostly peasant farmers living in areas whose control is disputed between the armed forces, their paramilitary allies and the guerrilla organizations. Civilians living in combat zones have increasingly been drawn into the conflict against their will as both the guerrillas and government forces and their paramilitary auxiliaries demand their support and collaboration.

Despite repeated promises by successive Colombian governments to dismantle paramilitary forces, political killings and other human rights violations by these groups have escalated dramatically in recent years. In July 1997 President Samper reiterated his commitment to "fight the so-called private self-defence groups with the same energy we use to combat the guerrilla". However, no action was taken by the armed forces to implement this policy. Indeed, not only have the armed forces consistently failed to

combat paramilitary organizations but strong evidence of continued armed forces' active support for paramilitary organizations has emerged in official and independent investigations.

It is not only the illegal paramilitary organizations whose expansion and consolidation has notoriously accelerated during the government of President Samper. The legal civilian vigilante associations, *Convivir*, introduced by this government in 1994, are now operating in many areas of the country. Over 400 groups have been legally authorized to act as *Convivir* and up to 300 vigilante groups are believed to be operating as *Convivir*, without due authorization. Amnesty International has repeatedly expressed its concern to the Colombian Government that these civilian vigilante groups could be used by elements within the armed and security forces to develop new paramilitary structures in order to perpetuate and expand illegal counter-insurgency practices. Indeed, there is increasing evidence that *Convivir* groups in some areas of the country are no longer confined to tasks of intelligence gathering but have become offensive structures participating in joint operations with the Colombian army. There is also strong evidence that *Convivir* groups have been responsible for human rights violations against civilian populations.

In November 1997 Colombia's Constitutional Court ruled the establishment of the *Convivir* to be constitutional but warned that they should not be allowed to act as "death squads" or to violate human rights. The Court ordered the *Convivir* to relinquish weapons whose use is legally restricted to the military with which they had been issued by the armed forces. Only days before the Court's ruling was disclosed, the government announced important modifications to the *Convivir* by which approximately half the authorized groups would be transformed into groups known as *Servicios Especiales*, Special Service groups, and the other half into *Servicios Comunitarios*, Community Service groups. According to resolution No 7164 regulating the modified *Convivir*, the Special Service groups would be equipped with arms whose use is restricted to the military, including automatic rifles and sub-machine guns, while the Community Service groups would be restricted to handguns for personal defence. Following the Constitutional Court's ruling, the *Defensor del Pueblo*, National Ombudsman, began to oversee the surrender of some weapons in possession of the *Convivir*.

Human rights defenders face a growing campaign of harassment, intimidation and violent assaults. During the first nine months of 1997 at least eight were killed. Among the victims were human rights and environmental activists Elsa Alvarado and Carlos Mario Calderón who were shot dead by gunmen who burst into their Bogotá home during the night of 19 May 1997. Elsa's father was also killed in the attack and her mother seriously injured. Mario Calderón and Elsa Alvarado, both university professors, worked for the *Centro de Investigación y Educación Popular*, (CINEP), Centre for Research and Popular Education. In September four people were charged with the murders. However,

those responsible for organizing and ordering the killings remained at large. Several other members of CINEP and other independent human rights organizations, including Amnesty International, have received repeated death threats in recent months.

The government repudiated the killings and attacks against human rights defenders. In July 1997 President Samper issued presidential directive No 11 which recognized the legitimacy of the work of human rights organizations and ordered national and regional authorities and the armed forces to co-operate with human rights defenders and to refrain from making statements of a threatening nature. Attacks against human rights defenders, however, continued and little progress was made in the majority of cases in identifying and bringing to justice those responsible.

Only exceptionally have those responsible for serious human rights violations been held accountable before the law, and impunity for human rights violations remains the norm. Military courts, which generally claim and exercise jurisdiction to pursue investigations into human rights violations by armed forces personnel, persistently fail to hold military personnel accountable.

In a landmark ruling issued in August 1997, Colombia's Constitutional Court defined the limitations of military jurisdiction over crimes committed by military personnel. The Constitutional Court considered that human rights violations such as "disappearance", torture, murder and rape cannot be considered "acts of service" and should, therefore, fall within the jurisdiction of the civilian justice system. Senior armed forces commanders announced their intention of challenging the Constitutional Court's ruling and serious doubts have emerged about the military's intention of complying with the ruling as, at the time of writing, military courts have failed to transfer ongoing investigations to the civilian justice system.

Following repeated calls from international organizations, including the United Nations and the OAS, that trials of individuals for the commission of human rights violations should be heard in civilian courts, the government finally presented legislation to Congress to comply with this recommendation and with the ruling of the Constitutional Court. In September 1997 the government presented to Congress a draft bill to reform the military penal code. The bill introduces important modifications to the military penal code including the specific exclusion from the military justice system of crimes not directly related to military service including "torture, genocide, forced disappearance and any other crime which constitutes a serious human rights violation". In November 1997 the government presented to Congress a draft bill to incorporate the crime of forced "disappearance" into the penal code and establishes prison sentences of up to 60 years for crimes of "disappearance" and "genocide", as well as increased penalties for torture and the formation of paramilitary organizations or death squads. At the time of writing (November 1997) neither bill had been debated by Congress.

The UN Commission on Human Rights adopted consensus statements from the Chairperson on the situation of human rights in Colombia at its sessions in 1996 and again in 1997. Amnesty International welcomed the opening of the UN High Commissioner for Human Rights office in Colombia in April and urged the High Commissioner to ensure full transparency in its monitoring and reporting of the human rights situation in Colombia. The organization continued to urge that the analytical reports of the field office to the High Commissioner should be made public and that the report of the High Commissioner to the Commission should be substantive and contain detailed information on the monitoring activities it carries out. However, as yet no public reports on activities by the Office have been issued.

The European Union and the European Parliament have again expressed concern about the human rights situation in Colombia on a number of occasions during 1997, including the murder of the two CINEP workers Elsa Alvarado and Carlos Mario Calderón and human rights abuses committed by guerrilla organizations and the Colombian security forces, through paramilitary groups acting on their behalf.

In March 1997, the (UN) Human Rights Committee deplored the fact that gross and massive human rights violations continue to be carried out by members of the armed forces, the police, paramilitary and guerrilla groups. The Committee expressed deep concern about continued widespread impunity and at evidence that paramilitary groups receive support from members of the military. It also considered that the legalization of armed civilian vigilante groups known as *Convivir* would further aggravate the human rights situation. While welcoming the setting up of a number of institutions and offices to protect and promote human rights, the Committee noted with concern the continuing gap between the legal framework and reality.

Amnesty International's recommendations

Amnesty International calls on the Commission to:

- Support the extension of the mandate of the office of the High Commissioner for Human Rights which expires in April 1998;
- Strengthen the office with the appointment of sufficient experts to effectively fulfil the office's mandate to monitor the human rights situation and to advise the government on the implementation of the recommendations of the Commission and its thematic mechanisms;
- Seek full, detailed reports from the High Commissioner for Human Rights on the human rights situation in Colombia and on the activities of her office;
- Seek assurances that the reports of the office on its activities are made regularly and publicly available;

- Consider the recommendations of the Special Rapporteurs on torture and on extrajudicial, summary or arbitrary executions and examine to what extent they have been implemented, including whether to appoint a special rapporteur;
- Ask the representative of the UN Secretary-General for Internally Displaced Persons to urgently carry out a follow-up visit to Colombia in order to assess the worsening situation of internal displacement and to monitor the implementation by the Colombian authorities of the recommendations made in the report of his 1994 visit.

Moreover, the Commission should reiterate its concern at the escalating human rights crisis in Colombia and at the Colombian Government's failure to satisfactorily implement recommendations of the UN thematic mechanisms, and urge the Colombian Government to implement in full all recommendations, in particular those which call on it to:

- Dismantle illegal paramilitary organizations and to bring to justice members of such forces responsible for political killings, torture, "disappearances" or other human rights violations;
- Rescind Resolution 7164 of 22 October 1997 and dismantle the *Convivir* structures;
- Ensure that the *Convivir* and any other legalized civilian vigilante groups relinquish their weapons in accordance with the Constitutional Court's ruling;
- Bring members of the armed forces responsible for promoting or supporting paramilitary activities to justice;
- Suspend members of the security forces implicated in the course of investigations of human rights violations from their posts until responsibility for the violations is established;
- Ensure that gross human rights violations, including those involving extrajudicial executions, "disappearances" and torture, are excluded from the jurisdiction of the military justice system in future and that ongoing investigations are transferred from the military justice system to the civilian courts;
- Protect human rights defenders, relatives of victims, witnesses, lawyers and others cooperating with investigations of human rights violations;
- Take all necessary steps to ensure respect for the fundamental human rights of persons who have been internally displaced by conflict and ensure that the necessary conditions are met to enable them to return to their homes.

KENYA

The Kenyan Government's violent crackdown on pro-democracy demonstrations in 1997 focussed international attention on a government prepared to take drastic measures to

silence its critics. Faced with growing international criticism¹⁹ the Government of Kenya has orchestrated a defence of its abysmal human rights record but failed to take measures which would promote and protect the human rights of all Kenyans. For many years Kenya was considered a stable country on a war torn continent. But behind this facade of stability is a government which represses dissent and a judicial system which fails to defend people's basic rights.

¹⁹See for example resolutions of the European Parliament on human rights in Kenya adopted 15 May 1997 reference B4-0366/97 and 17 July 1997 reference B4-725/97.

Kenya is also party to the International Covenant on Civil and Political Rights (ICCPR) but the government has failed miserably to honour its reporting obligation under this treaty.²⁰ Kenya has not submitted any reports as it is required to do since its initial report in 1981. Kenya's second periodic report was due in 1986, its third in 1991 and its fourth in 1996. The Human Rights Committee has consistently reminded the Kenyan authorities of their reporting obligation.²¹

In recent years the police and security forces have killed hundreds of Kenyans. Law enforcement authorities have frequently used excessive force against peaceful demonstrators including firing tear gas into confined spaces such as the cathedral and university buildings in Nairobi. The number of killings appears to indicate that there is a shoot to kill policy or that senior officials are unable to control their police officers. Peaceful protesters are violently attacked and unarmed suspects shot with live ammunition.²² The UN Special Rapporteur on extrajudicial, summary or arbitrary executions received reports indicating that police officers have killed a considerable number of alleged criminals and that in most cases it seemed that internationally recognized standards regarding the use of force were not respected.²³ In October 1996 Stephen Muthuo Kahara, a Christian lay preacher, heard the cries of his neighbour being robbed and with other villagers he went to help. Police officers assuming they were thieves fired at the group. Stephen Muthuo Kahara was shot in the leg and while lying injured on the ground the police officers fired three shots into his body at point-blank range. The police officers have not been apprehended for the killing. Several political opponents have also died in suspicious circumstances.

²⁰Article 40 of the ICCPR requires States Parties to submit reports to the Human Rights Committee through the Secretary-General.

²¹Reminders sent by the Human Rights Committee Second Periodic report (21 reminders), Third Periodic Report (11 reminders) and Fourth Periodic Report (one reminder).

²²The UN Code of Conduct for Law Enforcement Officials and the Basic Principles on Use of Force and Firearms by Law Enforcement Officials restrict use of force to exceptional circumstances only when strictly necessary.

²³Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/1997/60/Add.1, para 291.

Although the Kenyan authorities have acceded to the (UN) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and torture is forbidden by national law, anyone arrested in Kenya is at risk of torture or ill-treatment. One such case is that of Geoffrey Ndungu Gichuki who was wrongly accused of holding an illegal meeting. He was arrested and taken to a police station in Kinamba and later transferred to Special Branch Headquarters in Nakuru. While in Nakuru he was suspended from a tree, string was tied around his upper arms to prevent blood circulation and his body was beaten. The torture he received so severely damaged his right arm that it had to be amputated from the shoulder. In another case, Josephine Nyawira Ngengi, a human rights defender, was tortured by Kenyan police. She was beaten on her head and body with clubs, planks and iron bars. There has been no investigation into her torture allegations. Likewise allegations made by other torture victims have not been investigated or the investigations have been inadequate and the perpetrators are rarely brought to justice.²⁴ Policemen who have been accused of rape or sexual assault are rarely prosecuted. In one case two women alleged they had been tortured on several occasions by the police. The torture included being forced to strip and having a bottle filled with hot water and chillis inserted into their vaginas. In such cases the authorities appear to believe that if the policemen involved are transferred to another station or dismissed from their job that is sufficient punishment and it is rare for policemen to be prosecuted for their crimes.

At least five persons died in custody, apparently as a result of torture in 1996. In March 1997 Ali Hussein Ali died after eight days interrogation. A post-mortem found evidence of brutal beatings. Rosemary Nyambura was arrested on 10 May 1992 and died on the same day at Ruraka police station. Although an inquest was held and on 20 July 1995 the magistrate ruled that four police officers involved in the death should be charged with murder, to date no-one has been arrested. The Special Rapporteur on extrajudicial, summary or arbitrary executions expressed his concern about the large numbers of deaths in custody and urged the government to take all necessary measures to avoid further deaths.²⁵ The 1997 report of UN Special Rapporteur on torture contains information indicating the use of torture and ill-treatment including beatings, removal of toenails and finger nails, near-asphyxiation and rape. Based on information received, the Special Rapporteur requested to visit Kenya but has not yet received an invitation from the government.²⁶

²⁴The UN Convention against Torture requires the Kenyan authorities to ensure that all allegations of torture are investigated.

²⁵Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, E/CN.4/1997/60/Add.1, para 298.

²⁶E/CN.4/1997/7, para 138.

Kenyan courts continue to impose caning as a punishment for many offences, as an alternative or in addition to a custodial sentence. Such punishment amounts to cruel, inhuman and degrading treatment and is prohibited under international human rights law.²⁷ Caning is also administered to persons under the age of 18 years despite the fact that Kenya is a state party to the Convention on the Rights of the Child. In ratifying international human rights treaties Kenya has indicated its intent to respect human rights but this intent has not resulted in a marked improvement in the overall situation.

More than 700 people are under sentence of death in Kenya. The death sentence is mandatory under the Penal Code for anyone convicted of treason, murder, robbery with violence or attempted robbery with violence. Although no executions have been reported for ten years many prisoners on death row have died as a result of appalling prison conditions. In 1997 the UN Commission on Human Rights stated that it is “[C]onvinced that abolition of the death penalty contributes to the enhancement of human dignity and to the progressive development of human rights”.²⁸ The same resolution also called upon all States Parties to the ICCPR to consider acceding to or ratifying the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty.

Arbitrary arrest is widespread in Kenya.²⁹ Human rights defenders are frequently detained for their non-violent activities. Janai Robert Orina, an official of the Kenya University Students Union, was harassed, threatened and deprived of his chance to gain university qualifications. He received threatening phone calls and fears for his life following the death of a fellow student leader Solomon Muruli in February 1997. Journalists trying to report on events have been arrested and had their cameras and film destroyed. Evans Kanini, a journalist for fifteen years with *The Daily Nation*, was threatened, arrested, beaten and dismissed from his job because of his determination to

²⁷The UN Human Rights Committee stated in its General Comment 20, para 5, that the prohibition against torture in the International Covenant on Civil and Political Rights (ICCPR) extends to a prohibition of corporal punishment. In addition the UN Special Rapporteur on torture, in his 1997 report to the UN Commission on Human Rights (E/CN.4/1997/7, para 6) stated that “corporal punishment is inconsistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment enshrined inter alia, in the Universal Declaration of Human Rights, the ICCPR, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention against Torture”

²⁸Commission on Human Rights resolution 1997/12.

²⁹Arbitrary arrest is prohibited by Article 9(1) of the ICCPR, and Article 6 of the African Charter on Human and Peoples’ Rights (ACHPR).

report the facts. The police also round up the poor, women, and street children in mass arrests accusing them of being drunk and disorderly, of hawking, of prostitution, or vagrancy. Refugees are also arbitrarily arrested and even forcibly returned. In July 1996, more than 900 Somali refugees were forcibly returned to Somalia by the Kenyan army six days after seeking asylum in Kenya.

Serious concerns have been raised about the right to fair trial in Kenya including: the lack of legal aid in Magistrate's Courts, the defendant's lack of understanding of the language used in court, the admissibility of confessions made only in the presence of police officers, the lack of impartial investigation into allegations of torture during trial proceedings, pre-trial detention beyond the legal limit, inadequate time and facilities for the defence of trials in magistrates courts, and concern about the independence of the judiciary. Koigi wa Wamwere, a former member of parliament and founder of the National Democratic Human Rights Organization, has been repeatedly imprisoned. In October 1995 having been charged with attempted robbery with violence, Koigi wa Wamwere was sentenced with two others after a grossly unfair trial to four years in prison and six lashes of the cane. Amnesty International believes the charges were fabricated and that the real reason for his arrest was his opposition to the government.³⁰ On 1 December 1997 the outstanding conviction against Koigi wa Wamwere was quashed by the chief justice.

The Kenyan Government has consistently failed to live up to its promises to improve its human rights record. The government continues to violate international human rights treaties, legal obligations which it has freely undertaken, while at the same time deflecting international criticism and attention with promises of reform at some future date. The proposed reforms include the repeal of sedition laws and the ending of detention without trial, but other charges which restrict basic human rights remain, such as section 77 of the Penal Code which has been used recently to detain pro-democracy activists for holding unlawful assemblies. Continued delay and the absence of a concrete human rights program call into question the government's commitment to human rights. In ratifying international human rights treaties the government has agreed to respect human rights.

Amnesty International's recommendations

Amnesty International calls on the Commission to:

- Urge the government to investigate fully all allegations of extrajudicial execution, torture and ill-treatment and ensure that those responsible are brought to justice;

³⁰Koiga wa Wamwere is currently on bail pending appeal in order to receive medical treatment abroad.

- Request the government to release immediately and unconditionally all persons imprisoned for non-violent expression of their political views as well as human rights defenders;
- Urge the government to abolish the death penalty and commute death sentences already passed, and ratify the Second Optional Protocol to the ICCPR;
- Urge the government to comply with its international obligations by abolishing floggings;
- Urge the government to cooperate with the Special Rapporteur on torture and the Special Rapporteur on extrajudicial, summary or arbitrary executions;
- Urge the Government to submit as a matter of urgent priority its second periodic report to the Human Rights Committee.

SAUDI ARABIA

Saudi Arabia has an appalling record of gross and systematic human rights violations: hundreds of people are detained indefinitely on political grounds, torture and ill-treatment are endemic, public executions are carried out with a total disregard for even the most basic safeguards and there is a failure to respect even the most elementary fair trial standards. For years Amnesty International has called on the Saudi Arabian Government to observe international human rights standards but its appeals remain unanswered. The Commission on Human Rights has considered Saudi Arabia under the confidential '1503 procedure' but this private scrutiny has not resulted in an improvement of the human rights situation. Amnesty International is convinced that the human rights situation in Saudi Arabia is so serious that the Commission must address the violations through its public procedures and debate.

Saudi Arabia is a major political and economic power in the region and in addition has strong strategic and political relations with western governments. The Saudi Arabian National Guard and other branches of the security forces have been trained and supplied with weapons, including electric-shock stun devices, by foreign private security companies. Saudi Arabia also provides substantial employment opportunities for foreign workers with the majority of its migrant worker population from Africa and Asia. It is the foreign nationals of these countries which include Egypt, India, Indonesia, Pakistan, the Philippines, Somalia, Sri Lanka and Yemen as well as Palestinians who are discriminated against and consequently most vulnerable to grave violations of their human rights.

Women are also subjected to human rights violations that are based on their gender. Some of these violations arise because of discriminatory laws while others are simply perpetuated by virtue of discriminatory attitudes and practices. The existence of

such laws and practices clearly violate the principle of equality of rights and respect for dignity enshrined in international standards. In 1990 a group of Saudi Arabian women were arrested and detained after they took to the highway as a protest to the prohibition against women driving cars. They were only released after male relatives signed undertakings that the women would not violate the ban. The women were dismissed from their jobs and had no opportunity to legally challenge the arresting authorities or the government over the ban which remains in force. Women also risk arrest for immoral behaviour merely for walking alone or not wearing a headscarf. Margaret Madil, a Canadian nurse who worked in Saudi Arabia in 1993, was detained with a female friend by the *Mutawa'* (the religious police) for indecent dress. When she protested she was beaten and held in Malaz Prison for two days.

The government of King Fahd bin 'Abdul-'Aziz maintains a ban on political parties, trade unions and religious freedom. There is strict press censorship and access to the country for independent international human rights organizations is not allowed. Shi'a Muslim critics or opponents of the government are targeted for arrest. Likewise scores of Sunni Islamist critics are subject to arrest and detention. However, while the majority of those detained are Saudi Arabian citizens, foreign nationals also risk arrest for exercising the right to "freedom of thought, conscience and religion". One such case is that of Donato Lama, a Filipino who was arrested in October 1995 on suspicion of preaching Christianity and detained in al-Malaz Prison in Riyadh.

One important contributory factor to human rights violations in Saudi Arabia is the government's failure to respect international standards for fair trials.³¹ The right to a fair trial is fundamental if justice is to be done. Throughout the Saudi Arabian judicial system there is an imbalance which protects the interest of the state at the expense of the rights of the individual. Suspects are often arrested without a judicial warrant, held incommunicado, and detained for lengthy periods and denied the opportunity to challenge the legality of their detention. Trial hearings are behind closed doors and follow procedures which deny defendants a proper opportunity to exercise their right to defence and an adequate opportunity of appeal against conviction and sentence. The result of these trials is the widespread use of flogging, amputation and public execution.

Most of the victims of such punishments come from vulnerable sectors of Saudi Arabian society: women, migrant workers and the poor. Their plight is largely ignored by the international community and the media. It was not until two British nurses in Saudi Arabia were charged with the murder of Yvonne Gilford, an Australian nurse, that unfair trials became of concern to the international media and public opinion. In a

³¹*Saudi Arabia Behind Closed Doors: Unfair trials in Saudi Arabia*, November 1997, AI Index: MDE 23/08/97.

highly unusual step the Saudi Arabian authorities allowed the two nurses to appoint lawyers, something which is rare, if not unique, in the Saudi Arabian criminal system. Moreover, the government did not explain if access to lawyers was an exception to the rule or applicable in all cases throughout the country. Amnesty International, however, is not aware of any other defendants, including hundreds of political detainees, having access to lawyers.

Torture and ill-treatment are commonplace in Saudi Arabia. Methods include *falaqa* (beatings on the soles of the feet), beatings to the body and use of electric shock devices. Torture is practised to obtain information leading to the arrest of other suspects and to convict the detainee at the trial. In December 1996 Maitham al-Bahr, a 21 year-old Saudi Arabian student who was held in incommunicado detention, is reported to have died in al-Dammam Central Prison allegedly as a result of torture. A post-mortem examination reportedly revealed, *inter alia*, swellings in various parts of the body allegedly sustained as a result of torture. Amnesty International is not aware of any independent investigation by the Saudi Arabian authorities into this case or other cases. The Special Rapporteur on torture has made a number of urgent appeals on behalf of persons at risk of torture and expressed concern about the use of incommunicado detention apparently without limit of time.³²

Flogging and amputation are punishments imposed for a variety of offences. Amputations are mainly limited to cases of theft, for which the punishment is amputation of the right hand, and highway robbery, which is punished by amputation of the right hand and left foot. Judges have more discretion with flogging which may be used as a substitute or in addition to other punishments. Under international human rights standard the use of such punishments is forbidden as contrary to the prohibition of torture and other cruel punishments.³³

³²Report of the UN Special Rapporteur on torture, E/CN.4/1997/7, paras 177 and 178.

³³The UN Special Rapporteur on torture, in his 1997 report to the UN Commission on Human Rights (E/CN.4/1997/7, para 6) stated that "corporal punishment is inconsistent with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment". This has also been affirmed by the Human Rights Committee. In 1997 the UN Commission on Human Rights "remind(ed) governments that corporal punishment can amount to cruel, inhuman or degrading treatment or punishment or even torture", Resolution 1997/38 on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by consensus 11 April 1997.

Flogging is a widespread punishment throughout Saudi Arabia. It has been applied to men, women and even children. The flogging of children is in direct contravention of Article 37 of the Convention on the Rights of the Child to which Saudi Arabia is a state party. Article 37 prohibits torture or cruel, inhuman or degrading treatment or punishment of children. In March 1996 Nasir al-Shibani and Muhammad Majed al-Shibani, both secondary school students, were sentenced to 210 and 150 lashes respectively. In another case, Nieves, a Filipino married mother was arrested at a restaurant on suspicion of prostitution. She was asked to sign a 3-page report in Arabic, a language she does not understand, believing it to be a release order. Nieves was later summoned to a court and sentenced to 25 days imprisonment and 60 lashes followed by deportation. The sentenced was based on her three-page 'confession'. The number of lashes varies from cases to case from dozens to thousands of lashes. Muhammad 'Ali al-Sayyid, an Egyptian national convicted of robbery in 1990, was sentenced to 4,000 lashes in addition to imprisonment. The Special Rapporteur on torture has issued a number of urgent appeals to the Saudi Arabian authorities on behalf of persons sentenced to be flogged.³⁴

Saudi Arabia has one of the highest rates of execution in the world in both absolute numbers and per capita. Contrary to the 1977 UN General Assembly resolution 32/61 calling for progressive reduction of the number of capital offences, Saudi Arabia has expanded the scope of the death penalty to a wide range of offences, including offences without lethal consequences.³⁵ Amnesty International recorded at least 119 executions between January 1997 and December 1997, although the true figure is probably much higher. Executions are carried out after summary and secret trials and the majority of those executed are foreign workers from Asia and Africa. James Rebenito, a 37 year old Filipino national, was arrested in September 1994 and charged with murder. The Phillippines Embassy, although at first unaware of the case, wrote to the Saudi Arabian authorities seeking clarification in October 1994. However, requests by the Phillippines Embassy to visit him and attend his trial were denied. James Rebenito was held incommunicado until a visit by his wife Marina in May 1996. About two weeks later, on 2 June 1996, James Rebenito was beheaded. The trial of James Rebenito remains shrouded in secrecy. Marina Rebenito was never informed by Saudi Arabian officials of the date of her husband's execution or even that he was facing execution. From the information available it seems that James Rebenito himself was unaware of the date of his execution. James Rebenito was executed after a secret trial

³⁴Report of the Special Rapporteur on torture, E/CN.4/1997/7/Add.1, paras 434 and 435.

³⁵See also Commission on Human Rights resolution 1997/12 on the "Question of the death penalty". The resolution, *inter alia*, encourages states which retain capital punishment "to consider suspending executions with a view to completely abolishing the death penalty".

where he was denied a defence lawyer and the opportunity to call or cross-examine witnesses.

No-one, but the Saudi Arabian Government, knows how many people are under sentence of death but they include Sarah Jane Dematera, a 24-year-old Filipino who has been in prison for five years. She arrived in Saudi Arabia on 11 November 1992 from the Philippines and joined a Saudi Arabian family as a domestic helper. Four days later she was arrested and charged with the murder of her female employer. It remains unclear whether she was able to claim her innocence before the judge or scrutinize any evidence produced against her. She had no access to legal assistance or other opportunities to exercise her right to an effective defence. Sarah Jane Dematera is under sentence of death after a court appearance which failed to comply with even the most basic fair trial standards and UN Safeguards guaranteeing protection of the rights of those facing the death penalty.

The Commission must face up to the fact that scrutiny of Saudi Arabia under the confidential '1503 procedure' has failed to produce any significant improvement in the overall human rights situation. The government has acceded to the UN Convention on the Rights of the Child, albeit with a sweeping reservation that the provisions do not contradict with the Shari'a (the Islamic Law), to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment with two limiting reservations³⁶ and to the International Convention on the Elimination of All Forms of Racial Discrimination with two reservations.³⁷ These initiatives, although welcome steps in the right direction, fall far short of measures required to redress a dire human situation which requires the full implementation of international standards.

Amnesty International's recommendations

Amnesty International calls on the Commission to:

- Request the government to invite the Special Rapporteur on the independence of judges and lawyers to visit Saudi Arabia in 1998 and report to the Commission in 1999;
- Request the Special Rapporteur on racism, the Special Rapporteur on violence against women and the Working Group on Migrant Workers to undertake a joint study of laws and practices which may result in discriminatory practices against women and migrant workers and to present their study to the Commission in 1999;

³⁶The reservations to Article 3(1) concerning *non-refoulement* and Article 20 enabling the Committee against Torture to investigate allegations of systematic torture.

³⁷As in the Convention on the Rights of the Child there is a broad reservation that the provisions must not contradict Shari'a (the Islamic Law) and that Saudi Arabia is not bound by Article 22 of the Convention.

- Urge the government to ensure that trials are fair and in accordance with international standards including the defendant's right to:

- prompt access to an independent lawyer, doctor and family,
- be informed of the allegations in a language which the defendant understands,
- choose and call upon the assistance of a lawyer throughout the criminal proceedings,
- call witnesses and cross-examine witnesses,
- appeal against the sentence to a higher court;

- Request the government to ratify without limiting reservations the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women and to withdraw its sweeping reservations to the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Racial Discrimination, and to Article 3 of the Convention against Torture;

- Urge the government to suspend executions pending consideration of its complete abolition and to abolish cruel punishments including floggings and amputations immediately;

- Urge the government to ensure that persons arrested are not subject to prolonged incommunicado detention and that there is a 'prompt and impartial investigation' of any allegations of torture.

TURKEY

Grave human rights violations persisted in Turkey throughout 1997. Torture is widespread. People 'disappear' while in custody. Individuals are killed in circumstances which suggest extrajudicial executions by the security forces. People are detained for non-violently exercising their human rights. Individuals who try to defend human rights are threatened and intimidated and risk serious violations of their human rights including torture and long terms of arbitrary imprisonment. Sevil Dalkiliç, a Turkish lawyer, was detained in March 1994 and held in police custody in Ankara for 15 days. She was later sentenced to 30 years imprisonment on the basis of statements she made under torture. Amnesty International believes that Sevil Dalkiliç is the victim of a grave miscarriage of justice, apparently targeted because of her political and professional activities.

Miscarriages of justice and unfair trials are not a new phenomenon in Turkey. Selahattin im_ek, a 43 years old primary school teacher, will soon begin his 18th year in prison. In April 1980, after a grossly unfair trial in a martial court, Selahattin im_ek was sent to prison for alleged involvement in robbery and killing of a policeman on

behalf of the Kurdish Workers Party (PKK). He was convicted on the basis of his own statement extracted under torture and on a mass of contradictory evidence. In September 1995 the Working Group on Arbitrary Detention declared Selahattin _im_ek's detention to be arbitrary and requested the government to "take the necessary steps to remedy the situation"³⁸. The Turkish Government has so far failed to comply with the Working Group's decision even though the Commission has called on "Governments to pay attention to the recommendations of the Working Group concerning persons mentioned in its report, who have been detained for a number of years"³⁹.

³⁸WGAD Decision No.34/1995 (Turkey).

³⁹UN Commission on Human Rights resolution 1996/28 Question of arbitrary detention.

Torture continues to be widespread and systematic throughout Turkey. The torture of men, women and children occurs mainly in police stations and gendarmerie posts during incommunicado detention. Amnesty International has documented many cases, and continues to receive allegations of ill-treatment and torture of children. In March 1997 the Turkish Government announced measures to combat torture by amending the Anti-Terror Law and shortening the maximum periods of detention. The new provisions are a step in the right direction but the provision for four days' incommunicado detention has permitted the widespread use of torture to continue. The measures enacted fall short of recommendations made by the Committee against Torture⁴⁰ and the European Committee for the Prevention of Torture (CPT). In order to prevent torture which is so much a part of police practice, the detailed recommendations made by the UN Committee on Torture and the CPT must be implemented forthwith and international standards complied with, including access to legal counsel of one's choice from the outset of detention; a clear statement showing that the lawyer can be present during interrogation if the client so wishes and can confer with the client in confidentiality; access to independent medical advice and assistance throughout the detention period; explicit directions on the records to be kept of detentions (for example, that details shall be entered in a bound ledger with numbered pages, stating hour and date of detention) with the proviso that these records shall be open to lawyers and families; explicit provisions for notification of relatives; and mechanisms which will guarantee that these safeguards are not circumvented by police officers.

Some torture victims are detained for common criminal offences. Sixteen-year old Murat Yi_it was detained on suspicion of burglary and tortured at a police station in Ankara in January 1997. He was blindfolded, stripped naked, drenched with cold water, beaten on the soles of his feet and given electric shocks and later released without charge.

Other victims may be suspected of sympathy or membership of an illegal organization. Hatun Temuzalp, a journalist for a left-wing journal, was interrogated at Istanbul Police Headquarters for seven days in March 1997. Her clothes were pulled off and her arms tied to a wooden bar from which she was then suspended. Hatun Temuzalp suffered intense pain and eventually lost consciousness.

Despite strong cultural inhibitions against reporting sexual torture in Turkey Amnesty International nevertheless frequently receives allegations from women of rape and insertion of objects into the vagina or anus. Young women in police custody are sometimes threatened with forced gynaecological examination. Detainees do not have free access to any medical practitioner, much less one of their own choosing, although this right is supposedly guaranteed under Rule 98 of the European Standard Minimum Rules for the Treatment of Prisoners. This is an effective method of concealing torture

⁴⁰UN Committee against Torture, Report under Article 20, 9 November 1993.

including rape and makes it particularly difficult to provide medical evidence of sexual torture.

The Special Rapporteur on torture has raised numerous individual cases of torture⁴¹ with the Turkish authorities as well as other concerns such as flawed medical examinations of torture victims and the prosecution of officials from the Human Rights Foundation (HRFT), a non-governmental organization working with victims of torture. Amnesty International welcomes the decision of the Turkish authorities to invite the Special Rapporteur on torture to visit Turkey and urges that this visit should take place as soon as possible in 1998. In a judgement in September the European Court of Human Rights found that Turkish security forces had raped 17-year-old ükran Ayd_n while she was detained at Derik Gendarmerie Headquarters in Mardin. The court held that she had been tortured by being raped, paraded naked in humiliating circumstances and beaten, and that the Turkish authorities had failed to conduct an adequate investigation into her complaint. The court ordered the Turkish government to pay compensation to ükran Ayd_n in the amount of £25,000.

Since the creation of the mandate of the Working Group on Enforced or Involuntary Disappearances (WGEID) 145 cases from Turkey have been reported to the Working Group but only 65 have been clarified.⁴² Those responsible for “disappearances” are usually police officers or members of the security forces while the victims are frequently male members of political parties or groups. Even when the police or security forces are very clearly implicated in enforced disappearances they are not brought to trial or prosecuted. Amnesty International welcomes Turkey’s invitation to WGEID to visit the country but the organization is appalled that members of the Working Group did not carry out the visit in 1997 and Turkish authorities could not agree on a date prior to the 1998 session of the Commission on Human Rights. The failure to visit in 1997 will add to the torment the families of the disappeared are already suffering.

⁴¹E/CN.4/1997/7/Add.1

⁴²E/CN.4/1997/34, para 349.

Extrajudicial executions continue, especially in the south-east of the country. The military and the armed opposition frequently use light weapons to commit human rights abuses which are not carried out in the context of armed confrontation. In January 1997 Murat Akman was killed by members of the Special Operations Team in a house raid. Witnesses reported that heavily armed police came to the door and asked for Murat Akman. When he appeared they opened fire, killing him immediately. As with other extrajudicial killings no-one was arrested. Elsewhere in Turkey people have died in police stations, apparently as a direct result of torture sustained while in custody. In May 1997 a 23 year-old man, Fettah Kaya, died at Aksaray Police Station after being arrested by vice squad officers. Police claimed that he died of a heart attack but a fellow detainee claimed police officers beat Fettah Kaya with sandbags. The Special Rapporteur on extrajudicial, summary or arbitrary executions who has transmitted numerous cases concerning the violation of the right to life to the Turkish authorities, observed in his 1997 Commission report: "Serious doubts have been raised as to the willingness of the State to conduct prompt, thorough and impartial investigations".⁴³ Since 1992 the Special Rapporteur has made five requests to visit Turkey. Despite agreeing "in principle" to a visit taking place no dates have been agreed. Amnesty International believes it imperative that a visit takes place as soon as possible so that the Special Rapporteur can investigate and make recommendations to improve respect for the right to life in Turkey.

Armed separatist, leftist and Islamist organizations continue to kill civilians and prisoners. Armed members of the PKK killed Nusrat Harman and his wife Ayten Harman in Çeper village near the town of Lice in February 1997. In _z_ml_ village near Eruh in Siirt province, PKK members killed Emin _zdemir and abducted Abdullah Teymurta_ before also killing him, in July 1997. The Turkish Workers and Peasant's Army (TIKKO) and the Islamic Raiders of the Big East - Front (IBDA-C) have also claimed responsibility for killing civilians. Amnesty International condemns these grave abuses and calls on armed opposition groups to ensure that their members respect human rights and basic international humanitarian standards.⁴⁴

Rights concerning freedom of thought, conscience, religion, expression, association and assembly are only partially respected. Throughout 1997 trade unionists, students and demonstrators were arrested at peaceful public meetings or in their organization's office and detained for hours or even days while others were sentenced to terms of imprisonment. In June the writer Ahmet Zeki Okçuo_lu was imprisoned under

⁴³E/CN.4/1997/60 para 479.

⁴⁴See generally *Turkey: No security without human rights, Chapter 3 Abuses by armed opposition groups*, AI Index: EUR/44/84/96.

Article 8 of the Anti-Terror Law for “insulting the institutions of the state” in a newspaper article.

Prisoners of conscience, Hatip Dicle, Orhan Doğan, Selim Sadak and Leyla Zana, former parliamentary deputies for the Democratic Party, continue to serve their 15 year sentences at Ankara closed prison for alleged membership of the PKK. At their trial no strong evidence was ever presented to support the charges against them and Amnesty International considers that they are being held because of their criticism of state policy in the predominantly southeast provinces. In November 1995 the UN Working Group on Arbitrary Detention ruled the imprisonment of the four to be arbitrary, in contravention of Articles 10 and 11 of the Universal Declaration of Human Rights. The Working Group requested the Turkish Government to take the necessary steps to remedy the situation, which it has failed to do. Leyla Zana, Hatip Dicle, Selim Sadak and Orhan Doğan continue to serve their terms of imprisonment and are not due to be released until 2005 at the earliest.

In April 1997 members of the Aczmeni religious order were sentenced to long prison terms after appearing in public in turbans and cloaks in Ankara - garments which contravene the Dress and Hat Laws promulgated by Mustafa Kemal Atatürk.

Turkey does not recognize the right to conscientious objection to military service and consequently has made no provision for alternative civilian service.⁴⁵ Osman Murat Ülke, chairperson of the now banned Izmir War Resisters' Association (ISKD), was detained for more than a year after he publicly declared that he was a pacifist and would not perform military service. Since then four trials have opened against him in two military courts on account of his refusal to perform military service. He is charged with numerous offences for which the maximum sentence is 10 years imprisonment.

Light weapons and military transport equipment, much of which is received from abroad, have been used by the Turkish security forces, including police special units, to facilitate extrajudicial executions, as well as “disappearances” and torture. New rules of conduct for security force operations are claimed to reduce abuses in combat areas, but independent verification of this has been hampered by lack of access given by the Turkish authorities to journalists and to human rights observers.

⁴⁵Since 1987 the Commission on Human Rights has adopted resolutions on the right to conscientious objection to military service, including for persons performing military service, and reminded states to provide alternative forms of service and to refrain from subjecting conscientious objectors to imprisonment. See, for example, Commission resolution 1995/83 Conscientious objection to military service.

Amnesty International's recommendations

Amnesty International calls on the Commission to:

- Urge the Government to bring detention procedures into line with the recommendations contained in the 1993 report of the UN Committee against Torture, recommendations made by the CPT and international standards;

- Request the Government to release immediately and unconditionally all people imprisoned for expression of their non-violent opinions and undertake a thorough reform of Article 8 of the Anti-Terror Law and other relevant articles of the penal code under which people are imprisoned for their non-violent opinions;

- Request the Government to ensure that the Law on the Prosecution of Civil Servants (which permits local governors to block or delay prosecutions of security force members) is not applied to allegations of extrajudicial execution, torture or ill-treatment by police or other civil servants;

- Urge the Government to put an end to impunity and prosecute all those responsible for human rights violations;

- Urge the Government to do its utmost to facilitate the visits of, and cooperate with, the Working Group on Involuntary and Enforced Disappearances and the Special Rapporteur on torture in 1998;

- Welcome the Government's agreement "in principle" to an on-site investigation by the Special Rapporteur on extrajudicial, summary or arbitrary executions;

- Urge the Government to ensure a prompt retrial of Selahattin İmrek and the four parliamentary deputies Hatip Dicle, Orhan Doğan, Selim Sadak and Leyla Zana, in accordance with recognised international standards and the recommendation of the UN Working Group on Arbitrary Detention, or to release them;

- Urge all states exporting of light weapons and armoured vehicles to consider suspending exports to Turkey until the government demonstrates through appropriate monitoring mechanisms that they are not used to commit human rights violations.

HUMAN RIGHTS OF REFUGEES

Human rights violations often force individuals to flee their homes and communities and seek asylum abroad. Instead of seeking ways to resolve the human rights violations which cause people to seek international protection, an increasing number of governments pursue policies which undermine both refugee and human rights standards. The demise in the willingness of states to protect refugees and asylum-seekers is evidenced by measures which violate the fundamental principle of customary international law of *non-refoulement* - including: rejection at the frontier, restrictive interpretation of the 1951 Convention relating to the Status of refugees (1951 Refugee Convention) definition, the sending of asylum seekers to unsafe third countries, the use of detention as a deterrent to asylum-seekers and, under the guise of voluntary repatriation

programmes, the forcible return of refugees to countries where they risk serious human rights violations.

The Executive Committee of the programme of the United Nations High Commissioner for Refugees (UNHCR) has called on the High Commissioner for Refugees to cooperate with UN human rights bodies. For their part governments should take action through UN human rights mechanisms to address the repressive policies of other governments which lead people to flee. The Commission on Human Rights has information which if coupled with an appropriate country or thematic mechanism can make it easier for the Commission to address deteriorating human rights situations and take appropriate action to ensure that people are not forced to flee. Nevertheless, situations will arise when individuals are forced to seek international protection. Recent evidence shows that there is a failure of political will and inaction on the part of states which has brought into question firmly established protection principles. These principles articulated in international standards, drafted and agreed to by states, are now under threat.

In the absence of an independent treaty monitoring mechanism which can assess the human rights situation in countries of origin and the legal protection of refugees in countries of asylum, the Commission on Human Rights must assume a greater role for ensuring respect for the human rights of refugees. The Commission can supplement the work of UNHCR by paying increased attention through its country and thematic mechanisms to the human rights situation in host states and in states to which refugees may be returned.

Decisions to repatriate refugees must be firmly based on refugee and human rights standards. Since the last session of the Commission on Human Rights refugees were forced to return to their country of origin even though it was very likely that their human rights would be violated. For some refugee generating countries such as Afghanistan, the Great Lakes (Burundi, Democratic Republic of Congo and Rwanda) and Myanmar, 'voluntary' repatriation is now seen 'least worst option' even though returning refugees risk gross and systematic violations of their human rights in their home country. Faced with such a situation the Commission needs to affirm that respect for human rights in the country of origin is a prerequisite for any repatriation programme. To this end there must be an impartial and independent assessment of the country of origin's respect for human rights. Human rights organizations and UN human rights bodies and mechanisms have a significant contribution to make to such assessments. Following a decision to commence a voluntary repatriation programme, human rights mechanisms and the UN High Commissioner for Human Rights could assist UNHCR and others in the monitoring the return of refugees.

The right not to be subject to arbitrary arrest or detention is a fundamental norm in human rights law. Yet all over the world refugees are detained in host countries, sometimes for long periods, simply because they sought asylum from persecution. For example in Europe and North America the detention of asylum-seekers has significantly increased as states seek new ways to deter refugees seeking asylum. In its 1996 report to the Commission the Working Group on Arbitrary Detention expressed concern about “asylum seekers in foreign countries who are deprived of their liberty while their application is being processed”.⁴⁶ In its 1997 resolution on arbitrary detention, the Commission “[r]equests the Working Group to devote all necessary attention to the reports concerning the situation of immigrants and asylum-seekers who are allegedly being held in prolonged administrative custody without the possibility of administrative or judicial remedy”.⁴⁷ Amnesty International believes that it is necessary for the Working Group to make a series of on-site visits and make specific recommendations to remedy the situation.

The legal basis for detaining asylum-seekers contained in international and regional human rights instruments and is extremely limited. Nevertheless, in many cases the decision to detain asylum-seekers is arbitrary. It may rest on factors such as availability of detention places and the attitude of the official involved, rather than an objective assessment of whether detention is necessary and justified. In some situations the decision to detain is discriminatory as in cases when only asylum-seekers from certain countries are placed in detention. Even more alarming is the practice of detaining unaccompanied children sometimes in prisons with adults convicted of criminal offences.

Amnesty International’s recommendations

Amnesty International calls on the Commission to:

- Request the Working Group on Arbitrary Detention to undertake a series of on-site visits to investigate the arbitrary detention of asylum-seekers and make recommendations;
- Request its thematic mechanisms and country rapporteurs to report and make recommendations on human rights violations suffered by refugees and returnees.

THE HUMAN RIGHTS OF WOMEN⁴⁸

⁴⁶E/CN.4/1996/40, para 62.

⁴⁷Commission on Human Rights resolution 1997/50.

⁴⁸Please see also *1998: A Wonderful Year for Women’s human Rights? The UN, governments and the human rights of women*, AI Index: IOR 40/12/97, January 1998

The necessity and urgency of the Commission's focused attention to violations of women's human rights has been demonstrated particularly by the work of the Special Rapporteur on violence against women. Her reports, including those on domestic violence and trafficking in women, have provided the Commission with information on aspects of human rights violations which the Commission has not previously considered. In recent years some other thematic and country mechanisms have also adopted a gender perspective to their work and are revealing the extent and the severity of violations of the human rights of women but there is much that still needs to be done to ensure a consistent gender sensitive approach in their work.

Amnesty International has long standing concerns about the paucity of resources provided to the Commission's country and thematic experts who serve in an unpaid capacity but produce some of this body's most vibrant and effective work. If the mechanisms are to respond to the repeated requests of the Commission to include gender sensitive information in their reports,⁴⁹ they need to be adequately resourced.

At the moment, the inclusion of a gender perspective in the reports of the Commission's thematic and country experts is mixed. Steps need to be taken by the High Commissioner for Human Rights and the Commission to ensure that this situation improves. Furthermore, resolution 1997/43, adopted at the last session of the Commission, called on the UN, including the High Commissioner, to provide training in the human rights of women for all UN personnel and officials. In particular, the Office of the High Commissioner for Human Rights is encouraged to systematically review all its information and training materials to ensure the integration of a gender perspective, and to bear in mind the need for expertise in the human rights of women in the recruitment of staff. Amnesty International considers training to be an essential step for the implementation of those sections of the Vienna Declaration and Programme of Action relating to the human rights of women.

Amnesty International's recommendations

- All the Commission's country and thematic experts should be urged to make women visible in their reports by detailing the impact of human rights violations on them, even when they are not the immediate and obvious victim of the human rights violation. Governments responding to enquiries from the experts should be asked to provide this

⁴⁹ Commission resolution 1997/37, for example, asked the thematic mechanisms to include in their reports gender disaggregated data and to address the characteristics and practice of human rights violations under their mandate that are specifically or primarily directed against women, or to which women are particularly vulnerable.

information and the experts should seek information from NGOs who can provide appropriate information.

- The High Commissioner for Human Rights should ensure that the provisions of resolution 1997/43, concerning training in the human rights of women for all UN personnel and officials, is promptly and fully implemented.

- Both country and thematic experts should be encouraged to carry out joint visits involving the Special Rapporteur on violence against women. Steps should be taken to ensure that, particularly pending the training of all UN personnel in gender perspectives, delegations include at least one member with gender expertise. In the meantime, Amnesty International recommends that each delegation should include a 'gender adviser', a woman knowledgeable about the situation of women in the country being visited who could be from the UN, for example, the Division on the Advancement of Women, or a specialized agency, such as UNIFEM, or a non-governmental organization. In addition, it is essential that women interpreters are used in interviews with women who have been subjected to human rights violations such as rape and sexual abuse. All delegations should have time and resources to seek out women and women's organizations. They should be encouraged to look at violations of women's human rights from a broad perspective, and include in their analysis the impact of violations of their economic, social and cultural rights.

- All the thematic and country mechanisms should commit themselves to producing a report for the Commission on Human Rights within the next five years which focuses on a gendered analysis of human rights violations within their theme or country.

- Resolution 1997/17, adopted at the last session of the Commission, requests the Secretary-General to submit a report to the next session of the Commission on the opportuneness and resource implications of the appointment of a special rapporteur to encourage the promotion and protection of economic, social and cultural rights in general. If the Commission decides to establish such a special rapporteur, the mandate should specifically include the violations of these rights as they affect women.

ABOLITION OF THE DEATH PENALTY

At the 53rd session of the UN Commission on Human Rights (1997) Italy, with co-sponsorship from 44 other countries submitted a resolution on the death penalty. The resolution encouraged states which retain capital punishment "to consider suspending executions, with a view to completely abolishing the death penalty". Furthermore, the Commission decided to continue consideration of this matter in 1998 at its 54th session and requested the Secretary-General to submit to the Commission a yearly supplement to the UN quinquennial report on capital punishment, covering changes in law and practice on the death penalty worldwide.

Since the adoption of resolution 1997/12 by the Commission two countries have abolished the death penalty for all crimes - Georgia and Poland, bringing the number of countries abolitionist in law or practice to 100. Executions have been suspended in a number of countries including Estonia, Latvia, Lithuania and the Russian Federation, and in Malawi and Turkmenistan there have been mass commutations of death sentences. Two states, Colombia and Greece, have ratified the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty. This brings the number of states parties to this protocol to 31.

The revision of the Chinese penal code which took effect in October this year provides that those under 18 years of age at the time of the commission of the crime can no longer be sentenced to death. However, in at least two countries, Nigeria and Pakistan, prisoners were executed in 1997 for crimes committed when under the age of 18 years.

Amnesty International recorded 5,132 executions in 1996, a 75% increase over those recorded in 1995. The increase was largely due to China's "strike hard" anti-crime campaign in 1996 during which 4,367 executions were recorded in China alone. (Figures for 1997 are not yet available.) At the same time, the number of abolitionist countries continues to grow. Amnesty International remains optimistic that the number of countries who regard this punishment as a the ultimate cruel, inhuman and degrading punishment and one which is contrary to the right to life as proclaimed in the Universal Declaration of Human Rights, will continue to increase.

Amnesty International's recommendations

Amnesty International calls on the Commission to:

- Urge all states that have not yet abolished the death penalty to suspend executions with a view to completely abolishing the death penalty;
- Urge all states parties to the International Covenant on Civil and Political Rights (ICCPR) which have not yet acceded to, or ratified, the Second Optional Protocol to the ICCPR to do so without delay;
- Demand the cessation of the practice of sentencing to death those who were below the age of 18 years at the time of the crime;
- Request the Secretary-General to submit a supplement to his quinquennial report on capital punishment to the fifty-fifth session of the Commission on Human Rights in 1999.

THE 50th ANNIVERSARY: FROM DECLARATION TO IMPLEMENTATION

No human rights discussion in 1998 can neglect the 50th anniversary of the Universal Declaration of Human Rights or the five-year review of the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights. The first was proclaimed by the General Assembly in 1948 as “a common standard for all peoples and all nations”; the second confirmed in 1995 that “[h]uman rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governments”.

Since 1948 the world has moved closer to obtaining many of those rights and millions of people are active in the human rights movement. Nevertheless, violations of all the rights set out in the Universal Declaration of Human Rights continue throughout the world and commitments made in Vienna have still to be implemented. As the Commission knows well, the “disregard and contempt for human rights” of which the Universal Declaration speaks still result in barbarous acts which offend the conscience of humankind.

On the occasion of these anniversaries, the UN’s Year of Human Rights, Amnesty International will not only commemorate and celebrate the occasion but also provide a focus for the world’s commitment to the principles it promised to uphold:

- Amnesty International will work on behalf of human rights defenders, particularly those who have been the target of human rights violations because of their efforts to defend the rights set out in the Universal Declaration of Human Rights and the commitments contained in the Vienna Declaration and Programme of Action. It calls on the members of the Working Group on human rights defenders and the Commission to ensure that, at their 1998 sessions, a strong text of the draft Declaration on human rights defenders, which unequivocally supports all their human rights, is adopted.

- Amnesty International calls on all governments to announce at the Commission the steps they are taking to ensure that the texts of the Universal Declaration of Human Rights and the Vienna Declaration and Programme of Action are widely disseminated in all appropriate languages and through the electronic media to all those under their jurisdiction. Human rights should be incorporated into all educational curricula, in line with Article 26(2) of the Universal Declaration of Human Rights, which says that “[e]ducation shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms”.

- Amnesty International calls on all governments to ratify international and regional human rights treaties without limiting reservations, to ensure that they are fully implemented in law and practice and to report fully and on time to the treaty bodies. The ratification of human rights treaties is a basic but essential step which every government should take to demonstrate its commitment to protect human rights. Ratification is an occasion for a state to review its own legislation and practice, to ensure that they are in full conformity with international standards. Acceptance by states of international obligations helps establish more durable commitments in the field of human rights

protection. Adherence to these instruments not only invigorates domestic efforts at implementation but also preserves the achievements of today's governments against retrogression by those of tomorrow.

- Amnesty International is inviting people around the world to make a personal pledge to the principles contained in the Universal Declaration of Human Rights. The text of the pledge is on the back page of this document. You are invited to sign and return it to Amnesty International.

Annex

SELECTIVE LIST OF OTHER AMNESTY INTERNATIONAL DOCUMENTS

The following documents are available from Amnesty International section offices, the International Secretariat in London or the Amnesty International UN office in Geneva.

Availability of translations is indicated by means of superscribed letters (^French, ^Spanish, ^Arabic).

GENERAL

Amnesty International Report 1997
(AI Index: POL 10/01/97)^{F,S,A}

53rd UN Commission on Human Rights (1997): Statements and press releases issued by Amnesty International
(AI Index: IOR 41/08/97)^S

CAMBODIA

Cambodia: The victims of the 30 March grenade attack: an update
(AI Index: ASA 23/09/07)^F

Cambodia: International community should ensure that senior Khmer Rouge leaders are brought to justice
(AI Index: ASA 23/14/97)^{F,S}

Cambodia: Arrest and execution of political opponents
(AI Index: ASA 23/29/97)^F

Cambodia: Time for action on human rights
(AI Index: ASA 23/36/97)

COLOMBIA

Colombia: Hacienda Bellacruz: Land, violence and paramilitary power
(AI Index: AMR 23/06/97)^{F,S}

Colombia: No security for human rights defenders
(AI Index: AMR 23/32/97)^{F,S}

Colombia: Internally displaced: Dispossessed and exiled in their own land, "Just what do we have to do to stay alive?"

(AI Index: AMR 23/48/97)^{F, S}

KENYA

Kenya: Torture, compounded by the denial of medical care

(AI Index: AFR 32/18/95)^F

Kenya: Detention, torture and health professionals

(AI Index: AFR 32/01/97)^{F, S}

Kenya: The quest for justice

(AI Index: AFR 32/25/97)^F

Kenya: Violations of Human Rights: Communications between Amnesty International and the Government of Kenya

(AI Index: AFR 32/27/97)^F

SAUDI ARABIA

Saudi Arabia: Behind closed doors: Unfair trials in Saudi Arabia

(AI Index: MDE 23/08/97)

Saudi Arabia: Death sentence and flogging should not be imposed

(AI Index: MDE 23/09/97)

Saudi Arabia: Shrouded in secrecy - Justice denied by court system

(AI Index: MDE 23/13/97)

TURKEY

Turkey: Refoulement of non-European refugees: a protection crisis

(AI Index: EUR 44/31/97)^{F, S}

Turkey: Student campaigners tortured and imprisoned

(AI Index: EUR 44/54/97)^{F, S}

Turkey: Woman lawyer jailed for 30 years after unfair trial

(AI Index: EUR 44/64/97)^{F, S}

Amnesty International is a worldwide voluntary movement that works to prevent some of the gravest violations by governments of people's fundamental rights. The main focus of its campaigning is to:

- *free all prisoners of conscience. These are people detained anywhere for their beliefs or because of their ethnic origin, sex, colour or language – who have not used or advocated violence;*
- *ensure fair and prompt trials for all political prisoners;*
- *abolish the death penalty, torture and other cruel, inhuman or degrading treatment of prisoners;*
- *end extrajudicial executions and "disappearances".*

Amnesty International also opposes abuses committed by armed opposition groups which are contrary to minimum international standards of humanitarian conduct such as hostage-taking, torture and deliberate and arbitrary killings of prisoners and other civilians and non-combatants.

Amnesty International is impartial. It is independent of any government, political persuasion or religious creed. It does not support or oppose any government or political system, nor does it support or oppose the views of victims whose rights it seeks to protect. It is concerned solely with the protection of human rights regardless of the

ideology of the government or opposition force or the belief of the victim.

Amnesty International promotes awareness of and adherence to all the rights embodied in the Universal Declaration of Human Rights and elaborated in human rights instruments adopted by the United Nations (UN) including the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights although the specific rights on which it takes action are found in the latter treaty. All human rights are universal and indivisible and the specific rights which are the focus of Amnesty International's actions are inextricably linked to other human rights.

I will do everything
in my power to ensure
that the rights in the
Universal Declaration of
Human Rights
become a reality
throughout the world

Signature:

Name:

Delegation:

Please sign and return to:
Amnesty International
1 Easton Street, London WC1X 8DJ